



CITY COUNCIL STAFF REPORT

DATE: September 21, 2016

PUBLIC HEARING

SUBJECT: APPEAL BY WESSMAN HOLDINGS OF THE PLANNING COMMISSION ACTION TO DENY AN EXTENSION OF TIME REQUEST FOR THE CRESCENDO PLANNED DEVELOPMENT DISTRICT (PDD 294); A PREVIOUSLY APPROVED PROJECT CONSISTING OF A TENTATIVE TRACT MAP (TTM 31766), AND PLANNED DEVELOPMENT DISTRICT 294 FOR THE CONSTRUCTION OF 79 HOMES LOCATED AT W. RACQUET CLUB ROAD AND VISTA GRANDE AVENUE; (CASE 5.0996/PDD 294/TTM 31766).

FROM: David H. Ready, City Manager

BY: Department of Planning Services

SUMMARY

This is a request for the City Council to consider an appeal filed by Wessman Holdings, regarding the action of the Planning Commission on August 10, 2016, to deny a request for a one-year extension of time for the Crescendo development; a previously approved project consisting of a Tentative Tract Map (TTM 31766) and Planned Development District 294. The project was originally approved by the City Council on October 17, 2007, for a 79-lot subdivision on an undeveloped 42.2-acre parcel located along West Racquet Club Drive and Vista Grande Avenue.

RECOMMENDATION:

1. Open the public hearing and receive public testimony; and
2. Adopt Resolution No. _____, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, UPHOLDING THE PLANNING COMMISSION'S ACTION TO DENY AN EXTENSION OF TIME REQUEST FOR THE CRESCENDO PLANNED DEVELOPMENT DISTRICT 294 FOR THE CONSTRUCTION OF 79 SINGLE-FAMILY RESIDENTIAL HOMES ON A 42.2-ACRE PARCEL LOCATED AT WEST RACQUET CLUB ROAD AND VISTA GRANDE AVENUE;"

Or – Alternatively:

Adopt Resolution No. _____, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, OVERTURNING THE PLANNING

ITEM NO. 28

COMMISSION'S ACTION TO DENY AN EXTENSION OF TIME REQUEST FOR THE CRESCENDO PLANNED DEVELOPMENT DISTRICT 294; AND GRANTING A LIMITED EXTENSION OF TIME FOR A PERIOD OF THREE MONTHS TO ALLOW THE APPELLANT TIME TO SUBMIT AN AMENDED CRESCENDO PLANNED DEVELOPMENT DISTRICT (PDD 294) FOR THE 42.2-ACRE PARCEL LOCATED AT WEST RACQUET CLUB ROAD AND VISTA GRANDE AVENUE (CASE 5.0996-PDD 294)."

ISSUES:

- In May 2016, the applicant submitted a Final Map, Rough Grading Plan, Sewer Plan, on-site Street Plan, off-site Street Plan, Water Quality Management Plan and Hydrology Report. These submittals are in compliance with the project's conditions of approval.
- All of the above stated plans and Hydrology Report are currently under review by the Planning Department, the Engineering Department and by the City's outside Engineering consultant who is reviewing the rough grading plan check.
- Final design work and other related studies requested by the City are in progress.
- Planning Administrative Condition #11 "Final Design" stipulates that if the final development plan for PDD 294 is not approved, "...the procedures and actions which have taken place up to that time shall be null and void and the Planned Development District and Tentative Tract Map shall expire."
- A Final Map cannot be approved for Crescendo until Condition #11 is satisfied.

PRIOR ACTIONS:

<i>Most Recent Ownership</i>	
2003	Wessman Holdings

<i>Related Relevant City Actions by Planning, Fire, Building, etc...</i>	
09/26/07	The Planning Commission certified the EIR, approved the PDD and recommended approval of the project to the City Council.
10/17/07	The City Council certified a final EIR and approved TTM 31766 & PDD 294.
05/29/08	The City and Wessman Development reached a "Settlement and Release Agreement" granting a 5-year entitlement until 10/16/2012.
01/23/12	The Planning Commission granted a one-year time extension for PDD 294.
10/23/13	The Planning Commission granted a one-year time extension for PDD 294.
07/23/14	The Planning Commission granted a one-year time extension for PDD 294.
09/15/15	The Planning Commission granted a one-year time extension for PDD 294.
08/10/16	The Planning Commission denied an extension request for PDD 294 by a vote of 5-1-1; Donenfeld opposed, Chair Calderine recused himself.

