



CITY COUNCIL STAFF REPORT

DATE: January 15, 2014

CONSENT CALANDER

SUBJECT: ACCEPTANCE OF HOTEL OPERATIONS COVENANT AGREEMENTS BETWEEN THE CITY OF PALM SPRINGS AND BEARFOOT INN, INC. (BEARFOOT INN), AND KITTRIDGE HOTELS & RESORTS, LLC (HARD ROCK HOTEL PALM SPRINGS) PURSUANT TO THE CITY'S HOTEL OPERATIONS INCENTIVE PROGRAM.

FROM: David H. Ready, City Manager

BY: Community & Economic Development

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 Hotels Operations Incentive Program.

RECOMMENDATION:

Accept the Operations Covenants between the City and Bearfoot Inn, Inc., and Kittridge Hotels & Resorts, LLC in conjunction with the City's Hotel Operations Incentive Program.

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.

Bearfoot Inn, Inc. has applied for the Program and has provided satisfactory documentation certifying its recent renovation project as a qualified renovation under the Program. The Bearfoot Inn is located at 888 North Indian Canyon Drive and consists of eleven (11) total hotel rooms.

Kittridge Hotels & Resorts, on behalf of the Hard Rock Hotel Palm Springs, has applied for the Program and has provided satisfactory documentation certifying its recent renovation project as a qualified renovation under the Program. The Hard Rock Hotel

Palm Springs is located at 150 S. Indian Canyon Drive and consists one hundred sixty three (163) total hotel rooms.


Consistent with the provisions of the Program, two hotels now desires to place restrictions upon the use and operation of the hotels, in order to ensure that the Project shall be operated and maintained continuously as a hotel available for short-term rentals.

The two hotels have also agreed in the Covenants to participate in the Palm Springs Convention Center's Committable Rooms Program and provide City with designated room nights per month for official City use. City will share a percentage of Transient Occupancy Tax Increment with Owner pursuant to the Program guidelines.

FISCAL IMPACT:

For the Bearfoot Inn, an amount equal to 50% of transient occupancy tax increment over the annual base amount will be paid to the Bearfoot Inn, Inc. for a ten year period.

For the Hard Rock Hotel, an amount equal to 50% of transient occupancy tax increment over the annual base amount will be paid to Kittridge Hotel & Resort, LLC, for a ten year period.



John Raymond, Director
Community & Economic Development



Cathy Van Horn, Administrator
Community & Economic Development



David H. Ready, City Manager

Attachments:

Hotel Operations Covenant Agreement

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

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

OPERATIONS COVENANT

THIS OPERATIONS COVENANT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into this 31st day of December, 2012, by and between the CITY OF PALM SPRINGS, a municipal corporation and charter city ("City"), and Bearfoot Inn, Inc., a C corporation ("Owner").

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 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.

B. Owner has applied for the Program and has provided satisfactory documentation certifying its recent renovation project as a qualified renovation program under the Program. The Bearfoot Inn ("Owner's Hotel" or "Project"), generally located at 888 N. Indian Canyon Drive, Palm Springs, California, consists of eleven (11) total hotel rooms on that certain real property located in the City of Palm Springs, County of Riverside, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Site").

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 the approval of this Covenant is Categorically Exempt from CEQA under Section 15301 of the California Administrative Code as the Hotel Operations Incentive Program applicable to Owner's Hotel applies to the operation, repair, maintenance, or

minor alteration of existing structures, facilities, mechanical equipment involving no material expansion of use beyond that previously existing.

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

ARTICLE 1

STATEMENT OF OPERATING COVENANTS

1.1. OPERATION AND USE COVENANT. Owner covenants to operate, maintain, and use the Owner's 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 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 unless and until Owner's participation in the Program is terminated prior thereto in accordance with this Agreement (the "Term").

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. The City has determined the Transient Occupancy Tax Base to be used to calculate the Transient Occupancy Tax Increment shall be \$9,741.10, 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 rooms for one night (or one room for two 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 a 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, 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 shrubbery, plantings, and other landscaping 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 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 (such 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 and 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, sex, 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 Manager 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 relating in any manner to the Project excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of 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: Bearfoot Inn, Inc.
888 N. Indian Canyon Drive
Palm Springs, CA 92262
Attn: Glen Boomhour and Jerry Pergolesi

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 Agency, 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.

