



PLANNING COMMISSION STAFF REPORT

Date: May 25, 2011

Case No.: 5.1263

Type: Development Agreement

Location: Northwest corner of N. Palm Canyon Drive and Tahquitz Canyon Way, and other nearby properties.

Applicant: Wessman Development Co.

From: Craig A. Ewing, AICP, Director of Planning Services

Subject: Proposed Development Agreement to establish terms for redevelopment and revitalization of the Desert Fashion Plaza and related properties, in accordance with the Museum Market Plaza Specific Plan

PROJECT DESCRIPTION:

Over the past several months, representatives of the City Council and the Wessman Development Company have engaged in dialogue and negotiations aimed at revitalizing the existing Desert Fashion Plaza and Town & Country Center properties. As the discussions have progressed, both parties have determined that a Development Agreement is an appropriate vehicle for establishing the terms and relationships that would move the project to completion.

A Development Agreement is a land use planning tool recognized by the State of California (Government Code Section 65864 et seq.); it is also a form of development entitlement similar to a planned development permit and is allowed in Palm Springs under the provisions of Section 94.08.00 of the Palm Springs Municipal Code.

The Planning Commission is required by state and local law to review draft Development Agreements and forward its recommendation to the City Council. A public hearing has been noticed and the Commission will take public testimony prior to adopting a recommendation.

RECOMMENDATION:

That the Planning Commission determine that the draft Development Agreement between the City of Palm Springs, Palm Springs Promenade, LLC and Wessman Holdings, LLC meets the required findings of state and local law.

BACKGROUND AND SETTING

- On May 21, 2008, the City Council initiated a Specific Plan review process and directed staff to report on the conformance of the draft Museum Market Plaza Specific Plan with the Palm Springs General Plan, Downtown Design Guidelines and Palm Springs Zoning Code.
- On November 18, 2009, the City Council certified an Environmental Impact Report, adopted a Statement of Overriding Consideration and Findings of Fact, and adopted the Museum Market Plaza Specific Plan, including Amendments to the Palm Springs General Plan and the Palm Springs Zoning Code.
- On March 23, 2011, the Planning Commission conducted a Study Session on Development Agreements and related state and local laws.
- On May 3, 2011, the City submitted a draft Development Agreement for the Desert Fashion Plaza and Town & Country Center for review and approval.

ANALYSIS

The draft Development Agreement is essentially a contract between the City and the Desert Fashion Plaza and Town & Country Center owners (Palm Springs Promenade LLC and Wessman Holdings LLC). The Agreement is a binding agreement, which means that both parties agree to abide by its terms. The major terms are identified and described below.

Project Description / Development Plan

The underlying purpose of the Agreement is to identify the responsibilities of the City and the property owner in order to facilitate the revitalization of the properties. The Agreement includes a project description to guide the revitalization, labeled the "Development Plan" and comprised of three scenarios:

1. A "Revitalization Plan", is referenced in the Agreement's project description and a site plan. This approach uses certain existing buildings and replaces others, and may be contingent on a tax revenue measure that the City may put to a public vote in November 2011.
2. A "Renovation Plan", which can be summarized as a re-use of the existing mall with surface upgrades and new tenants.
3. A "Specific Plan" approach which implements the Museum Market Specific Plan, including significant new construction, mixed uses, increased densities.

See the definition of "development plan" (Section 1.1.8) on page 3 of the draft Agreement.

Term

Another important aspect of the Agreement is that it is proposed to have a term of ten (10) years if the tax ballot measure passes and twenty-five (25) years if it does not. This longer term is considered useful in providing predictability to the property owner, private financing interests and tenants who will be involved in developing a complex project in an as-yet uncertain economy (Section 2.3, page 5)

Sales and Assignments

The Agreement allows the property owner the right to sell the property or any part of it, subject to notification to the City. The new property owner will be subject to the Agreement to the full extent of the ownership. (Section 2.4, page 5)

Vesting

The Agreement establishes a vested right to develop the property in accordance with the terms of the Agreement and the Development Plan. This vesting is subject to the land use regulations in effect at the time of the adoption of the Agreement. These regulations are primarily the Museum Market Plaza Specific Plan and other current and applicable zoning and land use regulations. Should the Agreement be adopted, any subsequent zoning amendments or new land use regulations would not apply to the development. This is one of the primary benefits to the property owner: A predictable land use regulatory environment over the term of the Agreement. (Section 3.1, page 7)

As noted in the Section 3.2 of the Agreement, the applicable land use regulations also include processing requirements, fees, hearings and other provisions in effect at the time of adoption of the Agreement. All building codes apply to the project. Any new regulations that limit the extent, rate or time of development – including any adopted by initiative – would not apply.

Public Benefits

This section of the Agreement (Section 4, pages 8 and 9) list the benefits to the public that would accrue from the Agreement's implementation. They include: A stronger planning process that would otherwise occur, a more stable basis for long-term investment in the property, and the redevelopment of the core of downtown Palm Springs through a public-private partnership. Without this partnership, the Agreement notes that these benefits would be less likely to occur in a timely way.

Private Benefits

The property owner also receives certain benefits (Section 5, page 9) from the Agreement, including vested rights to develop the property, and specific arrangements regarding mitigation fees, parking and Transient Occupancy Taxes, as attached to the Agreement, as Appendices

Compliance and Other Provisions for Enforcement of the Agreement

Subsequent sections of the Agreement (Sections 6 through 9, pages 9 – 12) provide the means for enforcement of the Agreement, including

- Annual review by the City to show good faith compliance by the property owner,
- Proceedings for modification / termination of the Agreement,
- Remedies in case of default, including injunctive relief, but not monetary damages
- Terms of litigation of the Agreement, and
- Certain protections for lenders and mortgagees.

The Agreement concludes with a variety of standard provisions typical of such documents.

Staff believes that the key elements of the Development Agreement are the provisions for a comprehensive approach to redeveloping the site, the vesting rights granted to the owner and the Agreement's terms, as they relate to the financial options that might be used to support the project.

A review of the proposed Development Agreement indicates that the Agreement meets the requirements of the Palm Springs Zoning Code for consideration of such a document:

1. The proposed Development Agreement is intended to fulfill the purpose and use of such Agreements, as required of Section 94.08.A.12.a:
 - iv. *Conditions imposed in connection with the adoption of any specific plan;*and
 - viii. *Mitigation measures imposed upon a project after approval of an environmental impact report in which such mitigation measures have been proposed as a mechanism for eliminating or reducing environmental impacts.*

Both these purposes are fulfilled by the proposed Development Agreement in that it specifically cites the Museum Market Specific Plan and relies on the mitigation measures of the Specific Plan's certified Environmental Impact Report for complete implementation of the project.

2. The proposed Development Agreement has been filed by a "qualified applicant", as required by Section 94.08.A.4:
A qualified applicant is a person who has legal or equitable interest in the real property which is the subject of the development agreement.

Staff has determined that the Wessman Development Company meets the requirement of this section.

