

FOURTH AMENDMENT TO PFA

This FOURTH AMENDMENT TO PFA ("Fourth 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 defined terms therein shall, unless otherwise indicated, have the same meanings herein.)

B. First, Second and Third Amendments. Prior to the effective date hereof, City and Developer entered into a First Amendment to PFA ("First Amendment"), a Second Amendment to PFA ("Second Amendment"), and a Third Amendment to PFA ("Third Amendment"). (Said First, Second and Third Amendments are incorporated herein by reference as though set forth in full, and defined terms therein shall, unless otherwise indicated, have the same meanings herein.)

C. Fourth Amendment. The parties now desire to enter into this Fourth Amendment.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Site Plan and TPM. As of the effective date of this Fourth Amendment, the Site Plan for the DFP Area is as indicated on *Exhibit A* attached hereto, and the tentative parcel map ("TPM") for the DFP Area is as indicated on *Exhibit B* attached hereto. The parties agree that, upon request by Developer made at any time before recordation of a final map pursuant to the TPM, the DFP Property may be legally divided and functionally organized, in a manner generally consistent with divisions, functions and conditions of approval applicable to the TPM, by way of lot line adjustments, easement grants and reservations, and certificates of compliance, rather than by way of recordation of a final map for the TPM.

2. Force Majeure Occurrences. With respect to the Project, the parties acknowledge that (a) three lawsuits have been commenced, (b) two of said lawsuits have been dismissed, and (c) one lawsuit, i.e., a Petition for Writ of Mandamus filed by Advocates for Better Community Development ("ABCD"), Riverside Superior Court Case No. RIC 1302004, received a Court issued Denial of Petition on April 4, 2014. The last day ABCD could appeal the Denial of Petition was July 8, 2014 and such appeal was not filed. The parties acknowledge and agree that such lawsuits constituted force majeure

occurrences and suspended and tolled times for performance by Developer from February 19, 2013 to July 8, 2014. The parties further acknowledge and agree that on or about January 29, 2014, the City entered into a Settlement Agreement with ABCD pursuant to which, among other things, ABCD filed a dismissal with prejudice in the Superior Court Action of any and all claims relating to Block C and the hotel (i.e., the Kimpton Hotel previously approved by the City on Block C-1). The Parties acknowledge that multiple discretionary entitlements have been approved by the City and additional discretionary entitlements will be submitted to the City for review and approval. The Parties agree that any litigation filed against any portion of the Project for which all discretionary entitlements have not been approved shall not constitute force majeure occurrences and suspend and toll times for performance by Developer for any Block within the Project for which all discretionary permits have been approved or has been otherwise approved and vested. For the purposes of this Section 2, the term "discretionary entitlement" does not include ministerial permits

3. Block E. The parties agree that Block E, as shown on the attached Site Plan, shall be conveyed by Developer and acquired by City in fee and without condition or limitation except as expressly provided in this Section 3 of this Amendment No. 4. Block E shall be improved, used, operated, and maintained in accordance with the following:

A. Escrow. Within 10 days after execution of this Fourth Amendment, an escrow ("Escrow") shall be opened with a local escrow office of First American Title Insurance Company ("Escrow Holder"), and Escrow instructions, consistent with this Fourth Amendment and as reasonably requested by Escrow Holder, shall be promptly executed and delivered by the parties. The close of Escrow shall occur within 30 days after opening, and Block E will then be conveyed by Developer to City in accordance with the terms hereof.

B. Value. Prior to execution of this Fourth Amendment, City requested and received a Valuation Report dated January 17, 2014, which valued Block E at the sum of \$5,300,000. Notwithstanding such Valuation Report, City will pay \$4,500,000 for Block E and such sum will be delivered at close of Escrow. Said funds shall be used to create additional parking to the extent provided in Section 3.B(1) below.

(1) Additional Parking. Developer agrees that all funds received per Section 3.B above, will be deposited directly into the Private Improvement account and be released, upon authorizations from the IFC Agent and will be used to construct approximately 188+/- new underground parking spaces below surface areas of Blocks B and B-1, Market Street, and Andreas Street. Such new spaces are depicted on *Exhibit C* attached hereto and will be constructed approximately concurrently with streets to be constructed in the DFP Area. Deposit of the funds per Section 3.B above into the Private Escrow Improvement account and use of such funds as provided in this paragraph will satisfy the Developer's obligation to deposit \$2,000,000.00 into the Private Escrow Account as required under Section 2.8(6) of the PFA.