BACKGROUND AND SETTING:

On October 17, 2007, the City Council certified a Final EIR and approved the Crescendo project. The project consisted of a Tentative Tract Map (TTM 31766) and a Planned Development District (PD 294). Planned Development District 294 established

new design and development standards for the project while Tentative Tract Map 31766 created the 79 single-family residential lots to construct upscale homes. The lots range between 15,077 square feet and 54,500 square feet in size; the average lot size in the development is 21,195 square feet. (Among other development standards, PDD 294 established a smaller lot size than the minimum lot size of 20,000 square feet normally required by the underlying R-1-A Zoning District standards). The subject site is an undeveloped 42-acre triangular parcel bounded by Racquet Club Road to the south, single-family residential uses to the east and the south, Tram Way to the north and a portion of the Agua Caliente Indian Reservation to the west. The site is currently covered by rocks, loose cobbles and large boulders. The slopes are between eight and ten percent from east to west; the elevation ranges from 680 to 840 feet above sea level. The subject property is surrounded by well-established residential developments with unique building pads and street patterns. A site plan showing the approved PDD 294, and a copy of TTM 31766, are included as attachments to this report.

Following the approval of the Crescendo project, lawsuits were filed and as a result, on May 29, 2008, a Settlement and Release Agreement was reached between the City and the applicant, Wessman Development. Language in the Settlement Agreement states "...in the event that any State Legislation is adopted which would extend the life of any Entitlements; such an extension shall be in addition to the extension granted herein". The original expiration date of Tentative Tract Map 31766 with the automatic five (5)-year extension granted by the State Legislature was October 17, 2016; however, the Settlement Agreement has established a further extension of three (3) years to Tentative Tract Map 31766 which will now expire on October 17, 2019. However, the State Legislature did not grant any automatic extension to local zoning entitlements, such as PDD 294, and extension of time for PDD 294 is now required. A copy of the Settlement Agreement is included as an attachment to this report.

ANALYSIS:

The entitlement for Planned Development District 294 expires on October 1, 2016, and pursuant to the City of Palm Springs Zoning Ordinance, the appellant submitted a letter for an extension of time request. In the letter dated June 13, 2016, the applicant stated that they intend to commence construction by late 2017; however, concerns that the time necessary to obtain approval of the final map, plan checks and building permits may not be sufficient given the expiration date of PDD-294. According to the applicant, since the last extension in 2015, a series of steps to advance the project have been taken: the Final Map, grading plans, and off-site/on-site improvement plans have been submitted to the City for review and permitting. The Final Map, Subdivision Improvement Agreement (SIA) and Community Facility District (CFD) are scheduled to go to the City Council for a final action. However, the applicant opted to request for an extension of time just in case the review of those submittals are not completed prior to the expiration date of the project entitlement.

According to Section 94.03.00(H) of the Palm Springs Zoning Code, extensions of time for Planned Development District entitlements may be allowed by demonstration of good cause. No specific findings or determinations are required to grant time extensions for previously-approved Planned Development District projects. On August 10, 2016,

the extension of time request was considered and denied by the Planning Commission on the basis that the project was approved almost ten years ago and that the applicant has failed to demonstrate the ability to advance development of the project. On August 15, 2016, Wessman Development filed an appeal of the Commission's action.

APPEAL AND STAFF ANALYSIS:

On August 15, 2016, Wessman Development appealed the action of the Planning Commission; the basis of the appeal is the following:

Appellant: *"We have submitted substantially all documents necessary for filing of the final map. Under State law, the City may not deny or condition a final map if the developer has complied with all conditions of approval attached to the tentative map. Therefore we will be completing the recording of the map shortly".*

Staff Response: In May 2016, the appellant did submit a Final Map, Rough Grading Plan, Sewer Plan, on-site Street Plan, off-site Street Plan, Water Quality Management Plan and Hydrology Report to the City. These plans are currently in plan check at Development Services and at the outside Engineering consultant firm who works for the City. Again, the Planning Commission made a determination that the project was approved almost ten years ago and that the developer had made little progress in the intervening years to advance the project.

Appellant: *"The PDD provided the residential designs that fit within the map parameters, and should therefore run concurrently with the map. The objections raised at the Planning Commission were based on both factual and legal misrepresentations".*

Staff Response: Condition of approval No. 11 clearly states that... If, within two (2) years after the date of approval by the City Council of the preliminary development plan, the final development plan...has not been approved as provided below in Condition No. 12, the procedures and actions which have taken place up to that time shall be null and void and the Planned Development District and Tentative Tract Map shall expire. Condition No. 12 states that...the final development plans shall be submitted in accordance with Section 94.03.00 of the Zoning Ordinance. Final construction plans shall include site plans, building elevations, floor plans, roof plans, fence and wall plans, entry plans, landscape plans, irrigation plans, exterior lighting plans, street improvement plans and other such documents as required by the Planning Commission and City Council. No such plans have been submitted to date; consequently, the Planning Commission found that the applicant had not made adequate progress in advancing the project.

Appellant: *"The objection that the CEQA documents is 9 years old and therefore no longer valid runs in direct opposition to the State law regarding CEQA.*

Under state law, the City may not require further environmental analysis unless there are changed circumstances such that the project will generate significant impacts that were not previously analyzed or will significantly increase impacts beyond those analyzed. Those circumstances do not exist in this case. As staff notes in its staff report, there have been no changes on the property, and there are no changes in circumstances which could justify requiring additional environmental review”.

Staff Response: Members of the public who spoke at the hearing made references to the EIR being nine years old and that new studies are necessary to address changed environmental factors in the area. The Planning Commission did not reference the EIR in its motion to deny the extension of time request.