3. The proposed Development Agreement contains certain required provisions, per Section 94.08.A.5 and A.7:
 - A.5 *Each application shall identify all the proposed parties and shall include the general terms and conditions proposed by the applicant to be contained in the development agreement.*and
 - A.7 *A development agreement shall specify the duration of the agreement, the proposed uses of the property, the density or intensity of use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes. The development agreement may include conditions, terms, restrictions and requirements for subsequent discretionary actions; provided that, such conditions, terms, restrictions and requirements for subsequent discretionary actions shall not prevent development of the land for the uses and to the density or intensity of development set forth in the agreement. The agreement may provide that construction shall be*

commenced within a specified time and that the project or any phase thereof be completed within a specified time.

As summarized above, all required terms, conditions and parties are contained in the Agreement.

Staff has also reviewed the proposed Agreement against the California Government Code (Section 65864, et seq) and determined that all provisions of the Government Code concerning the contents of the proposed Development Agreement are met.

REQUIRED FINDINGS

According to Section 65867.5 of the California Government Code, a Development Agreement must meet three requirements prior to its adoption. Staff has reviewed the proposed Agreement against these provisions, as follows:

- a) *A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.*

The proposed Development Agreement is proposed to be adopted by the City Council by ordinance. Staff has concluded that the Agreement meets this finding.

- b) *A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.*

The Development Agreement cites the Museum Market Plaza Specific Plan as the land use plan to be used in the development of the affected property under the terms of the Agreement. This Specific Plan was adopted by the City Council in November 2009 as both a General Plan and Zoning amendment for the subject sites. Staff has concluded that the Agreement meets this finding.

- c) *A development agreement that includes a subdivision, as defined in Section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Section 66473.7.*

No subdivision is presently included in the Development Agreement, nor is one contemplated. However, it is possible that implementation of the plan may include revisions to internal lot lines and new subdivisions. The Development Agreement specifically provides for compliance with all provisions of the Subdivision Map Act (§§ 66410 – 66499.58), including the above section.

According to Palm Springs Zoning Code Section 94.08.A.12.b (Recommendations to City Council) the Planning Commission provides a recommendation to the City Council, including its determination of whether or not the proposed Development Agreement meets certain findings. Staff has analyzed the proposed Agreement against these findings, which require that the Agreement:

- i. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;*

The Development Agreement cites the Museum Market Plaza Specific Plan as the land use plan to be used in the development of the affected property. This Specific Plan was adopted by the City Council in November 2009 as both a General Plan and Zoning amendment for the subject sites. Consequently, the Development Agreement can be determined to be consistent with the objectives, policies, general land uses and programs of the City's adopted land use documents.

- ii. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;*

The Museum Market Plaza Specific Plan sets forth the authorized uses and prescribed regulations for the land use district in which the subject property is located. The Development Agreement specifically cites this Specific Plan as the controlling land use document for future development. Consequently the proposed Agreement can be determined to be compatible with the authorized uses and prescribed land use regulations.

- iii. Is in conformity with public convenience, general welfare and good land use practice;*

The proposed Development Agreement will provide for the implementation of the Museum Market Plaza Specific Plan and thereby provide a comprehensive redevelopment of the center of City's downtown area. The coordinated arrangement of buildings, roads, open space, parking and existing surrounding land uses is provided for in this Specific Plan in a manner which assures the long-term environmental, economic and social wellbeing of the community. Consequently, the proposed Development Agreement can be determined to be in conformity with public convenience, general welfare and good land use practice.

- iv. Will not be detrimental to the health, safety and general welfare;*

The Development Agreement will implement both the Museum Market Plaza Specific Plan as well as the associated Mitigation Measures of the certified Environmental Impact Report that was prepared for the Specific Plan. Consequently, the proposed Development Agreement can be determined to not be detrimental to the health, safety and general welfare of the community and surroundings.

- v. Will not adversely affect the orderly development of property or the preservation of property values.*

The Development Agreement is specifically intended to provide for the orderly development of property in the downtown by establishing a means to implement the Museum Market Plaza Specific Plan. Further, the comprehensive redevelopment of the site as provided by the Agreement will provide a stable long-term development environment for the site and surroundings, thereby reducing uncertainty for the

property owner, owners of adjacent properties and the community. Consequently, the proposed Development Agreement can be determined to not adversely affect the orderly development of property or the preservation of property values.

ENVIRONMENTAL ASSESSMENT

Staff has reviewed the Environmental Impact Report and associated findings and mitigation measures, which were certified and adopted in November 2009 for the Museum Market Plaza Specific Plan. These environmental documents provide an adequate and complete assessment of the future environmental condition should the Development Agreement be approved and implemented, including all required mitigation. Staff has concluded that these documents may be adopted for the proposed Development Agreement and no additional environmental review is necessary

NOTIFICATION

In accordance with the requirements of Section 94.08.A.9, including publication in the Desert Sun and mailing to all owners of record for properties with 400 feet of the proposed project boundaries.



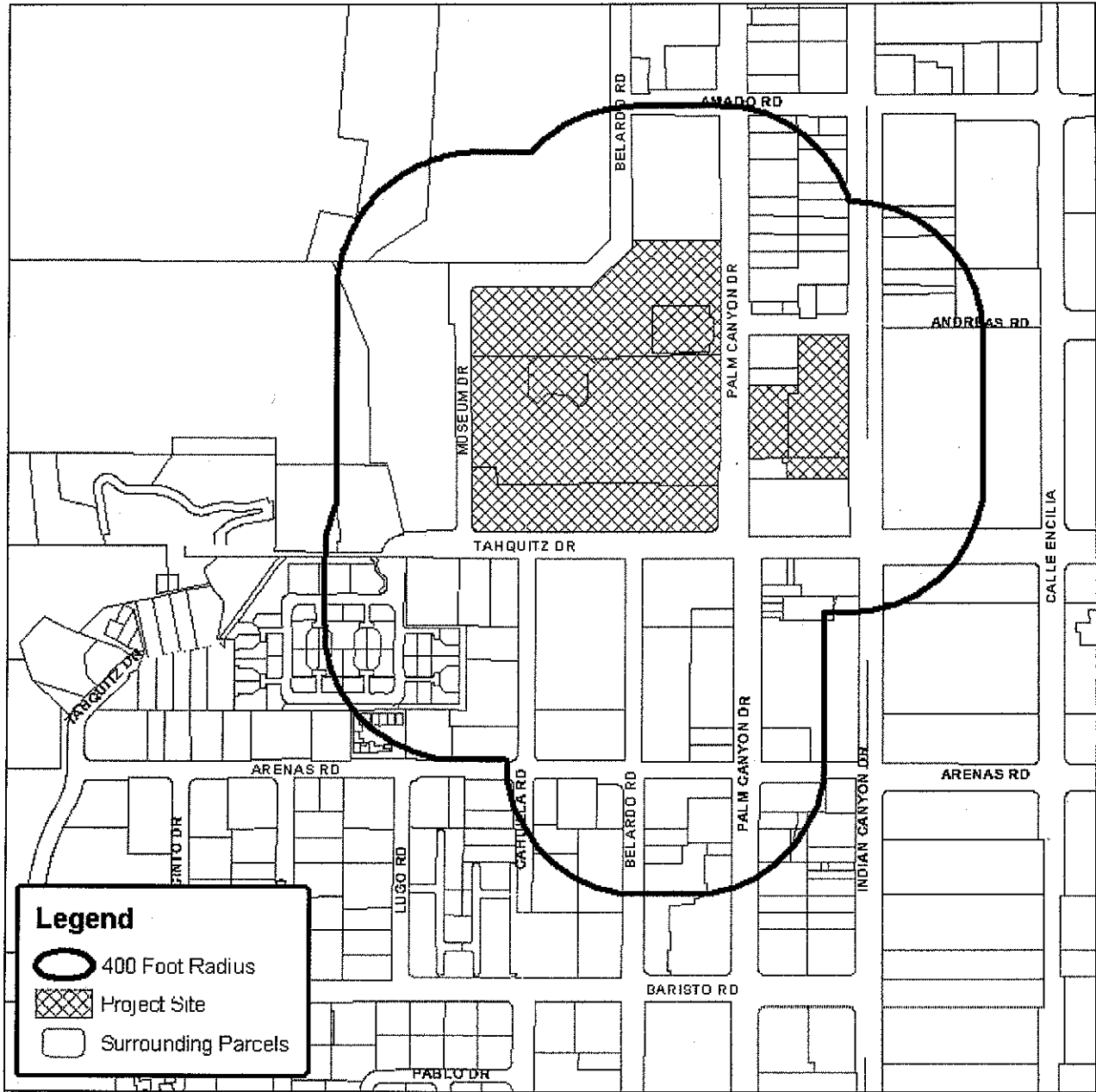
Craig A. Ewing AICP
Director of Planning Services

Attachments:

1. Vicinity Map
2. Draft Planning Commission Resolution
3. Draft Development Agreement
4. Conceptual Project Site Plan (Commission only)
5. Museum Market Plaza Specific Plan (Commission only)



Department of Planning Services Vicinity Map



Legend

- 400 Foot Radius
- Project Site
- Surrounding Parcels

CITY OF PALM SPRINGS

CASE NO: 5.1263 -- Development Agreement

APPLICANT: Wessman Development

DESCRIPTION: To consider a draft Development Agreement proposed by Wessman Development to renovate and remodel the existing Desert Fashion Plaza and related properties in accordance with the Museum Market Plaza Specific Plan (Case No. 5.1204).

RESOLUTION No.

A RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF PALM SPRINGS DETERMINING THAT A
PROPOSED DEVELOPMENT AGREEMENT FOR THE
DESERT FASHION PLAZA AND RELATED PROPERTIES
CONFORMS TO STATE AND CITY LAWS

WHEREAS, the Wessman Development Company has proposed a Development Agreement (Case No. 5.1263) with the City of Palm Springs to assist in the redevelopment and revitalization of the Desert Fashion Plaza and certain related properties; and

WHEREAS, the proposed Development Agreement includes reference to the Museum Market Plaza Specific Plan as the controlling land use document for said Agreement; and

WHEREAS, the conceptual plan proposed with the Development Agreement provides for redevelopment and revitalization of the subject properties in a manner consistent with and conforming to the Museum Market Plaza Specific Plan; and,

WHEREAS, the approval of a Development Agreement must conform to the requirements of California Government Code Section 65867 et seq, and also to the provisions of Palm Springs Zoning Code Section 94.08; and

WHEREAS, a notice of public hearing for Case 5.1263 was given in accordance with applicable law; and

WHEREAS, on May 25, 2011, a public hearing on the conformity of the proposed Development Agreement Case 5.1263 with State and City laws was held by the Planning Commission in accordance with applicable law; and

WHEREAS, the Planning Commission has carefully reviewed and considered all of the evidence presented in connection with the hearing on the project, including, but not limited to, the staff report, and all written and oral testimony presented.

NOW THEREFORE, the Planning Commission of the City of Palm Springs does determine as follows:

1. The proposed Development Agreement meets the requirements of Section 65867.5 of the California Government Code, as follows:
 - a. *A development agreement is a legislative act that shall be approved by ordinance and is subject to referendum.*

The proposed Development Agreement is proposed to be adopted by the City Council by ordinance. The proposed Development Agreement meets this finding.

- b. A development agreement shall not be approved unless the legislative body finds that the provisions of the agreement are consistent with the general plan and any applicable specific plan.*

The Development Agreement cites the Museum Market Plaza Specific Plan as the land use plan to be used in the development of the affected property under the terms of the Agreement. This Specific Plan was adopted by the City Council in November 2009 as both a General Plan and Zoning amendment for the subject sites. The proposed Development Agreement meets this finding.

- c. A development agreement that includes a subdivision, as defined in Section 66473.7, shall not be approved unless the agreement provides that any tentative map prepared for the subdivision will comply with the provisions of Section 66473.7.*

No subdivision is presently included in the Development Agreement, nor is one contemplated. However, it is possible that implementation of the plan may include revisions to internal lot lines and new subdivisions. The Development Agreement specifically provides for compliance with all provisions of the Subdivision Map Act (§§ 66410 – 66499.58), including the above section. The proposed Development Agreement meets this finding.

2. The proposed Development Agreement meets the required findings of Palm Springs Zoning Code Section 94.08.A.12.b, as follows:

- a. Is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;*

The Development Agreement cites the Museum Market Plaza Specific Plan as the land use plan to be used in the development of the affected property. This Specific Plan was adopted by the City Council in November 2009 as both a General Plan and Zoning amendment for the subject sites. Consequently, the Development Agreement is consistent with the objectives, policies, general land uses and programs of the City's adopted land use documents.

- b. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;*

The Museum Market Plaza Specific Plan sets forth the authorized uses and prescribed regulations for the land use district in which the subject property is located. The Development Agreement specifically cites this Specific Plan as the controlling land use document for future development. Consequently the proposed Agreement is compatible with the authorized uses and prescribed land use regulations.

- c. Is in conformity with public convenience, general welfare and good land use practice;*

The proposed Development Agreement will provide for the implementation of the Museum Market Plaza Specific Plan and thereby provide a comprehensive redevelopment of the center of City's downtown area. The coordinated arrangement of buildings, roads, open space, parking and existing surrounding land uses is provided for in this Specific Plan in a manner which assures the long-term environmental, economic and social wellbeing of the community. Consequently, the proposed Development Agreement is in conformity with public convenience, general welfare and good land use practice.

d. Will not be detrimental to the health, safety and general welfare;

The Development Agreement will implement both the Museum Market Plaza Specific Plan as well as the associated Mitigation Measures of the certified Environmental Impact Report that was prepared for the Specific Plan. Consequently, the proposed Development Agreement is determined to not be detrimental to the health, safety and general welfare of the community and surroundings.

e. Will not adversely affect the orderly development of property or the preservation of property values.

The Development Agreement is specifically intended to provide for the orderly development of property in the downtown by establishing a means to implement the Museum Market Plaza Specific Plan. Further, the comprehensive redevelopment of the site as provided by the Agreement will provide a stable long-term development environment for the site and surroundings, thereby reducing uncertainty for the property owner, owners of adjacent properties and the community. Consequently, the proposed Development Agreement is determined to not adversely affect the orderly development of property or the preservation of property values.