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. Owner may elect to terminate its participation in the Program and this Agreement by providing written notice to the City (a) if the City fails to deliver to Owner any amounts owed to Owner pursuant to the Program within thirty (30) days after Owner's written request for payment or (b) in its sole discretion for any reason prior to the fifth (5th) anniversary of the date of 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: _____

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART

By: _____

Douglas C. Holland, Esq.
City Attorney

"OWNER"

BEARFOOT INN, INC.
a C corporation

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: _____

[END OF SIGNATURES]

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
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 _____

(Seal)

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
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 _____

(Seal)

EXHIBIT "A"

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:

See attached

DOC # 2011-0402121
09/09/2011 03:51P Fee:15.00
Page 1 of 1

Recorded in Official Records
County of Riverside
Larry W. Ward
Assessor, County Clerk & Recorder



RECORDING REQUESTED BY:
Investors Title IE

AND WHEN RECORDED MAIL TO:
Bearfoot Inn Inc.
888 N. Indian Canyon Drive
Palm Springs, CA 92262

Order No.: 7100039
Escrow No.: 4200207-DG
A.P.N.: 507-161-001-3

S	R	U	PAGE	FILE	UA	MISC	LONG	RFD	COPY	
			465	426	PCOR	NCOR	SMF	NCHG	EXAM	
								T:	CTY	UNI
									030	

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE

GRANT DEED

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

DOCUMENTARY TRANSFER TAX IS \$-0 R&T Code 11911 *to correct spelling of name only*

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale.
- unincorporated area City of Palm Springs

T
030

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
Bearfoot Inn Inc., a California Corporation who acquired title as Barefoot Inn Inc., a California Corporation

hereby GRANT(S) to Bearfoot Inn Inc., a California Corporation

the following described real property in the County of Riverside, State of California

Lot 5, Block 2 of Las Hacenditas, in the City of Palm Springs, County of Riverside, State of California, as shown by Map on file in Book 11, page 5 of Maps, records of Riverside County, California.

The property more commonly known as: 888 North Indian Canyon Dr , Palm Springs, CA 92262

Dated: July 13, 2011

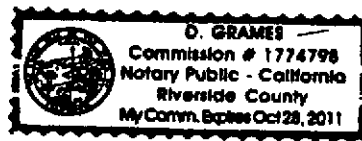
STATE OF CALIFORNIA
COUNTY OF Riverside

Bearfoot Inn Inc.

On Sept. 7, 2011 before me,
D. Grames, Notary Public,
personally appeared Glen Boomhour

x Glen Boomhour, president
By: Glen Boomhour, President

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) 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 D. Grames

(This area for official notary seal)

MAIL TAX STATEMENTS AS DIRECTED ABOVE

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

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

OPERATIONS COVENANT

THIS OPERATIONS COVENANT AND DECLARATION OF COVENANTS AND RESTRICTIONS ("Agreement") is made and entered into this 1st day of October, 2013, by and between the CITY OF PALM SPRINGS, a municipal corporation and charter city ("City"), and Kittridge Hotels & Resorts, LLC, a Delaware limited liability company ("Owner").

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 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.

B. Owner has applied for the Program and has provided satisfactory documentation certifying its recent renovation project as a qualified renovation program under the Program. The Hard Rock Hotel Palm Springs ("Owner's Hotel" or "Project"), generally located at 150 S. Indian Canyon Drive, Palm Springs, California, consists of one hundred sixty three (163) total hotel rooms on that certain real property located in the City of Palm Springs, County of Riverside, State of California, more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Site").

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 four (4) 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 the approval of this Covenant is Categorically Exempt from CEQA under Section 15301 of the California Administrative Code as the Hotel Operations Incentive Program applicable to Owner's Hotel applies to the operation, repair, maintenance, or

minor alteration of existing structures, facilities, mechanical equipment involving no material expansion of use beyond that previously existing.

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

ARTICLE 1

STATEMENT OF OPERATING COVENANTS

1.1. OPERATION AND USE COVENANT. Owner covenants to operate, maintain, and use the Owner's 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 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 unless and until Owner's participation in the Program is terminated prior thereto in accordance with this Agreement (the "Term").