(2) Use of Parking. Such new parking spaces will be designated for use by occupants of development constructed within Blocks A, B, B-1, C, C-1, D, F, and G, and the guests and invitees of the occupants of such development.

C. Title. Prior to execution of this Fourth Amendment, City received a current Preliminary Title Report ("PTR") issued by First American Title Insurance Company ("Title Company") covering Block E, and copies of all recorded exceptions to title shown by the PTR. City has approved the PTR and all such exceptions, and will take title subject to such exceptions and standard title insurance policy exclusions and exceptions. At close of Escrow, City will receive a CLTA title insurance policy issued by the Title Company in the face amount of \$4,500,000.

D. Property. Block E is currently in process of demolition and removal of existing surface improvements. Subsequent thereto, Developer shall, at no cost to the City, do the following: (i) complete public streets to be located adjacent to Block E, i.e., Belardo Road and Main Street, with all appropriate utilities, including without limitation, water, sewer, gas, telecommunications including cable television, and electric utility services installed in said streets; (ii) install connections for such utility services, stubbed five (5) feet into the Block E site at locations designated by the City Manager; (iii) convey good and marketable title to Block E to City, consistent with the provisions of Section 1.A(1)(b) of the Project Financing Agreement and this Amendment No. 4; and (iv) deliver physical possession of Block E to City in the form of a clean dirt site. Following such delivery, City shall, at its cost, install and maintain the following within the Block E property: public restrooms, appropriate hardscape, landscape, perimeter and ancillary lighting, security systems, irrigation systems, access improvements, and electrical, sewer and audio-visual infrastructure. Such installation work by City will be coordinated so as to be completed approximately concurrently with completion of Private Improvements on Blocks C and/or C-1.

E. Use of Block E. Subsequent to installation of the Block E improvements pursuant to Subsection D above, City shall, at its cost, own, operate and maintain, in a neat, clean, attractive, safe, functional and first class condition, the Block E property as public open space, and as an active and vibrant area for staging community and public events such as concerts, movies, farmers markets, public gatherings, or community events of any kind or nature on or adjacent to (per Section 3.F below) Block E until at least January 1, 2044 or the date on which the O'Donnell Golf Club ceases operations at the O'Donnell Golf Course, whichever event occurs first. At any time after such date, the City may sell or lease Block E for any use or purpose as the City may determine. Before City may sell or lease Block E to a third party or entity, or any portion thereof as provided herein, the City shall first offer Block E or the portion thereof, to Developer on the same terms and conditions as are offered by the third party. Developer shall have 30 days during which to accept said offer. If Developer does not accept said offer within said period, City shall be free to accept the third-party offer. If City does not enter into an agreement with the third party on said terms and conditions and close the transaction within 120 days, City's right to sell or lease Block E or any portion thereof to the third party shall expire and the procedure described in this Section shall again be applicable. Nothing herein shall

prohibit or limit the right or the ability of the City to contract with one or more third parties to perform any of the City's obligations pursuant to the terms of this Section E, regardless of whether such agreement is characterized as a contract for services, a lease, or any other label or description.

F. Noise Easement. Developer, as the owner of Blocks C-1 and F, shall convey to City, and agents, employees, contractors, and designees, a noise easement over the Project, including without limitation, for the staging, conducting, or allowing of events as described above and the residual effects of such events, which may include loud music, loudspeakers, fireworks, vibrations, debris, and other noise or activities, and closure of all or parts of New Main Street between the westerly alignment of Belardo Road and Museum Drive so long as such closure does not interfere with access to Parcel 5, which may disturb or disrupt any owner, tenant, or guest within the Project, between the hours of 8:00 am and 10:30 pm. In the event the City ceases to use Block E for event uses, the City shall terminate the noise easement provided in this Section. City, as the owner of Block E, shall convey to Developer, as the owner of Blocks C-1 and F, a similar noise easement.

G. Escrow Costs. Escrow costs and the premium for the title insurance policy shall be paid for by City. Property taxes and assessments shall be prorated between the parties at close of Escrow.

H. Prior Provisions. The provisions of Section 3 of the Second Amendment relating to Block E are superseded and replaced by the provisions of Section 3 of this Fourth Amendment.

4. Blocks A and A-1. As leasing discussions have occurred, it became clear that because of concerns about the height of proposed retail facilities, commercial tenants were opposed to locating in the Block A building that was originally scheduled to remain in place. As a result, and after examination of various alternatives, it has been determined that such building should be replaced with two new buildings, one on Block A and one on Block A-1, as depicted on the attached Site Plan. Updated concepts for Block A call for a 3 story structure, well within Specific Plan height parameters, which will contain retail and restaurant uses at ground level, with office and other uses on the second and third floors. Developer intends to submit revised plans for Block A at or prior to execution of this Fourth Amendment. Block A-1 will be designed and developed as part of future phase 2. When Block A-1 is developed, a 30 foot wide pedestrian paseo will be created, and it will be aligned to match on the south with proposed Market Street and on the north with an existing entry into the adjacent Hyatt Hotel.

5. Blocks B and B-1. The Site Plan attached to the original PFA contemplated layout configurations, land uses, improvements, etc., that have evolved and changed over time as pursuit of the Project, and negotiations and discussions with potential tenants, end users, design consultants and the City have occurred. Block E, originally planned for 65,000-70,000 square feet of commercial space plus 165 upper level residential units, is now planned for 50,530 square feet of public open space. Increasing open space (and completely eliminating Private Improvements) in Block E logically justifies decreasing

open space (and increasing Private Improvements) in nearby Blocks B and B-1. Updated concepts for Block B call for a two story structure which will contain retail and restaurant uses. Developer intends to submit revised plans for Block B at or prior to execution of this Fourth Amendment. Block B-1 will be designed and developed as part of future phase 2.

6. Block C Public Restrooms. Developer agrees, within a building in Block C, to design and construct at its cost, at a location within such building reasonably acceptable to City, public restroom facilities for women consisting of at least four (4) stalls and related wash basins and facilities, and public restroom facilities for men consisting of at least two stalls, two urinals, and related wash basins and facilities, fully compliant with all applicable laws, including without limitation physical disability access requirements, and connect same to requisite utilities (water, power, sewer). Developer shall convey easement or leasehold title to the restrooms space and improvements to the City in a form acceptable to the City Manager, and thereafter and at all times the City shall operate and maintain such facilities in a neat, clean, attractive, safe, functional, and first class condition.

7. Maintenance of Streets, Sidewalks and Other Common Areas. Within the Project and DFP Area, once constructed and accepted (a) City shall, at its sole cost and expense, operate and maintain all street and sidewalk areas and all landscaping and other improvements, e.g., utilities normally maintained by City, located therein, and (b) Developer shall, at its sole cost and expense, operate and maintain all other common areas and improvements and landscaping therein, all as shown on Exhibit "A."

8. Performance Trust Deed. As part of the PFA, Developer provided City with a Performance Trust Deed to secure obligations of Developer under the PFA to complete Private Improvements. The parties acknowledge that plans for development of the Project have evolved and changed over time, and that such changes, while significantly improving the overall Project, greatly increase Developer costs. Such increased costs can only be funded by substantial construction loans, and such loans can only be obtained if the City releases the Performance Trust Deed. The City is strongly in support of such changes and has agreed, and hereby does agree, to incrementally reconvey the Performance Trust Deed on a parcel by parcel basis concurrently with the recordation of any loan to fund all Private Improvements on each such parcel to be constructed within the DFP Area, so long as 100% of the costs to complete such improvements are fully funded by the construction loan and/or Developer funds as determined by the lender and reviewed by the City Manager or the City Manager's designee at a location in the Coachella Valley identified by the lender. In turn, Developer has agreed, and hereby does agree, that expenditures from any such loan will require prior approval of the IFC Agent, as contemplated by original requirements of the PFA.