ADOPTED this ___th day of May, 2011

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

Craig A. Ewing, AICP
Director of Planning

Recorded at request of:)
City Clerk)
City of Palm Springs)
)
When recorded return to:)
City of Palm Springs)
3200 East Tahquitz Canyon Way)
Palm Springs, California 92262)
Attention: City Clerk)
)

Exempt from Filing Fees, Government Code Section 6103

DEVELOPMENT AGREEMENT

A DEVELOPMENT AGREEMENT BETWEEN

CITY OF PALM SPRINGS

and

PALM SPRINGS PROMENADE, LLC

and

WESSMAN HOLDINGS, LLC

DRAFT

DEVELOPMENT AGREEMENT

This Development Agreement ("Agreement") is entered into and made effective as of the Effective Date set forth below, 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 ("PSP LLC") and Wessman Holdings, LLC, a California limited liability company ("WH LLC") (collectively "OWNER"), with reference to the recitals set forth below.

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Section 65864, et seq, of the Government Code; and

WHEREAS, by adoption of Ordinance No. _____ (or Resolution No. _____), CITY has established procedures and requirements for the consideration of development agreements; and

WHEREAS, OWNER has requested CITY to enter into a development agreement regarding the Property (as defined below), and proceedings have been taken in accordance with established development agreement procedures and requirements of CITY; and

WHEREAS, by electing to enter into this Agreement, CITY intends to and shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY, to the greatest extent permitted by law; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the City of Palm Springs and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, CITY and OWNER believe that all of the procedures of the California Environmental Quality Act have been met with respect to this Agreement pursuant to City Council Resolution 22625, adopted on December 2, 2009, which certified an Environmental Impact Report for the Specific Plan (as defined below), and pursuant to City Council Resolution _____, adopted on _____, which certified this Agreement as being in conformance with the Specific Plan; and

WHEREAS, this Agreement and the Project (as defined below) are consistent with the Palm Springs General Plan and the Specific Plan (as defined below); and

WHEREAS, CITY and OWNER believe that all actions taken and approvals given by CITY have been duly taken and/or given in accordance with applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

DRAFT

WHEREAS, development of the Property in accordance with this Agreement will provide substantial benefits to CITY and will further important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the intended purposes for development agreements under Section 65864, et seq, of the Government Code; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs, including substantial costs in excess of the generally applicable requirements, in order to assure vesting of legal rights to develop and development of the Property in accordance with this Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. When used in this Agreement, terms defined below (whether or not initially capitalized herein) shall have meanings and definitions as indicated. Additional defined terms, if any, shall have meanings as otherwise indicated in this Agreement.

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "CITY" means the City of Palm Springs, a California municipal corporation and charter city.

1.1.3 "City Council" means the duly elected city council of the City of Palm Springs.

1.1.4 "Development" means revitalization and/or renovation of the Property and Project and includes, without limitation, demolition, grading, re-grading, construction, reconstruction, installation and/or re-installation of (a) on-site private infrastructure, improvements and landscaping, and (b) on and off-site public infrastructure, improvements and landscaping.

1.1.5 "Development Approvals" means all permits and entitlements subject to approval or issuance by CITY in connection with development and use of the Property and Project including, without limitation, the Specific Plan and all provisions thereof, architectural approvals, tentative and final subdivision maps, conditional use permits, planned development permits, plot plans, zoning, grading and building permits.

1.1.6 "Development Exaction" means any requirement of CITY, in connection with or pursuant to any Land Use Regulations or Development Approvals, for the dedication of land, the construction of improvements (public or private), or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment, or otherwise comply with requirements of CITY.

1.1.7 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, but does not include fees specified in Government Code Section 66477, fees for processing applications for governmental regulatory actions or approvals, fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies which provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law, Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code.

1.1.8 "Development Plan" means the plan for development and/or redevelopment of the Property and Project, in phases, as contemplated by the Specific Plan and the "Project Description" attached hereto as Exhibit "A". The Development Plan consists of three (3) potential approaches, as follows: As of the Effective Date, the desired approach is to implement, as the initial phase, the Revitalization Plan referenced in the Project Description. However, implementation of the Revitalization Plan may be contingent upon voter approval of a tax revenue measure ("Ballot Measure") to be placed by the CITY on the ballot for the November 2011 general election and, therefore, if the Ballot Measure is not approved, the approach may be to implement, as the initial phase, the Renovation Plan referenced in the Project Description. In any event, the Development Plan includes development and/or redevelopment of the Property and Project, in phases, as and when determined by OWNER to be practical and feasible but subject to time limits as provided herein, in accordance with the Specific Plan. It is understood and agreed that this Agreement is intended to and shall grant to OWNER vested rights, for time periods as specified herein, to implement development and/or redevelopment of the Property and Project, in phases, pursuant to the Revitalization Plan, the Renovation Plan and/or the Specific Plan.

1.1.9 "Effective Date" means the date on which the CITY ordinance approving and authorizing this Agreement has become effective and both parties have signed and delivered this Agreement.

1.1.10 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction

standards and specifications applicable to the development of the Property. "Land Use Regulations" includes the right of the CITY, when applicable and subject to the provisions of this Agreement, to impose Development Exactions and/or Development Impact Fees. "Land Use Regulations" does not include any CITY ordinance, resolution, code, rule, regulation or policy governing the conduct of businesses, professions and occupations, taxes and assessments, the control and abatement of nuisances, or the granting of encroachment permits and the conveyance of rights and interests that provide for the use of or entry upon public property.

1.1.11 "OWNER" means the entity identified as such on the initial page of this Agreement, and any successor in interest to such Owner.

1.1.12 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and any successor in interest thereto.

1.1.13 "Project" means the development of the Property as contemplated by the Development Plan and this Agreement.

1.1.14 "Property" means the real property described on Exhibit "B", and shown and depicted in the Specific Plan; any reference herein to "Property" shall, whenever reasonably appropriate to the context, automatically be deemed to include reference to the Project.

1.1.15 "Reservation of Rights" means the rights reserved to CITY and excluded from the assurances and rights provided to OWNER under this Agreement, as provided Section 3.2 hereof.

1.1.16 "Specific Plan" means that certain Museum Market Plaza Specific Plan approved by the City Council on December 2, 2009, by adoption of Ordinance 1764.

1.2 Exhibits. Documents attached and made a part hereof are:

Exhibit "A" – Project Description.

Exhibit "B" – Legal Description of Property.

Exhibit "C" – Development Impact Fees

Exhibit "D" – Specific Arrangements regarding Parking

Exhibit "E" – Specific Arrangements regarding Transient Occupancy Tax

2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property and Project are hereby made subject to this Agreement. Development, and subsequent use and operation of the Property and Project, are hereby authorized and may be carried out by OWNER in accordance with the terms of the Development Plan and this Agreement.

2.2 Interest in Property. OWNER represents and covenants that as of the Effective Date OWNER has legal title to the Property.

2.3. Term. The term of this Agreement shall commence on the Effective Date and, unless cancelled, modified or terminated pursuant to other provisions hereof, continue for a period of twenty-five (25) years thereafter; provided, however, if the Ballot Measure passes, OWNER shall have vested rights to develop in accordance with the Revitalization Plan only for a period of ten (10) years from the Effective Date.

2.4 Sales and Assignments. OWNER shall have the right, at any time during the term of this Agreement, to sell and/or convey all or any part of the Property (provided that any conveyance of only part of the Property shall be in compliance with the Subdivision Map Act), to any related or unrelated person or entity; provided, however, notice of any such sale and/or conveyance shall promptly be provided by OWNER to CITY. Upon any sale and/or conveyance of all of the Property, the acquiring party shall thereupon assume all obligations and be entitled to all rights of OWNER under this Agreement. Upon any sale and/or conveyance of only a part of the Property, obligations and rights of OWNER under this Agreement shall, to the maximum extent reasonably practicable, be bifurcated between OWNER and the acquiring party so that OWNER remains responsible for obligations and entitled to rights relating to the part of the Property retained, and the acquiring party becomes responsible for obligations and entitled to rights relating to the part of the Property acquired and, in such event, OWNER, CITY and the acquiring party shall cooperate with each other and execute such supplements and/or addenda to this Agreement as may be reasonably necessary, expedient or convenient to reflect and implement such bifurcation.

2.5 Amendment or Cancellation. This Agreement may be amended or canceled, in whole or in part, by mutual consent of the parties or their successors in interest, only in the manner provided for in Government Code Section 65868; provided, however, the foregoing shall not limit any remedy of CITY or OWNER provided by this Agreement.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- (a) Expiration of the term as set forth in Section 2.3.
- (b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.
- (c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.
- (d) Termination of this Agreement based on default by OWNER and following termination proceedings required by this Agreement.

Termination of this Agreement shall not constitute termination of any other Development Approvals or Land Use Regulations applicable to the Property and/or Project, or to continued use, operation and/or maintenance of portions of the Property or Project that have been developed prior to the date of termination. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have

been performed prior to such termination or with respect to any default in the performance that has occurred prior to such termination.

2.7 Notices.

(a) 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.

(b) 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) ____ - ____
Facsimile: (760) ____ - ____

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

If to OWNER:
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

3. DEVELOPMENT OF PROPERTY.

3.1 Vested Rights to Develop. During the term of this Agreement, OWNER (and successors) shall have vested rights to develop and/or redevelop the Property and Project in accordance with this Agreement and the Development Plan; provided, however, any such development shall be subject to Land Use Regulations as they exist and are in effect, as modified and/or supplemented by this Agreement, as of the Effective Date; provided further, however, if the Ballot Measure passes, OWNER shall have vested rights to develop in accordance with the Revitalization Plan only for a period of ten (10) years from the Effective Date. During the term and time periods specified herein, this Agreement shall be binding on CITY, and future City Councils, to the maximum extent allowed by law.

3.2 Reservation of Rights.

3.2.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following Land Use Regulations shall apply to the development of the Property.

(a) Processing fees and charges customarily imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(c) Regulations governing engineering and construction standards and specifications applicable to public and private improvements, including, without limitation, all uniform codes, and local amendments thereto, adopted by the CITY including, without limitation, the CITY's Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code.

(d) Regulations that may be in material conflict with this Agreement but that are necessary to protect the residents and/or members of the public from a condition immediately perilous to health or safety; provided, however, City shall endeavor to apply and construe any such regulations so as to reasonably preserve the rights and assurances provided Owner under this Agreement.

(e) Regulations that are not in material conflict with this Agreement or the Development Plan; provided, however, any regulation, whether adopted by initiative or otherwise, limiting the extent, rate or timing of development of the Property, shall be deemed to materially conflict with this Agreement and/or the Development Plan and shall, therefore, not be applicable to the development and/or redevelopment of the Property.

(f) Regulations that are in material conflict with this Agreement or the Development Plan but, with respect to which, OWNER has provided written concurrence and consent.

3.2.2 Development Applications Submitted After Term. This Agreement shall not prevent CITY, with respect to applications for Development Approvals submitted after the term of this Agreement, from acting on such applications in the same manner and to the same extent as it would otherwise be authorized to do absent this Agreement.

3.2.3 Modification or Suspension by State or Federal Law. In the event that state or federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with any provisions of this Agreement, such provisions shall be modified or suspended as may be necessary to comply with such state or federal laws or regulations; provided, however, this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations.

3.3 Regulations of Other Public Agencies. The parties acknowledge that other public agencies, not within the control of CITY, possess authority to regulate aspects of the development of the Property separately from CITY, and this Agreement does not limit the authority of such other public agencies; provided, however, CITY agrees to reasonably cooperate with and support OWNER, in connection with any reasonable efforts by OWNER to mitigate and/or minimize the effect of regulations, including Development Impact Fees, imposed by any other public agency but enforced or collected by the CITY so long as such cooperation and/or support does not violate any law or agreement

4. PUBLIC BENEFITS.

4.1 Comprehensive Planning. The parties acknowledge and agree that providing, by way of this Agreement, assurance that OWNER may proceed with development and redevelopment per the Development Plan will strengthen the planning process and encourage public and private participation therein.

4.2 Investment. The parties acknowledge and agree that the lack of certainty in the approval of development projects can result in a waste of resources and discourage investment in and commitment to comprehensive planning and development, and this Agreement is intended to overcome and/or mitigate such constraints, and encourage investment and efficient utilization of resources.

4.3 Downtown Redevelopment. Development and/or redevelopment pursuant to the Development Plan is considered to be a critical component to restoring economic vitality and

luster to core areas of downtown Palm Springs. In the current economic climate, such restoration will require cooperation and joint public and private efforts to achieve meaningful results. Proceeding with the Development Plan is expected to promote and serve the long term best interests of the City and its residents. This Agreement is intended to constitute significant progress in the correct direction, and result in substantial public benefits and the satisfaction of substantial public needs that would not otherwise occur.

5. PRIVATE BENEFITS.

5.1 Compliance with Government Code. The parties acknowledge that this Agreement is intended to serve purposes for which development agreements are authorized, as provided and contemplated under Section 65864, et seq, of the Government Code.

5.2 Vested Rights. The provision of vested rights to develop and/or redevelop, as set forth and/or contemplated herein, is intended to eliminate uncertainty in planning, and provide for orderly revitalization and/or renovation, and progressive installation, in phases, of desired improvements, both public and private.

5.3 Development Mitigation Fees. Anything in this Agreement to the contrary notwithstanding, with respect to Development Mitigation Fees, the parties agree to specific arrangements as set forth in Exhibit "C" attached.

5.4 Parking. Anything in this Agreement to the contrary notwithstanding, with respect to parking, the parties agree to specific arrangements as set forth in Exhibit "D" attached.

5.5 Transient Occupancy Tax. Anything in this Agreement to the contrary notwithstanding, with respect to Transient Occupancy Taxes relating to hotels developed within the Property, the parties agree to specific sharing arrangements as set forth in Exhibit "E" attached.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic Review. During the term hereof, CITY shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain good faith compliance by OWNER with the terms of the Agreement.

6.2 Special Review. During the term hereof, a special review of good faith compliance with this Agreement may be initiated upon a majority vote of the City Council.

6.3 Procedure. During either a periodic review or a special review, OWNER shall be required to reasonably demonstrate good faith compliance with the terms of the Agreement. If the CITY finds, based on substantial evidence and the vote of a majority of the City Council, that OWNER has not reasonably complied in good faith, CITY may, subject to Section 7.3 below, initiate procedures to terminate or reasonably modify this Agreement.

6.4 Proceedings regarding Termination or Modification. If, upon a finding under

Section 6.3, CITY determines to proceed with termination or reasonable modification of this Agreement, CITY shall give written notice to OWNER of its intention so to do. The notice shall be given at least sixty (60) calendar days prior to the scheduled hearing and shall contain (a) the time and place of the hearing, (b) a statement as to whether or not CITY proposes to terminate or modify this Agreement, and (c) additional information sufficient to ensure that OWNER is reasonably apprised of the full nature and extent of the proceeding, and the allegations thereof.