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. The City has determined the Transient Occupancy Tax Base to be used to calculate the Transient Occupancy Tax Increment shall be ~~\$616,252.14~~, and the Owner accepts such Transient Occupancy Tax Base. The City shall pay to Owner 50%

of the Transient Occupancy Tax Increment for the 12 month period ending on the anniversary of the effective date of the Agreement.

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 four rooms for one night (or two rooms for two 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 a 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, 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 shrubbery, plantings, and other landscaping 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 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 (such 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 and 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, sex, 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 Manager 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 relating in any manner to the Project excepting only any such loss, liability, claim, or judgment arising out of the intentional wrongdoing or gross negligence of 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: Kittridge Hotel & Resorts, LLC
Hard Rock Hotel Palm Springs
150 S. Indian Canyon Drive
Palm Springs, CA 92262
Attn: Andre Carpiac

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 Agency, 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.

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. Owner may elect to terminate its participation in the Program and this Agreement by providing written notice to the City (a) if the City fails to deliver to Owner any amounts owed to Owner pursuant to the Program within thirty (30) days after Owner's written request for payment or (b) in its sole discretion for any reason prior to the fifth (5th) anniversary of the date of 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: _____

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN & SMART

By: _____

Douglas C. Holland, Esq.
City Attorney

"OWNER"

Kittridge Hotels & Resorts, LLC,
A Delaware limited partnership

By: _____

Name: Andre Carpiac

Title: _____

By: _____

Name: _____

Title: _____

[END OF SIGNATURES]

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
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 _____

(Seal)

ACKNOWLEDGMENT

State of California)
County of _____)

On _____, before me, _____,
(insert name of notary)

Notary Public, personally appeared _____,
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 _____

(Seal)

EXHIBIT "A"

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 1:

PARCEL 1 AND LETTERED LOT A, IN THE CITY OF PALM SPRINGS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY PARCEL MAP 18963, ON FILE IN BOOK 122 PAGES 79 AND 80, OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 2:

AN EASEMENT FOR AN UNDERGROUND TUNNEL FOR UNDERGROUND PASSAGE AND FOR ALL PURPOSES CONNECTED THEREWITH, ALONG THAT CERTAIN 34.50 FOOT WIDE STRIP OF LAND WITHIN CALLE ENCILIA, AS SAID STREET IS SHOWN ON THE SUPPLEMENTAL PLAT OF SECTION 14, TOWNSHIP 4 SOUTH, RANGE 4 EAST, SAN BERNARDINO BASE AND MERIDIAN (ON FILE WITH THE DEPARTMENT OF INTERIOR, GENERAL LAND OFFICE, WASHINGTON, D.C., ON SEPTEMBER 7, 1927) TOGETHER WITH THE EASTERLY 15.00 FEET OF BLOCK 22 AND THE WESTERLY 15.00 FEET OF BLOCK 21, ALL SHOWN ON SAID SUPPLEMENTAL PLAT OF SECTION 14, BEING 17.25 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK 22;

THENCE WEST ALONG THE NORTH LINE OF SAID BLOCK 22, A DISTANCE OF 15.00 FEET TO A POINT ON A LINE THAT IS PARALLEL WITH AND 15.00 FEET WESTERLY OF THE EASTERLY LINE SAID BLOCK 22;

THENCE SOUTH 0° 00' 14" EAST ALONG SAID PARALLEL LINE, A DISTANCE OF 100.91 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 83° 28' 35" EAST, A DISTANCE OF 80.52 FEET TO A POINT ON A LINE THAT IS PARALLEL WITH AND 15.00 FEET EASTERLY OF THE WESTERLY LINE OF SAID BLOCK 21, BY DOCUMENT RECORDED JULY 22, 1985 AS INSTRUMENT NO. 160369 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 3:

AN EASEMENT FOR ACCESS AND UTILITIES AS SAID RIGHTS ARE SET FORTH, UPON THE TERMS AND CONDITIONS IN A RECIPROCAL EASEMENT AGREEMENT RECORDED JULY 1, 1998, AS DOCUMENT NUMBER 272058, OFFICIAL RECORDS OF RIVERSIDE COUNTY, OVER A PORTION OF LOT 1 AND LETTERED LOTS A AND B OF TRACT 16544 AS SHOWN BY MAP ON FILE IN BOOK 143 PAGES 39 AND 40 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA