



## CITY COUNCIL STAFF REPORT

DATE: March 2, 2016

PUBLIC HEARING

SUBJECT: CONDUCT A PUBLIC HEARING UNDER SECTION 53083 OF THE CALIFORNIA GOVERNMENT CODE TO APPROVE A HOTEL OPERATIONS COVENANT BETWEEN THE CITY OF PALM SPRINGS AND THE PALM GROVE GROUP, LLC, A LIMITED LIABILITY CORPORATION, (THE ARRIVE HOTEL) PURSUANT TO THE CITY'S HOTEL OPERATIONS INCENTIVE PROGRAM.

FROM: David H. Ready, City Manager

BY: Community & Economic Development

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### SUMMARY

As a condition of receiving the benefits of the City's Hotel Operations Incentive Program, an operator is required to execute and record an Operations Covenant on the property to ensure that the hotel will be operated and maintained continuously as a hotel consistent with the Hotel Operations Incentive Program. This action is to approve one such agreement.

### RECOMMENDATION:

- 1) Open the public hearing and receive public testimony;
- 2) Approve a Hotel Operations Covenant Agreement with The Palm Grove Group, LLC (The Arrive Hotel) located at 1551 North Palm Canyon Drive; and
- 3) Authorize the City Manager to execute all necessary documents.

### STAFF ANALYSIS:

The City Council adopted Chapter 5.26 of the Palm Springs Municipal Code in December 2007 (amended on May 15, 2013) to provide a Hotel Operations Incentive Program ("Program") for the operation and maintenance of hotel facilities that enhance the tourist and travel experience for visitors to the city, maximize the use of the City's Convention Center, provide attractive and desirable visitor serving facilities and experiences, and assist the City in achieving its tourism goals. The Hotel Incentive Program consisted of two primary incentive components: 1) the renovation and upgrade of existing hotels and, 2) the construction of new hotels.

ITEM NO. 1B

The request to participate in the Hotel Incentive Program was received from the developers of the Arrive Hotel in August of 2012. The Arrive Hotel was expected to be "vertical" in 2012, but based on a number of site conditions, the developer was unable to break ground to meet the original Hotel Incentive Program timelines. Subsequently, the Hotel Incentive Program was suspended as the Council considered the impact of the original program and what changes should be made to the program going forward. During this interim, Council authorized staff to negotiate one-on-one hotel incentive agreements with developers of hotel properties based on a number of factors: (1) the need for the particular hotel product in the City's inventory; (2) the demonstrated financial need; and (3) the public benefit provided through the development or redevelopment of a site or hotel. On January 2, 2013 the City Council approved the developer's request to share transient occupancy tax revenue pursuant of the Council's one-on-one approach and directed staff to prepare an Agreement (Operations Covenant) to rebate 50% of the Transient Occupancy Tax (TOT) for a ten (10) year period.

The boutique hotel is located in the Uptown District and consists of 32 rooms built in a midcentury modern style. There is an 80-seat restaurant with indoor and outdoor dining, a 66-foot pool and 20-foot jacuzzi, plus a Customs coffee shop, and ice cream shop. The developer started construction in May 2014 and completed construction in February 2016.

The Arrive is now open to guests and the Hotel Operator now agrees to place restrictions upon the use and operation of the hotel, in order to ensure that the Project shall be operated and maintained continuously as a hotel available for short-term rentals. The hotel operator also agrees to participate in the Palm Springs Convention Center's Committable Rooms Program and provide two (2) designated room-nights per month for official City use. The City will share a percentage of Transient Occupancy Tax Increment with Owner pursuant to the Program guidelines.

#### State Law Requirement

In October, 2013, Section 53083 was added to the California Government Code. Section 53083 states that before granting an economic development subsidy, each local agency shall provide public notice and conduct a hearing regarding the economic development subsidy. "Economic development subsidy" under Section 53083 means any expenditure of public funds or loss of revenue to a local agency in the amount of one hundred thousand dollars (\$100,000) or more, for the purpose of stimulating economic development within the jurisdiction of a local agency, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zone or empowerment zone incentives, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits.

Each local agency shall, before approving any economic development subsidy within its jurisdiction, provide all of the following information in written form available to the public, and through its Internet Web site, if applicable.