6.5 Hearing on Termination or Modification. At the time and place set for the hearing on termination or reasonable modification, OWNER shall be given an opportunity to be heard. OWNER shall be required to reasonably demonstrate good faith compliance with material terms and conditions of this Agreement. If the City Council finds, based upon substantial evidence and the vote of a super majority of the City Council, that OWNER has not complied in good faith with material terms or conditions of the Agreement, the City Council may, subject to satisfaction of requirements in Section 7.3 hereof, terminate or reasonably modify this Agreement to impose such conditions as are reasonably necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.6 Certificate of Compliance. If, at the conclusion of any periodic or special review, OWNER is found to be in compliance with this Agreement, CITY shall, upon request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that, after the most recent periodic or special review and based upon information known or made known, the City Council has found that this Agreement remains in effect, and OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a periodic or special review and shall state the anticipated date of commencement of the next periodic review. OWNER may record the Certificate with the County Recorder. During the term of this Agreement, and from time to time, OWNER may request and CITY shall provide, the aforementioned Certificate, as long as OWNER is then considered to be in good faith compliance with this Agreement.

7. DEFAULT AND REMEDIES.

7.1 Remedies in General. The parties acknowledge that they would not have entered into this Agreement if they were to be liable in damages for breach. Therefore, it is agreed that each party may pursue any remedy at law or equity available for breach of any provision of this Agreement, except that neither CITY nor OWNER shall be liable in damages, and each party covenants not to sue for damages or claim any damages: (a) for any breach of this Agreement or for any cause of action that arises out of this Agreement; or (b) for the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or (c) arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.

7.2 Specific Performance and Injunctive Relief. The parties acknowledge that money damages and remedies at law generally are inadequate, and specific performance, injunctive relief and other non-monetary relief are particularly appropriate remedies for the enforcement of

this Agreement and should be available to all parties for the following reasons: (a) money damages are unavailable as per Section 7.1 above, and (b) due to the size, nature and scope of the Project, it may not be practical or possible to restore the Property once implementation of this Agreement has begun.

7.3 Termination or Modification of Agreement for Default of OWNER. CITY may terminate or reasonably modify this Agreement for any failure of OWNER to comply in good faith with the terms hereof ("default"); provided, however, CITY may commence proceedings to do so only after providing written notice of default to OWNER, setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, providing OWNER with an opportunity to cure such default for a period of sixty (60) days after delivery of such notice or, in the event that such default cannot be cured within such sixty (60) day period but can be cured within a longer time, providing OWNER with such reasonable time as may be necessary to cure such default (and during such time neither termination or modification actions shall be commenced by CITY as long as OWNER commences and diligently pursues such cure.

8. LITIGATION.

8.1 Development Agreement Litigation. In the event litigation is commenced to attack or set aside this Agreement before the election, or after the election with voter approval of the Ballot Measure, CITY and OWNER shall both join in the good faith defense of such litigation, and each shall pay commercially reasonable legal fees and costs incurred by each in connection therewith. In the event litigation is commenced after the election with no voter approval of the Ballot Measure, OWNER shall defend against such litigation and indemnify and hold CITY, its officers, agents and employees, free and harmless from any and all costs, claims and/or liabilities incurred in connection therewith.

8.2 Ballot Measure – Litigation after Election. In the event litigation is commenced to attack or set aside the Ballot Measure (or any bond or other financing issued pursuant thereto) after the election with voter approval of the Ballot Measure, CITY shall defend against such litigation and indemnify and hold OWNER, its officers, agents and employees, free and harmless from any and all costs, claims and/or liabilities incurred in connection therewith.

9. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property and/or Project. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and/or modifications, and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation and/or modification. CITY will not unreasonably withhold, delay or condition its consent to any such requested interpretation and/or modification provided such interpretation and/or modification is reasonably consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall

be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage or deed of trust on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property and/or Project, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. Anything in this Agreement to the contrary notwithstanding, the Mortgagee shall have the right, but not the obligation, to notify the CITY that the Mortgagee has elected to cure the default, and, in such event, the Mortgagee shall thereafter have all rights of OWNER including, without limitation, the right to cure any such default; provided, however, the Mortgagee shall have an additional sixty (60) days (beyond the cure period of OWNER) to cure the default, or, if such default cannot be cured within that time, then such additional time as may be reasonably necessary to cure such default if, within such additional sixty (60) day period, the Mortgagee has commenced and is diligently pursuing cure of the default (including, without limitation, commencement of foreclosure proceedings against OWNER), in which event and while such remedies are being diligently pursued by Mortgagee, CITY shall not continue with proceedings to terminate or modify this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

(e) In the event of any conflict between the provisions of this Section 9 of the Agreement and any any agreement between CITY and OWNER relating to CITY'S acquisition of improved land and/or public facilities within or on the Property ("Acquisition Agreement"), the provisions of the Acquisition Agreement shall control.

10. MISCELLANEOUS PROVISIONS.

10.1 Recordation of Agreement. This Agreement, and any amendment or cancellation of it, shall be recorded with the Riverside County Recorder by the Clerk of the City Council within ten (10) days after the CITY enters into the Agreement, in accordance with Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement, or if the CITY terminates or modifies this Agreement as provided herein for failure of the OWNER to reasonably comply in good faith with the terms and conditions of this Agreement, the City Clerk shall have notice of such action recorded with the Riverside County Recorder.

10.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties with respect to matters contained herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements that are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

10.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement.

10.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

10.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

10.6 Singular and Plural. As used herein, the singular of any word includes the plural.

10.7 Joint and Several Obligations. If at any time during the Term of this Agreement the Property is owned, in whole or in part, by more than one OWNER, all obligations of such OWNERS under this Agreement shall be joint and several, and the default of any such OWNER shall be the default of all such OWNERS.

10.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

10.9 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

10.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

10.11 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots, hostilities, strikes, , or court actions. If any such events shall occur, the term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended by the length of time that such events reasonably prevented performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

10.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

10.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement; provided, however, tenants of OWNER shall not be deemed to be successors of OWNER, and shall not, unless authorized by OWNER, have any rights under this agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each party and each successor in interest during ownership of the Property or any portion thereof.

10.14 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

10.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Riverside, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

10.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the development of the Project is a private development, that neither party is acting as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

10.17 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary or expedient under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

10.18 Authority to Execute. The person executing this Agreement on behalf of OWNER warrants and represents (a) that he has the authority to execute this Agreement on behalf of OWNER, and (b) that he has the authority to bind OWNER to the performance of its obligations hereunder.

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IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement on the last day and year set forth below.