9. Development Agreement. At any time, upon request by Developer, City and Developer shall exert and use commercially reasonable best efforts to prepare, finalize, execute and implement a Development Agreement, as statutorily authorized by Section 65864, *et seq.* of the California Government Code, pursuant to which, among other things, Developer will obtain vested rights to construct and operate, in whole or in part,

improvements contemplated for construction and development within areas covered by the Project and the Specific Plan. In connection with any such efforts and Development Agreement, City agrees to cooperate and proceed without charge, e.g., without imposition of fees, costs or exactions, upon or against Developer or the Project.

10. Amendment of Grant Deed for Parking. The Parties agree to amend the Grant Deed conveying the Parking Facilities as provided in the PFA to allow the City Council with the discretion to prohibit parking in the underground parking area in Block A between the hours of 3:00 am and 6:00 am as the City Council may designate by resolution.

11. Effect of Fourth Amendment. To the extent provided and/or contemplated herein, the terms, provisions, covenants, and conditions of the PFA (and all documents attached to and/or executed pursuant thereto) and the First, Second and Third Amendments, are deemed amended and superseded. Except to the extent provided and/or contemplated herein, the terms, provisions, covenants and conditions of the PFA (and all documents attached to and/or executed pursuant thereto) and the First, Second and Third Amendments, shall remain in effect as originally written.

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

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

DEVELOPER: PALM SPRINGS PROMENADE, LLC
A California limited liability company
By: [Signature]
Title: Managing Partner
Dated: 10/30/14

CITY: CITY OF PALM SPRINGS
A California municipal corporation and charter city
By: [Signature]
Title: CITY MANAGER
Dated: 10/30/14

ATTEST: [Signature]
City Clerk

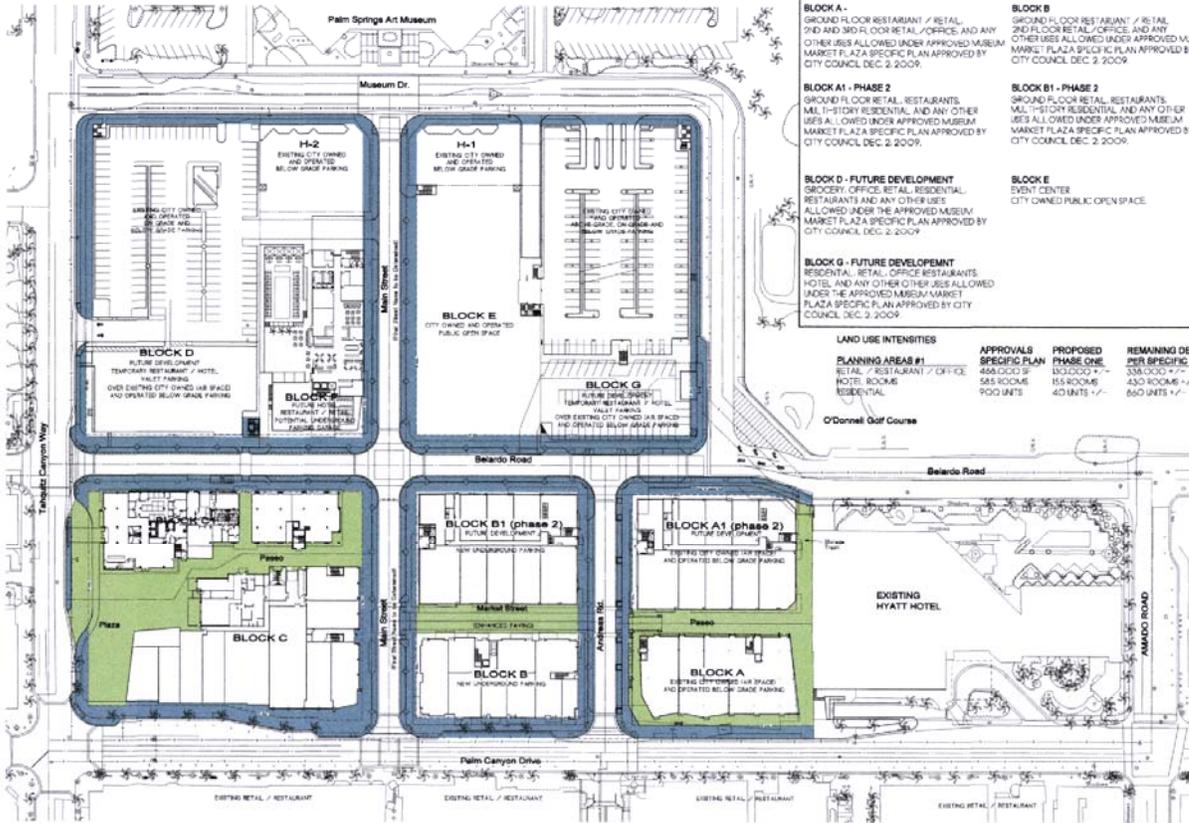
APPROVED AS TO LEGAL FORM:
[Signature]
City Attorney