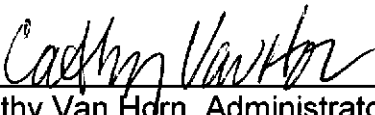
For Palm Grove Group, LLC, the information is as follows:

1. The business entity that is the beneficiary of the economic development subsidy: The Palm Grove Group, LLC, (Ezra Callahan, Peter Karpinski, Chris Pardo, and Matt Steinberg) P.O. Box 93217, Pasadena, CA 91109.
2. The start and end dates and schedule, if applicable, for the economic development subsidy: The Operations Covenant starts on March 1, 2016 and ends February 28, 2026. However, the "start date" of the Operations Covenant is the date at which the project is deemed fully completed and the calculation of the TOT increment commences.
3. A description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to the local agency as a result of the economic development subsidy: The subsidy is the rebate of 50% of the Transient Occupancy Tax (TOT) collected annually and calculated as follows: after the start date (3/1/2016) the subsidy is based on TOT collections for each calendar year. 50% of the TOT is payable to Palm Grove Group, LLC.
4. A statement of the public purposes for the economic development subsidy: The City has confirmed that Palm Grove Group, LLC, operation and maintenance of the hotel facilities improvements enhances the tourist and travel experience for visitors by providing attractive and desirable facilities and assists the City in achieving its tourism goals.
5. Projected tax revenue to the local agency as a result of the economic development subsidy: The City keeps 50% of the TOT. Even with a portion of the increment being shared with the applicant, the City conservatively still projects an average of \$67,500 net annual increase in TOT revenue over the ten year period.
6. Estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time and temporary positions: The development of the hotel created thirty four (34) full time positions, seventeen (17) part time positions, and three hundred fourteen (314) jobs during the construction period.

FISCAL IMPACT:

An amount equal to 50% of transient occupancy tax increment derived from The Arrive Hotel will be retained by the City for a ten year period. After that time, the city will retain 100% of the TOT.

  
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Lauri Aylaian, Director  
Community & Economic Development

  
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Cathy Van Horn, Administrator  
Community & Economic Development

  
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David H. Ready, City Manager

Attachments:

Hotel Operations Covenant – The Arrive Hotel  
Vicinity Map

**CITY OF PALM SPRINGS  
PUBLIC NOTIFICATION**



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Date: March 2, 2016  
Subject: Hotel Incentive Program  
Arrive Hotel – 1551 N. Palm Canyon Drive

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**AFFIDAVIT OF PUBLICATION**

I, Kathie Hart, MMC, Chief Deputy City Clerk, of the City of Palm Springs, California, do hereby certify that a copy of the attached Notice of Public Hearing was published in the Desert Sun on February 20, 2016.


I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Kathie Hart, MMC  
Chief Deputy City Clerk

**AFFIDAVIT OF POSTING**

I, Kathie Hart, MMC, Chief Deputy City Clerk, of the City of Palm Springs, California, do hereby certify that a copy of the attached Notice of Public Hearing was posted at City Hall, 3200 E. Tahquitz Canyon Drive, on the exterior legal notice posting board, and in the Office of the City Clerk on February 17, 2016.

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Kathie Hart, MMC  
Chief Deputy City Clerk

NOTICE OF PUBLIC HEARING  
CITY COUNCIL  
CITY OF PALM SPRINGS

HOTEL INCENTIVE PROGRAM  
THE PALM GROVE GROUP (THE ARRIVE HOTEL)  
1551 NORTH PALM CANYON DRIVE

NOTICE IS HEREBY GIVEN that the City Council of the City of Palm Springs, California, will hold a public hearing at its meeting of March 2, 2016. The City Council meeting begins at 6:00 p.m., in the Council Chamber at City Hall, 3200 E. Tahquitz Canyon Way, Palm Springs.

The purpose of this hearing is to consider approving a Hotel Operations Covenant with The Palm Grove Group, LLC, (The Arrive Hotel) at 1551 North Palm Canyon Drive in accordance with Chapter 5.26 of the Palm Springs Municipal Code to provide a Hotel Operations Incentive Program for the operation and maintenance of hotel facilities that enhance the tourist and travel experience for visitors to the City, maximize the use of the City's Convention Center, provide attractive and desirable visitor facilities and experiences, and assist the City in achieving its tourism goals.

The Owner applied for the Hotel Operations Incentive Program and on January 2, 2013, the City Council approved the Owners participation in the Program. The Owner has provided satisfactory documentation and confirmation that the Arrive Hotel is entitled and completed, and under operation. Therefore, pursuant to provisions of Chapter 5.26 of the Municipal Code, City and Owner now desire to place restrictions upon the use and operation of the Hotel for a 10 year period and 50% share of the new transient occupancy tax collected.

**REVIEW OF INFORMATION:** The staff report and other supporting documents regarding this matter are available for public review at the City Hall between the hours of 8:00 a.m. and 6:00 p.m., Monday through Thursday. Please contact the Office of the City Clerk at (760) 323-8204 if you would like to schedule an appointment to review these documents.