OWNER:

PALM SPRINGS PROMENADE, LLC,
a California limited liability company

By: _____

Title: _____

Dated: _____

WESSMAN HOLDINGS,LLC,
a California limited liability company

By: _____

Title: _____

Dated: _____

CITY:

CITY OF PALM SPRINGS

By: _____

Name:

Title:

Dated: _____

ATTEST:

City Clerk

APPROVED AS TO LEGAL FORM:

City Attorney

EXHIBIT "A" TO DEVELOPMENT AGREEMENT

(Project Description)

I. BACKGROUND.

A. **Specific Plan.** On December 2, 2009, the City Council ("Council") of the City of Palm Springs ("City") adopted Ordinance 1764, which approved the Museum Market Plaza Specific Plan ("Specific Plan"). The Specific Plan covered two existing downtown commercial complexes, i.e., the area commonly known as Desert Fashion Plaza ("DFP Area"), and the area (shown on the Specific Plan as Blocks K-1 and K-2) commonly known as Town & Country Center ("TCC Area"). In granting such approval, the Council found that the Specific Plan was consistent with applicable provisions of the State Government Code, and the General Plan of the City. Among other things, the Specific Plan established criteria, standards, restrictions, requirements and limitations (collectively "criteria") for major redevelopment, in phases, of both the DFP Area and the TCC Area. Such criteria included without limitation, criteria for land use (allowed and prohibited uses), development standards (minimum setbacks and maximum heights), land regulations (allowable square footage and building mass), and design guidelines (architectural themes and concepts).

B. **Prior Renovation Plan.** At the time of approval of the Specific Plan, the U.S. economy was in process of a major downturn and, in recognition of that fact and the reality of potential long term financial and development constraints, the owner of the Specific Plan property ("Developer"), had previously submitted a less ambitious plan ("Renovation Plan"), which contemplated that existing buildings within the DFP Area would largely remain intact but be upgraded with exterior architectural improvements. In Section V.C of the Specific Plan, the Renovation Plan, which was primarily confined to the DFP Area, was approved as an optional "phase one" of the Specific Plan.

C. **EIR Certification.** Concurrently with approval of the Specific Plan, the Council approved and adopted Resolution 22625, which certified an Environmental Impact Report for the Specific Plan. Such Resolution included, without limitation, the making of amendments to the General Plan and Zoning Ordinance of the City, the making of certain findings relative to environmental effects identified in the EIR, the adoption of a Statement of Overriding Considerations, and the adoption of a Mitigation Monitoring Plan and Reporting Plan. The Resolution also included the incorporation of the Renovation Plan as an option, i.e., a potential "phase one" for remodeling the DFP Area.

D. **Current Revitalization Plan.** Because of continuing depressed economic and financial conditions locally and nationally, the Renovation Plan was not commenced during the latter part of 2009 or 2010. As a result, and recognizing that commencement of redevelopment under the Specific Plan is critical to restoring economic vitality to central areas of downtown Palm Springs, the City Council and the Developer, in 2011, commenced a series of "visioning" sessions with community leaders and concerned

citizens, with broad and significant community input. As a product of that joint effort, a new plan ("Revitalization Plan") has evolved, which has broad community support, as evidenced by input from participants during the visioning sessions. The Revitalization Plan constitutes the current proposal that is the topic of discussion below.

II. CURRENT PROPOSAL

A. Project Description for Revitalization Plan. The Revitalization Plan is intended to expand upon the prior Renovation Plan, and continue to remain in conformance with the Specific Plan. In essence, the Revitalization Plan will constitute part of the redevelopment "phasing" process recognized and approved in the Specific Plan. Relevant aspects of the Revitalization Plan are considered below.

1. New Site Plan. The new site plan for the Revitalization Plan ("New Site Plan") is attached hereto as *Exhibit "A-1"*. With respect to the New Site Plan (and the Revitalization Plan) the comments below are relevant.

2. Internal Street Improvements. The New Site Plan shows the main internal street running the full distance from Indian Canyon Drive to Museum Drive. In this respect, it is consistent with ultimate Specific Plan redevelopment concepts, and provides an important part of the solution to making the DFP Area commercially successful, i.e., direct east-west access from Indian Canyon Drive into the DFP Area. The New Site Plan also shows an extension from the roundabout at the "center" of the DFP Area southerly to become part of an extension of Belardo Road into the DFP Area. (Note: [1] Construction of the Belardo Bridge over Tahquitz Creek will provide a large new segment of residential areas with direct northerly access to the DFP Area. [2] Under the New Site Plan, internal streets will be public, i.e., owned by the City rather than the Developer.)

3. New Building Improvements. The Prior Site Plan contemplated that existing buildings within the DFP Area would largely remain in place but be upgraded with exterior architectural improvements. The New Site Plan contemplates the demolition, reconfiguration and replacement of some buildings, particularly in the southeast corner of the DFP Area. In that location, existing buildings will be demolished, a new open space area will be located at the northwest corner of Tahquitz Canyon Way and North Palm Canyon Drive, and a landscaped pedestrian walkway will extend from the corner open space area into the center of the DFP Area, connecting to the "roundabout" described in Section II.A.2 above. New retail building improvements are planned for location in the area shown as Block 2 on the New Site Plan. A new movie theater complex is planned for location directly north of the roundabout in the center of the DFP Area.

4. Retention and Use of Existing Building Improvements. The New Site Plan contemplates the retention, upgrade and use of some existing building improvements, as follows: (1) the former Saks Fifth Avenue building located on Palm Canyon Drive may be retained and used for major retail purposes, (2) the former I.

Magnin building located directly northwest of the center roundabout in the DFP Area may be retained and used as an entertainment venue, such as for fitness/spa uses and/or recreational bowling purposes, (3) existing building improvements shown as Block 1 on the New Site Plan (located on Palm Canyon Drive), may be retained and used for retail purposes, and (4) existing building improvements located immediately adjacent to the Hyatt Hotel may be retained and used for hotel ballroom and conference center purposes. Depending on the condition of these properties, the needs of potential tenants, and economic feasibility, any of these buildings could be replaced with new structures. (Note: The foregoing identification of potential uses is not intended to preclude other uses authorized by the Specific Plan.)

5. **Retention of Block 6 for Future Development.** The New Site Plan calls for the area shown thereon as Block 6 to be retained by the Developer and be held for future development for a variety of potential uses including, without limitation, boutique gourmet grocery, bar/restaurant, entertainment, multi-story housing and/or office uses.

6. **City Purchase of Improvements for Public Parking.** The Revitalization Plan calls for certain parking improvements within the DFP Area to be purchased by the City from the Developer, and be used by the City in perpetuity as and for free public parking. These may include all or part of the above-ground parking structure at the northwest corner of the DFP Area, the parking deck and associated underground parking at the southwest corner of the DFP Area, the parking underneath developed portions of the DFP Area, and all associated ramps, driveways and approaches currently owned by the Developer.

7. **City Purchase of Land for Public Streets.** The Revitalization Plan calls for the City to purchase from the Developer the ground upon which the interior streets shown on the New Site Plan will be built. Such purchase could be the ground only, or the purchase from Developer of full streets in finished condition.

8. **City Purchase of Land (Parcels A and B) for Future Use.** The Revitalization Plan calls for two parcels within the DFP Area, i.e., the two parcels directly east of the Palm Springs Art Museum ("Art Museum") which are currently used for open space and sculpture garden purposes ("Parcels A and B"), to be purchased by the City from the Developer and be held for future development opportunities including, without limitation, possible expansion of Art Museum facilities.