APPROVED BY CITY COUNCIL
09/17/2014 4.B.
AGI4E

Exhibit A

Site Plan for the DFP Area

(On following page)



USES

- BLOCK A -** SECOND FLOOR RESTAURANT / RETAIL, 2ND AND 3RD FLOOR RETAIL / OFFICE, AND ANY OTHER USES ALLOWED UNDER APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009.
- BLOCK B1 - PHASE 2** SECOND FLOOR RESTAURANT, RESTAURANTS, MULTISTORY RESIDENTIAL, AND ANY OTHER USES ALLOWED UNDER APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009.
- BLOCK D - FUTURE DEVELOPMENT** 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 - FUTURE DEVELOPMENT** 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** SECOND FLOOR RESTAURANT / RETAIL, 2ND FLOOR RETAIL / OFFICE, AND ANY OTHER USES ALLOWED UNDER APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009.
- BLOCK B1 - PHASE 2** SECOND FLOOR RESTAURANT, RESTAURANTS, MULTISTORY RESIDENTIAL, AND ANY OTHER USES ALLOWED UNDER APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009.
- BLOCK E** EVENT CENTER, CITY OWNED PUBLIC OPEN SPACE.
- BLOCK C** SECOND FLOOR RETAIL, RESTAURANTS, PUBLIC RESTROOMS AS PER PFA, MULTISTORY RESIDENTIAL, AND ANY OTHER USES ALLOWED UNDER APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009.
- BLOCK C1** HOTEL, RESTAURANTS, RETAIL, OFFICE, RESIDENTIAL, OFFICE SIGNAGE, AND OTHER USES ALLOWED UNDER APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009.
- BLOCK F - PHASE 2** HOTEL, HOTEL, OFFICE, RESIDENTIAL, RESTAURANTS AND ANY OTHER USES ALLOWED UNDER APPROVED MUSEUM MARKET PLAZA SPECIFIC PLAN APPROVED BY CITY COUNCIL DEC. 2, 2009.

LAND USE INTENSITIES

PLANNING AREA #1	APPROVALS SPECIFIC PLAN	PROPOSED PHASE ONE	REMAINING DENSITY PER SPECIFIC PLAN
RETAIL / RESTAURANT / OFFICE, HOTEL, ROOMS, RESIDENTIAL	466 ROOMS / 265 ROOMS, 900 UNITS	103 ROOMS / 164 ROOMS, 40 UNITS / 17	338 ROOMS / 433 ROOMS, 860 UNITS / 17

ENHANCED PAVING ON MAIN ST., ANDREAS AND MARKET STREET AS SHOWN / PAVING VARIES DEPENDING ON SERVICE & TRAFFIC LOCATION. REMOVABLE BOLLARDS AT THE FOLLOWING INTERSECTIONS: MARKET STREET & MAIN STREET, MARKET STREET & ANDREAS.