At the hearing any person may present oral or written testimony. The City Council will consider all objections or protests, if any, for approval of the Agreement.

Response to this notice can be made verbally at the Public Hearing and/or in writing before the hearing. Written comments can be made to the City Council by letter (for mail or hand delivery) to:

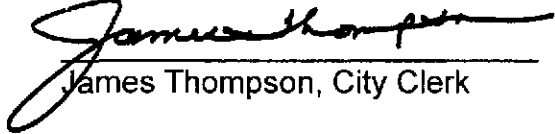
James Thompson, City Clerk  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262

Any challenge in court of the proposal may be limited to raising only those issues raised at the public hearing described in this notice, or in written correspondence delivered to

the City Clerk at, or prior, to the public hearing. (Government Code Section 65009(b)(2)).

An opportunity will be given at said hearing for all interested persons to be heard. Questions regarding this case may be directed to Lauri Aylaian at (760) 323-8228.

Si necesita ayuda con esta carta, porfavor llame a la Ciudad de Palm Springs y puede hablar con Felipe Primera telefono (760) 323-8253.

  
James Thompson, City Clerk

FREE RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

THE CITY OF PALM SPRINGS  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Attention: City Clerk

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(Space Above This Line for Recorder's Office Use Only)

**OPERATIONS COVENANT**

THIS OPERATIONS COVENANT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement" or "Covenant") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the CITY OF PALM SPRINGS, a municipal corporation and charter city ("City"), and The Palm Grove Group, LLC, a California Limited Partnership ("Owner" or "Participant").

**RECITALS:**

A. The City of Palm Springs adopted Chapter 5.26 of its Municipal Code in December, 2007 to provide a Hotel Operations Incentive Program ("Program") for the operation, maintenance and expansion of the inventory of quality hotels within the City that enhance the tourist and travel experience for visitors to the City, maximize the use of the City's Convention Center, provide attractive and desirable visitor serving facilities and experiences, and assist the City in achieving its tourism goals. (Chapter 5.26 of the Municipal Code is incorporated herein by reference and defined terms therein, shall unless otherwise indicated, have the same meanings herein.)

B. Owner holds fee title to certain real property ("Site") which is depicted on the Site Plan attached hereto as Exhibit "A", and legally described on the Legal Description attached hereto as Exhibit "B". The Site, which is generally located at 1551 North Palm Canyon Drive, Palm Springs, California, is fully entitled for development of a new hotel to contain approximately thirty-two (32) hotel rooms ("Hotel" or "Project"). Owner has applied for the Program and has provided satisfactory documentation confirming that the Arrive Hotel, as entitled and approved and when completed and under operation, will qualify as a new hotel and be entitled to benefits thereof under the pursuant to provisions of Chapter 5.26 of the Municipal Code and this Agreement.

C. City and Owner now desire to place restrictions upon the use and operation of the Project, in order to ensure that the Project shall be operated continuously as a hotel available for short-term rental for the term of this Agreement.

D. City and Owner also agree that in return for participation in the Program, Owner shall agree to operate the Project as a hotel; participate in the Palm Springs Convention Center's Committable Rooms Program; and provide City with a minimum of two (2) room-nights per month for official City use; and, City agrees to share a percentage of Transient Occupancy Tax Increment with Owner pursuant to the Program guidelines.



E. The City finds that no further environmental review is required in connection with the approval of this Covenant in that in connection with City approval of entitlements, related to the project, pursuant to the California Environmental Quality Act (CEQA) Guidelines, the Project is determined to be Categorically Exempt under CEQA Section 15332 (“in-fill development”).

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Participant hereby conveys to the City the Operating Covenants described herein and City hereby agrees to provide Owner with funds as provided under the Program and as set forth hereinafter.

## ARTICLE 1

### STATEMENT OF OPERATING COVENANTS

1.1. OPERATION AND USE COVENANT. Upon occupancy, Owner covenants to operate, maintain, and use the Arrive Hotel in accordance with this Agreement. All uses conducted on the Site, including, without limitation, all activities undertaken by the Owner pursuant to this Agreement shall, in all material respects, conform to requirements of this Agreement and Palm Springs Municipal Code.