B. **City Administration and Processing of Revitalization Plan.** With respect to City Administration and processing, a number of matters need to be considered, as follows:

1. **Development Agreement.** Under certain provisions of the State Government Code, local governments are authorized to enter into binding contracts with developers known as development agreements. Among other things, a development agreement, once consummated, gives the developer a vested right to proceed to develop

his property in the manner specified in the development agreement and/or entitlements adopted concurrently therewith or prior thereto. In this case, the Developer has filed an application for approval of a Development Agreement. Once approved and executed, the Development Agreement will, among other things, grant the Developer the vested right to develop the DFP Area in accordance with the Revitalization Plan, and the TCC Area in accordance with the Revitalization Plan (construction of the public street from Indian Canyon Drive to Palm Canyon Drive) and other entitlements authorized by the Specific Plan (hotel and retail use), but subject to all criteria (restrictions, standards, requirements and limitations) contained in the Specific Plan.

2. **Major Architectural Review.** Section V.A of the Specific Plan provides that implementation tools will be major architectural reviews, conditional use permits, subdivision maps and, in certain circumstances, planned development permits. For purposes of the subject Revitalization Plan, the Planning Commission and City Council will consider and rule on the Development Agreement application prior to major architectural review of proposed revitalization improvements, which will come later.

3. **Substantial Conformance of Revitalization Plan.** For reasons indicated herein, the Revitalization Plan and New Site Plan are consistent and in conformance with the Specific Plan in general and the prior Renovation Plan in particular. Land uses under the Revitalization Plan will be fully consistent with land uses allowed under the Specific Plan, development standards and land use regulations set forth in the Specific Plan will be followed in the Revitalization Plan, and architectural and design concepts under the Revitalization Plan will be consistent with those contained in the Specific Plan.

III. **SUMMARY.** Redevelopment pursuant to the goals, objectives and criteria of the Museum Market Place Specific Plan is a critical component to restoring economic vitality and luster to core areas of downtown Palm Springs. This has been recognized by essentially all that have considered the subject, e.g., the City Council, business groups such as the Chamber of Commerce, The Desert Sun and other media outlets, community leaders and concerned citizens. In the current challenging economic climate, this is not an easy task, and it will require serious cooperation and joint public and private efforts to achieve meaningful results. Proceeding with the Revitalization Plan described above would constitute significant progress in the right direction, and clearly serve the long term best interests of the City and its residents. Upon completion, the project would create a strong public gathering place comprised of well-designed public spaces linked by a total shopping environment offering a variety of merchandise and price points, with major emphasis on dining and entertainment. World-class architecture, landscaping and enhanced circulation facilities will create an exciting atmosphere where retail, hotel, cultural and other activities can come together and establish a sense of arrival and place – one that can compete with other Coachella Valley venues such as The River in Rancho Mirage and The Gardens at El Paseo in Palm Desert. The design will preserve and enhance views of the adjacent San Jacinto Mountains and provide pedestrian friendly movement to an interior architectural feature at the project center. Proposed streets and walkways will establish a direct connection between the Art Museum adjacent to the

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mountains on the west, and casino and convention center facilities located in Section 14 to the east. The project will serve as a gathering place, a destination for both tourists and locals alike – a place to dine, be entertained and shop, in a setting of architectural and cultural stimulation.

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EXHIBIT "B"

(Legal Description of the Property)

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EXHIBIT "C"

(Development Impact Fees)

EXHIBIT "D" TO DEVELOPMENT AGREEMENT

(Specific Arrangements regarding Parking and Related Matters)

1. Existing Parking Facilities. Existing parking facilities within the DFP Area ("Existing Parking Facilities") consist of (i) an above-ground parking structure at the northwest corner of the DFP Area; (ii) a parking deck and associated underground parking at the southwest corner of the DFP Area; (iii) parking spaces underneath developed portions of the DFP Area; and (iv) associated ramps, driveways and approaches.

2. Agreements Regarding Parking and Related Matters.

A. DFP Area. City agrees that the Existing Parking Facilities are sufficient to satisfy all City parking requirements for all uses and occupancies allowed and/or contemplated within the DFP Area under the Revitalization Plan (including future Block 6) and/or the Renovation Plan. Accordingly, no additional parking requirements or in lieu parking fees of any type shall be imposed or required by the City in connection any application for development approval within the DFP Area that is consistent with the Revitalization Plan and/or the Renovation Plan.

B. Block K1 of TCC Area. City agrees that the Existing Parking Facilities, when combined with approximately 50 additional surface parking spaces to be built within the DFP Area as part of the Revitalization Plan, and 65 new surface parking spaces to be built within Block K1 upon development, will satisfy all parking requirements for future development of up to a 160 room hotel (and accompanying retail/restaurant uses) within Block K1. Accordingly, no additional parking requirements or in lieu parking fees of any type shall be imposed or required by the City in connection any application for development of such 160 room hotel (and accompanying retail/restaurant uses).

C. Block K2 of TCC Area. City agrees that the Existing Parking Facilities, when combined with approximately 50 additional surface parking spaces to be built within the DFP Area as part of the Revitalization Plan, and 80 new surface parking spaces to be built within Block K2 upon development, will satisfy all parking requirements for future development of up to a 180 room hotel (and accompanying retail/restaurant uses) within said Block K2. Accordingly, no additional parking requirements or in lieu parking fees of any type shall be imposed or required by the City in connection any application for development of such 180 room hotel (and accompanying retail/restaurant facilities).

D. Hotel Development. Blocks K1 and K2 are acknowledged as prime locations for new hotel stock to support the recently expanded Palm Springs Convention Center and, accordingly, City agrees that, during the ten (10) year period immediately following the Effective Date of this Development Agreement, approval of applications for hotel construction which are consistent with the above and otherwise satisfy normal requirements will not be unreasonably withheld.

EXHIBIT "E" TO DEVELOPMENT AGREEMENT

(Specific Arrangements regarding Transient Occupancy Tax)

Pursuant to City Ordinance No. 1730, adopted January 9, 2008, the City found and determined that the general welfare and material well being of City residents were dependent, in large measure, upon growth and expansion of tourism and travel industries within the City, and that inducing and encouraging operation, maintenance and expansion of quality hotel inventory was in the best interest of the City. Accordingly, the City adopted Ordinance No. 1730 and thereby created a Hotel Operations Incentive Plan ("Incentive Plan"). Pursuant to City Ordinance No. 1742, adopted June 18, 2008, the City amended the Incentive Plan to revise certain tax rate calculations and add Deluxe Hotel as a type of hotel that would be eligible for the Incentive Plan. Pursuant to City Ordinance No. 1786, adopted April 6, 2011, the City further amended the Incentive Plan to allow a First Class New Hotel to receive 75% of the Adjusted Tax Rate (as defined).

Blocks K1 and K2 within the TCC Area are acknowledged as prime locations for new hotel stock to benefit the City and support the recently expanded Palm Springs Convention Center and, accordingly, City agrees to allow and/or to take actions reasonably necessary to allow continued applicability of the Incentive Plan (and benefits thereof) to any "New Hotel", "First Class New Hotel", "Deluxe New Hotel" or "New Quality Hotel" that is under construction after the Effective Date of this Development Agreement but before expiration of the ten (10) year period immediately following said Effective Date. Further, City agrees that during said ten (10) year period, approval of applications for hotel construction which are consistent with the Sections 2.B and 2.C of Exhibit "D" to this Development Agreement and otherwise satisfy normal requirements will not be unreasonably withheld.