COLOR LEGEND:

- CITY TO MAINTAIN
- DEVELOPER TO MAINTAIN

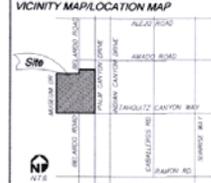
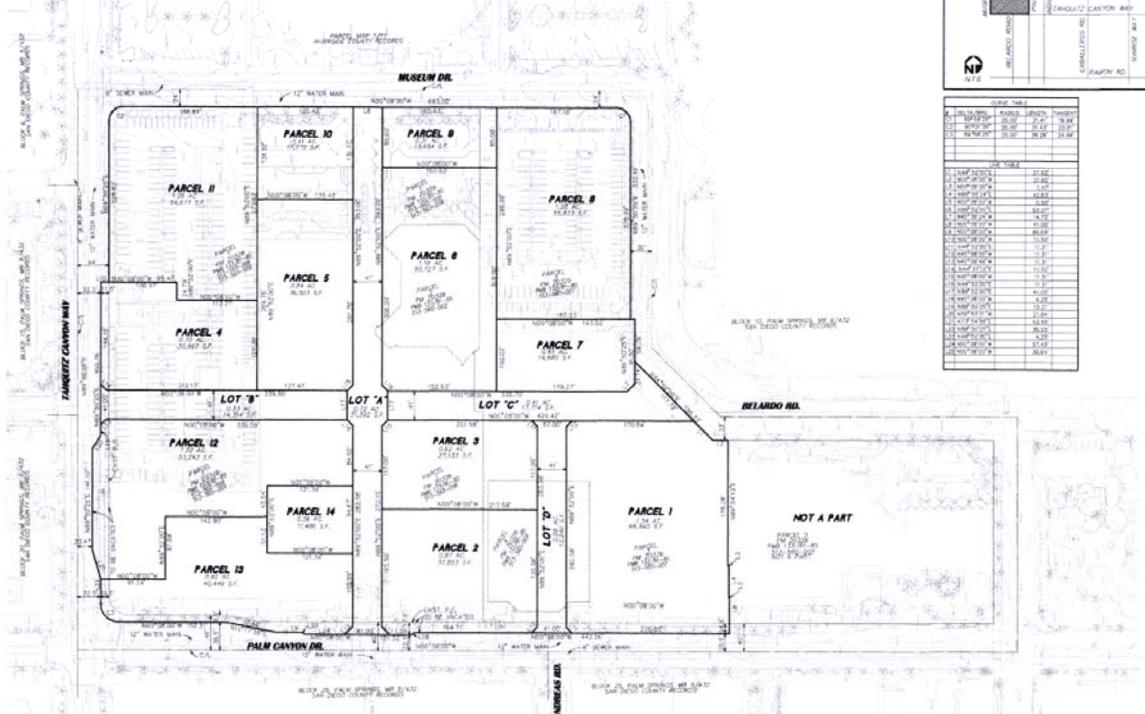
Exhibit B

Tentative Parcel Map (“TPM”) for the DFP Area

(On following page)

IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
TENTATIVE PARCEL MAP NO. 36446

BEING A SUBDIVISION OF PARCELS 1, 2, 3 & 4 OF PARCEL MAP NO. 20326
 P.M.S. 153 91-80, RIVERSIDE COUNTY RECORDS
 SOUTHWEST ONE-QUARTER OF SECTION 15, TOWNSHIP 4 SOUTH, RANGE 4 EAST, S.E.M.
 SANBORN A/E, Inc. MARCH 2012



NO.	AREA	AREA (SQ. FT.)	PERCENT
1	PARCEL 1	14,211.00	10.00
2	PARCEL 2	14,211.00	10.00
3	PARCEL 3	14,211.00	10.00
4	PARCEL 4	14,211.00	10.00
5	PARCEL 5	14,211.00	10.00
6	PARCEL 6	14,211.00	10.00
7	PARCEL 7	14,211.00	10.00
8	PARCEL 8	14,211.00	10.00
9	PARCEL 9	14,211.00	10.00
10	PARCEL 10	14,211.00	10.00
11	PARCEL 11	14,211.00	10.00
12	PARCEL 12	14,211.00	10.00
13	PARCEL 13	14,211.00	10.00
14	PARCEL 14	14,211.00	10.00
15	LOT 9	14,211.00	10.00
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96	LOT 90	14,211.00	10.00
97	LOT 91	14,211.00	10.00
98	LOT 92	14,211.00	10.00
99	LOT 93	14,211.00	10.00
100	LOT 94	14,211.00	10.00

OWNER/DEVELOPER:
 OWNER: JESSAMAY INC 2012
 222 S GARRETT ST STE 200
 PALM SPRINGS, CALIFORNIA 92264
 ENGINEER: SANBORN A/E, INC.
 7100 SAN JACINTO DR
 SUITE 201
 RANCHO MESADE, CA 92270
 PHONE: 951-251-1100
 FAX: 951-251-1101

UTILITY NOTIFICATIONS:
 ELECTRIC: SD CALIFORNIA ENERGY
 760-200-4000
 GAS: SD CALIFORNIA GAS CO
 760-200-4000
 ATTN: DEBRA WELLS
 TELEPHONE: SANBORN A/E, INC.
 ATTN: JOHN SANDORN
 951-251-1100
 TELEVISION: PALM SPRINGS
 ATTN: DALE BERNER
 951-251-1100
 SEWER: PALM SPRINGS
 ATTN: DEBRA WELLS
 760-200-4000
 WATER: DESERT WATER AGENCY
 951-251-1100
 ATTN: DEBRA WELLS

BASIS OF BEARINGS:
 CONTAINS NORTH PALM CANYON DRIVE
 BEARING INFORMATION IN REF PARCEL MAP NO. 20326
 FILE 153-91-80

SCHOOL DISTRICT INFORMATION:
 PALM SPRINGS UNION SCHOOL DISTRICT
 840 EAST TANGENT CANYON RD
 PALM SPRINGS, CA 92262
 760-328-8000

ASSESSOR'S PARCEL NUMBERS:
 2008 THOMAS GUIDE LOCATION
 PAGE 756 OF 80

FEMA FLOOD ZONE:
 COMMUNITY PANEL NO. 20020 E
 DATE: 06/25/2008

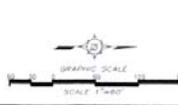
TOPOGRAPHIC SOURCE:
 DATE OF SURVEY: 12-19-09

AREA INFORMATION:
 TOTAL NO. OF MAPPED PARCELS = 14
 TOTAL NO. OF LOTS = 14
 THE PARCELS SHOWN HEREIN CONTAINING
 THE ENTIRE CONTIGUOUS CHANGING
 TOTAL GROSS AREA = 194,000 ACRES
 14 LOTS AREA = 194,000 SQFT
 14 NUMBER LOTS AREA = 194,000 ACRES
 14 NUMBER LOTS AREA = 194,000 SQFT
 SANBORN PARCEL SIZE = 14,000 ACRES
 14,000 SQFT

LEGAL DESCRIPTION:
 PARCELS 1, 2, 3 & 4 OF PARCEL MAP NO. 20326
 FILE 153-91-80 RIVERSIDE COUNTY RECORDS

LAND USE INFORMATION:
 EXISTING ZONING = R-10
 ADJACENT EXISTING LAND USE: NORTH - HOTEL / GOLF COURSE
 SOUTH - COMMERCIAL / HOTEL
 EAST - COMMERCIAL / RETAIL
 WEST - MEDIAN AND GOLF COURSE

GENERAL NOTES:
 1. LOT DIMENSIONS SHOWN HEREIN ARE APPROXIMATE
 2. THIS MAP IS COMPILED FROM RECORD INFORMATION ONLY
 AND IS NOT TO BE USED AS A SURVEY SERVICE



SANBORN A/E INC.
 JOHN L. SANBORN
 P.L.S.
 7100 SAN JACINTO DR
 SUITE 201
 RANCHO MESADE, CA 92270
 951-251-1100
 951-251-1101

TENTATIVE PARCEL MAP NO. 36446
 RECORD DEVELOPMENT
 PARCELS 1, 2, 3 & 4 OF PARCEL MAP NO. 20326, FILE 153-91-80
 RIVERSIDE COUNTY RECORDS, 2012, RANGE 4 EAST, SECTION 15
 S.E.M. 153-91-80
 DATE: 03/12/12
 DRAWN: JLS
 11.0

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 Sanborn A/E, Inc.
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Exhibit C

Parking Space Plan for DFP Area

(On Following Page)