1.2. HOTEL USE. The Owner hereby agrees that the Project is to be owned, managed, and operated as a hotel in a first-class manner, and the Project's participation in the Program shall continue in accordance with the terms of the Program, for a term equal to **ten (10) years**, commencing upon the date Owner first receives from the City the Owner's share of transient occupancy tax revenues pursuant to the Program, or until Owner has received from the City the total sum of fifteen million dollars (**\$15,000,000**) if that occurs prior to the expiration of said ten years, unless Owner's participation in the Program is terminated prior thereto in accordance with this Agreement (the "Term"). Subject to Palm Springs Municipal Codes Section 5.26.040(b), Comfort New Hotels, and Sections 7.9, 7.11 and 7.16 of this Covenant, during the Term, City shall annually pay to Owners, within sixty (60) days after receipt from Owner of twelve monthly payments made by Owner to the tax administrator per Section 3.24.080 of the Municipal Code, an amount equal to fifty percent (50%) of the sum of all twelve payments. City acknowledges and agrees that City has reviewed proposed development and operational plan for the Hotel and concluded that such plan is in substantial compliance with and will satisfy new Hotel requirements of the City and Chapter 5.26 of the Municipal Code.

1. Housing Uses Prohibited. None of the rooms in the Project will at any time be utilized as a non-transient residential property including dormitory, fraternity or sorority house, rooming house, nursing home, hospital, sanitarium, or trailer court or park without the City's prior consent which consent may be given or withheld in its sole and absolute discretion.

2. Conversion of Project. No part of the Project will at any time be owned by a cooperative housing corporation, nor shall the Owner take any steps in connection with the conversion to such ownership or uses to condominiums, or to any other form of ownership, without the prior written approval of the City Council which approval may be given or withheld in its sole and absolute discretion.

## ARTICLE 2

### WARRANTIES AND COVENANTS

2.1. WARRANTIES AND COVENANTS. For the Term of this Agreement, the Owner hereby represents, covenants, warrants and agrees as follows:

1. Owner has completed the City's application for the Hotel Operations Incentive Program. Since the Hotel will be a new hotel, City has determined the Transient Occupancy Tax Base to be used to calculate the Transient Occupancy Tax Increment shall be zero, and the Owner accepts such Transient Occupancy Tax Base.

2. Owner hereby agrees to subscribe to the Palm Springs Convention Center's Committable Rooms Program or any similar successor program as identified by the City Manager without being obligated to incur any additional costs or expenses.

3. Upon City's prior request, Owner shall provide the City at no cost two (2) rooms for one (1) night (or 1 room for 2 nights) other than Friday or Saturday nights each month for use for City purposes as approved or designated by the City Manager, provided that such use by the City shall be subject to the rooms being available at the time of the City's request. Such accommodations shall include all services and amenities for which the Owner would normally collect transient occupancy taxes but will not include services and amenities that are optional to the transient and for which the transient is not required to pay a transient occupancy taxes. City shall be responsible for any transient occupancy taxes for any occupancy provided to City under the provisions of this paragraph. Notwithstanding anything in this Agreement to the contrary, if the City does not use rooms during any month, then its right to use rooms with respect to that month shall expire at the end of that month and shall not accrue; provided, however, if the City was unable to use rooms solely because Owner's Hotel had no rooms available when the City requested a room in accordance with this Section 2.1.3, then, the City's right to use rooms shall not expire and may be used by the City in the next subsequent month.

## ARTICLE 3

### MAINTENANCE

3.1. MAINTENANCE.

1. Maintenance Obligation. Owner, for itself and its successors and assigns, hereby covenants and agrees to maintain and repair or cause to be maintained and repaired the Site and all related on-site improvements and landscaping thereon, including, without limitation, buildings, amenities, parking areas, lighting, signs and walls in a first class condition and repair, free of rubbish, debris and other hazards to persons using the same, and in accordance with all applicable laws, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction, at Owner's sole cost and expense. Such maintenance and repair shall include, but not be limited to, the following: (i) sweeping and trash removal; (ii) the care and replacement of all irrigation, shrubbery, plantings, and other landscaping to maintain it in a healthy condition; and (iii) the repair,

replacement and restriping of asphalt or concrete paving using the same type of material originally installed, to the end that such paving at all times be kept clearly marked and in a level and smooth condition. In addition, Owner shall be required to maintain the Property in such a manner as to avoid the reasonable determination of a duly authorized official of the City that a public nuisance has been created by the absence of adequate maintenance such as to be detrimental to the public health, safety or general welfare or that such a condition of deterioration or disrepair causes appreciable harm or is materially detrimental to property or improvements within one thousand (1,000) feet of such portion of the Site.

2. Parking and Driveways. The driveways and traffic aisles on the Site shall be kept clear and unobstructed at all times.

3. Right of Entry. In the event Owner fails to maintain the Site in the above-mentioned condition, and satisfactory progress is not made in correcting the condition within thirty (30) days from the date of written notice from City (which notice shall reasonably identify the required maintenance), City may, at City's option, and without further notice to Owner, declare the unperformed maintenance to constitute a public nuisance. Thereafter, either City or its employees, contractors, or agents, may cure Owner's default by entering upon the Site and performing the necessary landscaping and/or maintenance in accordance with Section 3.1.1 above. The City shall give Owner, its representative, or the residential manager reasonable notice of the time and manner of entry, and entry shall only be at such times and in such manner as is reasonably necessary to carry out this Agreement. Owner shall pay such costs as are reasonably incurred by City for such maintenance, including attorneys' fees and costs.

4. Lien. If any costs incurred by City under Section 3 above are not reimbursed within thirty (30) days after Owner's receipt of City's written request for reimbursement, the same shall be deemed delinquent, and the amount thereof shall bear interest thereafter at a rate of the lower of ten percent (10%) per annum or the legal maximum until paid. Any and all delinquent amounts, together with said interest, costs and reasonable attorney's fees, shall be an obligation of Owner as well as a lien and charge, with power of sale, upon the property interests of Owner, and the rents, issues and profits of such property. City may bring an action at law against Owner obligated to pay any such sums or foreclose the lien against Owner's property interests. Any such lien may be enforced by sale by the City following recordation of a Notice of Default of Sale given in the manner and time required by law as in the case of a deed of trust; such sale to be conducted in accordance with the provisions of Section 2924, et seq., of the California Civil Code, applicable to the exercise of powers of sale in mortgages and deeds of trust, or in any other manner permitted by law.

Any monetary lien provided for herein shall be subordinate to any bona fide mortgage or deed of trust covering an ownership interest or leasehold or subleasehold estate in and to any Site approved by City pursuant to the Agreement, and any purchaser at any foreclosure or trustee's sale (as well as any deed or assignment in lieu of foreclosure or trustee's sale) under any such mortgage or deed of trust shall take title free from any such monetary lien, but otherwise subject to the provisions hereof; provided that, after the foreclosure of any such mortgage and/or deed of trust, all other assessments provided for herein to the extent they relate to the expenses incurred subsequent to such foreclosure,

assessed hereunder to the purchaser at the foreclosure sale, as owner of the subject Site after the date of such foreclosure sale, shall become a lien upon such Site upon recordation of a Notice of Assessment or Notice of Claim of Lien as herein provided.

#### ARTICLE 4

##### COMPLIANCE WITH LAWS

4.1. COMPLIANCE WITH LAWS. Owner shall comply with all ordinances, regulations and standards of the City applicable to the Site. Owner shall comply with all rules and regulations of any assessment district of the City with jurisdiction over the Site.

#### ARTICLE 5

##### NONDISCRIMINATION

5.1. NONDISCRIMINATION. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, creed, religion, gender, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, nor shall Owner, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of guests or vendees of the Site, or any part thereof.

#### ARTICLE 6

##### COVENANTS TO RUN WITH THE LAND

6.1. COVENANTS TO RUN WITH THE LAND. Owner hereby subjects the Site to the covenants, reservations, and restrictions set forth in this Agreement. City and Owner hereby declare their express intent that all such covenants, reservations, and restrictions shall be deemed covenants running with the land and shall pass to and be binding upon the Owner's successors in title to the Site; provided, however, that on the termination of this Agreement said covenants, reservations and restrictions shall expire. All covenants without regard to technical classification or designation shall be binding for the benefit of the City, and such covenants shall run in favor of the City for the entire term of this Agreement, without regard to whether the City is or remains an owner of any land or interest therein to which such covenants relate. Each and every contract, deed or other instrument hereafter executed covering or conveying the Site or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations, and restrictions, regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed or other instrument.

City and Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the land in that Owner's legal interest in the Site is rendered less valuable thereby. City and Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Project by the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the City was formed.

Owner, in exchange for the City entering into the Agreement, hereby agrees to hold, sell, and convey the Site subject to the terms of this Agreement. Owner also grants to the City the right and power to enforce the terms of this Agreement against the Owner and all persons having any right, title or interest in the Site or any part thereof while such party owns the Site. No party shall have any liability or obligation in connection with any breach occurring while such party is not the owner of the Site.

Within fifteen (15) business days after request of Owner, City shall execute and provide to Owner an estoppel certificate, in the form approved by the City Attorney of the City, confirming whether or not Owner is in breach of any obligations under this Agreement and identifying any required cure.

## ARTICLE 7

### INDEMNIFICATION

7.1. INDEMNIFICATION. Owner agrees for itself and its successors and assigns to indemnify, defend, and hold harmless City and its respective officers, members, officials, employees, agents, volunteers, and representatives from and against any loss, liability, claim, or judgment to or by any third party relating to development and/or operation of the Project by Owner, excepting only any such loss, liability, claim, or judgment arising solely out of the intentional wrongdoing or gross negligence of City or its respective officers, officials, employees, members, agents, volunteers, or representatives. Owner, while in possession of the Site, and each successor or assign of Owner while in possession of the Site, shall remain fully obligated for the payment of property taxes and assessments in connection with the Site. The foregoing indemnification, defense, and hold harmless agreement shall only be applicable to and binding upon the party then owning the Site or applicable portion thereof.

7.2. ATTORNEYS' FEES. In the event that a party to this Agreement brings an action against the other party hereto by reason of the breach of any condition, covenant, representation or warranty in this Agreement, or otherwise arising out of this Agreement, the prevailing party in such action shall be entitled to recover from the other reasonable expert witness fees, and its reasonable attorney's fees and costs. Attorney's fees shall include attorney's fees on any appeal, and in addition a party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, including the conducting of discovery.

7.3. AMENDMENTS. This Agreement shall be amended only by a written instrument executed by the parties hereto or their successors in title, and duly recorded in the real property records of the County of Riverside.

7.4. NOTICE. Any notice required to be given hereunder shall be made in writing and shall be given by personal delivery, certified or registered mail, postage prepaid, return receipt requested, at the addresses specified below, or at such other addresses as may be specified in writing by the parties hereto:

City: City of Palm Springs  
3200 E. Tahquitz Canyon Way

Palm Springs, CA 92262  
Attn: City Manager

Copy to: Woodruff, Spradlin & Smart, LLP  
555 Anton Boulevard, Suite 1200  
Costa Mesa, CA 92626  
Attn: Douglas C. Holland, Esq.

Owner: Palm Grove Group LLC  
P.O. Box 93217  
Pasadena, CA 91109  
Attn: Matt Steinberg

The notice shall be deemed given three (3) business days after the date of mailing, or, if personally delivered, when received.

#### 7.5. SEVERABILITY/WAIVER/INTEGRATION

1. Severability. If any provision of this Agreement or portion thereof, or the application to any person or circumstances, shall to any extent be held invalid, inoperative, or unenforceable, the remainder of the provisions, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; provided, that if any material terms or provisions of these Operating Covenants are rendered invalid, void and/or unenforceable, or due to changes in the law such terms or provisions would materially alter the terms of the transactions contemplated herein, the parties agree to meet and negotiate in good faith to attempt to reform these Operating Covenants to accomplish the intent of the parties.

2. Waiver. A waiver by either party of the performance of any covenant or condition herein shall not invalidate this Agreement nor shall it be considered a waiver of any other covenants or conditions, nor shall the delay or forbearance by either party in exercising any remedy or right be considered a waiver of, or an estoppel against, the later exercise of such remedy or right.

3. Integration. This Agreement contains the entire Agreement between the parties and neither party relies on any warranty or representation not contained in this Agreement.

4. Third Parties. No third party beneficiaries are intended, and the only parties who are entitled to enforce the provisions of these Operating Covenants are the City, Mortgagees, Participant and their respective successors and assigns.

7.6. GOVERNING LAW. This Agreement shall be governed by the laws of the State of California and is subject to the provisions of Government Code Section 53083.

7.7. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall constitute one original and all of which shall be one and the same instrument.

7.8. TERMINATION. This Agreement may be terminated only (i) by and upon expiration of the Term, (ii) by mutual written agreement of the parties, and (iii) by and pursuant to the provisions of Section 7.9 or 7.10 below. In the event of any termination of this Covenant, Owner (or its successor, as applicable) shall not be obligated to return any amounts previously paid to it by the City pursuant to the Program.

7.9. DEFAULT BY OWNER. If at any time during the Term, City contends that Owner has committed a material default with respect this Agreement, e.g., by failing to operate the Hotel as a Comfort New Hotel, City shall deliver to Owner written notice of default which specifies in detail all facts alleged by City to constitute such default. For a period of sixty days thereafter, Owner will have the right to commence and complete cure of the alleged default; provided, however, if the alleged default is of such a nature as to reasonably require more than sixty days to cure, and the Parties so agree, Owner will have such addition time as is reasonably necessary to complete such cure. Subject to Section 7.11 below, if Owner fails to timely cure such default, City shall then have the right to terminate this Agreement. (To the extent of any inconsistency between the provisions of this Section 7.9 and the provisions of Section 3.1 above, the provisions of this Section 7.9 shall prevail.)

7.10 DEFAULT BY CITY. If at any time during the Term, Owner contends that City has committed a material default with respect this Agreement, Owner may deliver to City written notice of default that specifies in detail all facts alleged by Owner to constitute such default. For a period of thirty days thereafter, City will have the right to commence and complete cure of the alleged default; provided, however, if the alleged default is of such a nature as to reasonably require more than thirty days to cure, and the Parties so agree, City will have such addition time as is reasonably necessary to complete such cure. Subject to Section 7.11 below, if City fails to timely cure such default, Owner shall then have the right to terminate this Agreement or exercise any and all other rights and remedies available at law and in equity, and each of such rights and remedies shall be cumulative and not exclusive.

7.11 MORTGAGE PROVISIONS. Anything in this Agreement to the contrary notwithstanding, with respect to any recorded mortgage or deed of trust given in good faith and for value and encumbering the Hotel ("Mortgage"), any holder thereof that has delivered to City a copy of such recorded Mortgage and current contact information ("Mortgagee") will be entitled rights and benefits in accordance with the following:

1. City acknowledges and agrees that the rights and obligations of Owner under this Agreement may, with or without approval by City, be conditionally assigned by Owner to any Mortgagee as security for performance of Mortgage obligations.

2. While any Mortgage remains in effect, City will not amend or modify this Agreement in any material respect without receiving prior written approval from Mortgagee, which approval may not be unreasonably withheld, delayed or conditioned; provided, however, failure by Mortgagee to provide written approval or disapproval (and if disapproval the reasons therefor)

within thirty days of delivery of request therefor shall be deemed to constitute approval by Mortgagee.

3. While any Mortgage remains in effect, in the event City delivers to Owner of any notice of default as referenced in either Section 3.1 or 7.9 above, City shall concurrently deliver a copy thereof to Mortgagee.

4. Delivery of any such notice of default notwithstanding, City will not terminate or initiate or pursue any action to terminate this Agreement as long as Mortgagee diligently (i) declares a default by Owner under the Mortgage, (ii) pursues foreclosure and/or other appropriate actions under the Mortgage, (iii) pays to City all amounts that would otherwise have been payable by Owner to City, and (iv) cures non-monetary defaults.

7.12 Operator Provisions. City acknowledges and agrees that operational obligations of Owner may, with or without consent of City, be assigned by Owner to any entity owned or wholly controlled by Owner or its Members or Hotel Operator of Owner's choice, and, in connection therewith, such Hotel Operator may assume all or part of Owner's Hotel operation obligations under this Agreement; provided, however, Owner shall retain ultimate responsibility for such Hotel operation obligations. City agrees that while any Hotel Operator agreement is in effect, and provided that City has been put on notice of such agreement and received contact information for such Operator, in the event City delivers to Owner of any notice of default as referenced in either Section 3.1 or 7.9 above, City shall concurrently deliver a copy thereof to the Operator.

7.13 RESERVED.

7.14 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 and/or effectuate the intents and purposes hereof. City and Owner agree to cooperate with each other and/or with any Mortgagee or proposed Mortgagee, in a manner consistent with concepts and principles of good faith, fair dealing and commercial reasonableness, with respect to consideration, implementation and execution of any modification(s) to this Agreement reasonably requested by the City, Owner, Mortgagee or proposed Mortgagee.

7.15 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.

7.16 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 Owner 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.

7.17 Incorporation of Recitals and Exhibits. Each of the recitals set forth above and each of the exhibits attached hereto are agreed to and made part of this Agreement.

7.18 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.

[END -- SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City and Owner have executed this Operations Covenant by duly authorized representatives on the date first written hereinabove.

"CITY"

THE CITY OF PALM SPRINGS,  
a municipal corporation and charter city

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

\_\_\_\_\_  
David H. Ready, Esq., Ph.D.  
City Manager

ATTEST:

\_\_\_\_\_

\_\_\_\_\_  
James Thompson  
City Clerk

**APPROVED AS TO FORM:**

WOODRUFF, SPRADLIN & SMART

By: \_\_\_\_\_  
Douglas C. Holland, Esq.  
City Attorney

"OWNER"

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

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

Name: \_\_\_\_\_  
Title: \_\_\_\_\_

[END OF SIGNATURES]

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**



A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
Date Here Insert Name and Title of the Officer

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Individual  Attorney in Fact
- Trustee  Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_



**EXHIBIT "B"**

**LEGAL DESCRIPTION OF SITE**

That certain real property located in the City of Palm Springs, County of Riverside, State of California, more particularly described as:

**PARCEL A:**

THAT PORTION OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF SECTION 10, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED

AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 10; THENCE WESTERLY ALONG THE NORTH LINE OF SAID SECTION 10, SOUTH 89°53' WEST, 353.13 FEET, TO THE CENTERLINE OF NORTH PALM CANYON DRIVE, SHOWN AS COUNTY HIGHWAY ROUTE NO. 18 BY MAP ON FILE IN BOOK 5, PAGE 32, OF RECORDS OF SURVEY, OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; THENCE SOUTH ALONG SAID CENTERLINE, 143.00 FEET; THENCE LEAVING SAID CENTERLINE, SOUTH 89°53' WEST, 38.50 FEET, TO THE NORTHWEST CORNER OF THAT CERTAIN PARCEL GRANTED TO THE CITY OF PALM SPRINGS, CALIFORNIA BY DEED RECORDED APRIL 27, 1961, IN BOOK 2895, PAGE 445, OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY, SAID POINT ALSO BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH ALONG THE WESTERLY RIGHT OF WAY OF NORTH PALM CANYON DRIVE (38.50 FOOT HALF-WIDTH), 100.35 FEET TO THE NORTH LINE OF THAT CERTAIN PARCEL GRANTED TO THE CITY OF PALM SPRINGS, BY DEED RECORDED MARCH 15, 1961, IN BOOK 2867, PAGE 386, OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY; THENCE ALONG SAID NORTH LINE, SOUTH 89°53' WEST, 2.50 FEET, TO THE NORTHWEST CORNER OF SAID PARCEL; THENCE SOUTH ALONG THE WESTERLY RIGHT OF WAY OF NORTH PALM CANYON DRIVE (41.00 FOOT HALF-WIDTH), 91 FEET TO THE NORTHWEST CORNER, OF THAT CERTAIN PARCEL GRANTED TO THE CITY OF PALM SPRINGS, BY DEED RECORDED NOVEMBER 19, 1962, IN BOOK 3261, PAGE 500, OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY; THENCE CONTINUING SOUTH ALONG SAID WESTERLY RIGHT OF WAY, 63 FEET TO THE SOUTH LINE OF THAT CERTAIN PARCEL GRANTED TO ALBERT COLE BY DEED RECORDED DECEMBER 4, 1939, IN BOOK 439, PAGE 340, OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY; THENCE ALONG SAID SOUTH LINE, SOUTH 89°53' WEST, 99 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL; THENCE NORTH ALONG THE WEST LINE OF SAID PARCEL, 4.66 FEET TO THE NORTHEAST CORNER OF THAT CERTAIN PARCEL GRANTED TO PAUL KERSTEN BE DEED RECORDED AUGUST 20, 1936, IN BOOK 291, PAGE

443, OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY; THENCE ALONG THE NORTH LINE OF SAID PARCEL, SOUTH 89'53' WEST, 118.45 FEET, TO THE EASTERLY RIGHT OF WAY OF WAWONA ROAD (25.00 FOOT HALF -WIDTH), AS SHOWN BY MAP ON FILE IN BOOK 5, PAGE 32 OF RECORDS OF SURVEY, OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY; THENCE NORTH ALONG SAID EASTERLY RIGHT OF WAY, 252.69 FEET, TO THE NORTHWEST CORNER OF THAT CERTAIN PARCEL GRANTED TO EAGLE CONSTRUCTION, INC., BY DEED RECORDED MAY 15, 2007, AS INSTRUMENT NO. 2007-0322652, OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY; THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL, NORTH 89'53' EAST, 100.45 FEET TO THE WEST LINE OF PARCEL 1, GRANTED TO L.A. HANCOCK IN DEED RECORDED FEBRUARY 24, 1938, IN BOOK 361, PAGE 588, OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY; THENCE SOUTH AND PARALLEL WITH THE CENTERLINE OF SAID NORTH PALM CANYON DRIVE, 3 FEET, TO THE NORTHERLY LINE OF THAT CERTAIN PARCEL GRANTED TO EAGLE CONSTRUCTION, INC., BY DEED RECORDED MAY 7, 2007, AS INSTRUMENT NO. 2007-0303664, OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY; THENCE ALONG SAID NORTHERLY LINE, NORTH 89'53' EAST, 119.50 FEET, TO THE TRUE POINT OF BEGINNING.

Vicinity Map  
500' radius  
1551 N Palm Canyon Drive