Appellant: *“Project opponents cite the development that has occurred in Desert Palisades to say that the EIR must be revised, however, this is incorrect. When the EIR for Crescendo was completed, it included a cumulative impact analysis that considered the City's build out scenario and all foreseeable projects planned for the area. When the EIR for Desert Palisades was completed, it too included a cumulative impact analysis that considered all projects in the area. Therefore, there has been complete environmental review of these projects, and all of those environmental documents are now beyond challenge”.*

Staff Response: The reference to the Desert Palisades project was made by speakers opposing the extension request. The Planning Commission did not make such a reference in their motion to deny the extension request.

Appellant: *“Crescendo was a hard fought entitlement when it was originally granted. There were two major EIR revisions to make certain all issues were covered and the neighbors still filed a CEQA suit against the project at the time. The neighbors ultimately agreed to and did settle that CEQA suit, releasing all claims against Crescendo, and in return, the developer made concessions to the neighborhood including a commitment there would be no mass grading. The neighbors now attempting to fight this project appears to be a violation of their obligations under the settlement agreement”.*

Staff Response: The settlement agreement and CEQA lawsuit were not deliberated upon by the Planning Commission at the hearing of August 10, 2016. The Planning Commission voted to deny the extension because they were not persuaded that appellant demonstrated a good cause to grant one more extension of time.

Appellant: *“The opponents also made claims that this developer had already impacted the area with work on the site. That is a factual error in that there has been no work on the site. The photographs that were produced by the*

project opponents were pictures of work being done in the area by other developers. The berm which they object to, for example, was originally a requirement of the Desert Palisades project. There is simply no justification for penalizing the developer because they don't like what others have done".

Staff Response: The validity of the pictures presented at the hearing did not factor in the decision of the Planning Commission to deny the extension of time request; however, the Commission stated that further directions are needed from the City Council on how to proceed with extension of time requests for projects that have received multiple extensions and no sign of progress.

Appellant: *"As staff is aware, Wessman Development has completed virtually all the plans for the final map on this site. Having endured the expense of those plans, the entitlement process, two EIR rounds, and a lawsuit, it is fair and reasonable to allow the developer the time makes use of the map by extending the PDD".*

Staff Response: Again the Planning Commission determined that nine (9) was long enough for Wessman Development to have commenced construction at the site.

Alternative Proposal

On September 15, 2016, the appellant submitted a request proposing to amend PDD 294 to eliminate all of the previously approved architectural approvals, but preserving the currently approved lot configurations identified on Tentative Tract Map 31766 (i.e. maintaining the minimum lot size of 15,077 square feet) and setbacks established by PDD 294. In this way, the Crescendo project would be developed as a custom home subdivision with construction of homes on each individual lot subject to the City's Major Architectural Approval process, in the same way as the Boulders or Desert Palisades development projects. On-site construction would be limited to the on-site streets, utilities and related storm drainage infrastructure across the property.

The appellant has also committed to direct all construction traffic to Tram Way, and has negotiated a construction easement with the San Jacinto Winter Park Authority to facilitate this commitment.

A copy of the appellant's request letter is included as an attachment to this staff report.

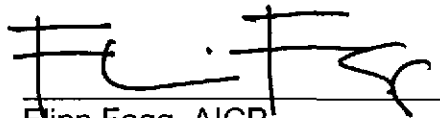
This alternative proposal would negate the need for final development plans, given that the amended PDD 294 would be limited to preserving the development standards (lot sizes and property line setbacks), and not any architectural approvals related to single family home construction.

Based on this alternative proposal, staff has provided City Council with an alternative Resolution for consideration which would overturn the Planning Commission's action to deny an extension of PDD 294 only insofar as to provide a three-month extension of PDD 294 to facilitate the appellant's request to amend PDD 294. If the alternative proposal is considered, the request to amend PDD 294 would be referred to the Planning Commission for review and recommendation, with final approval by City Council.

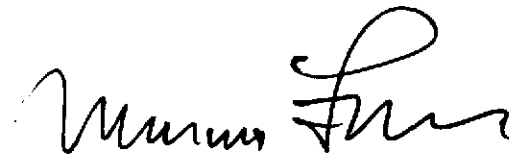
NOTIFICATION:

The applicant was notified of the City Council hearing of the appeal; a public hearing notice was mailed to property owners within a 500-foot radius of the project site. Additionally, the public hearing was published in the local newspaper and the surrounding neighborhood organizations were also notified.

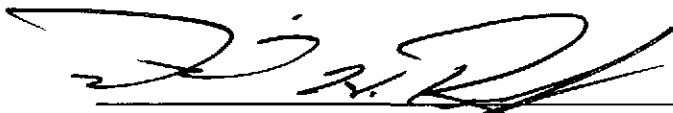
SUBMITTED:



Flinn Fagg, AICP
Director of Planning Services



Marcus Fuller, MPA, P.E., P.L.S.
Assistant City Manager/City Engineer



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

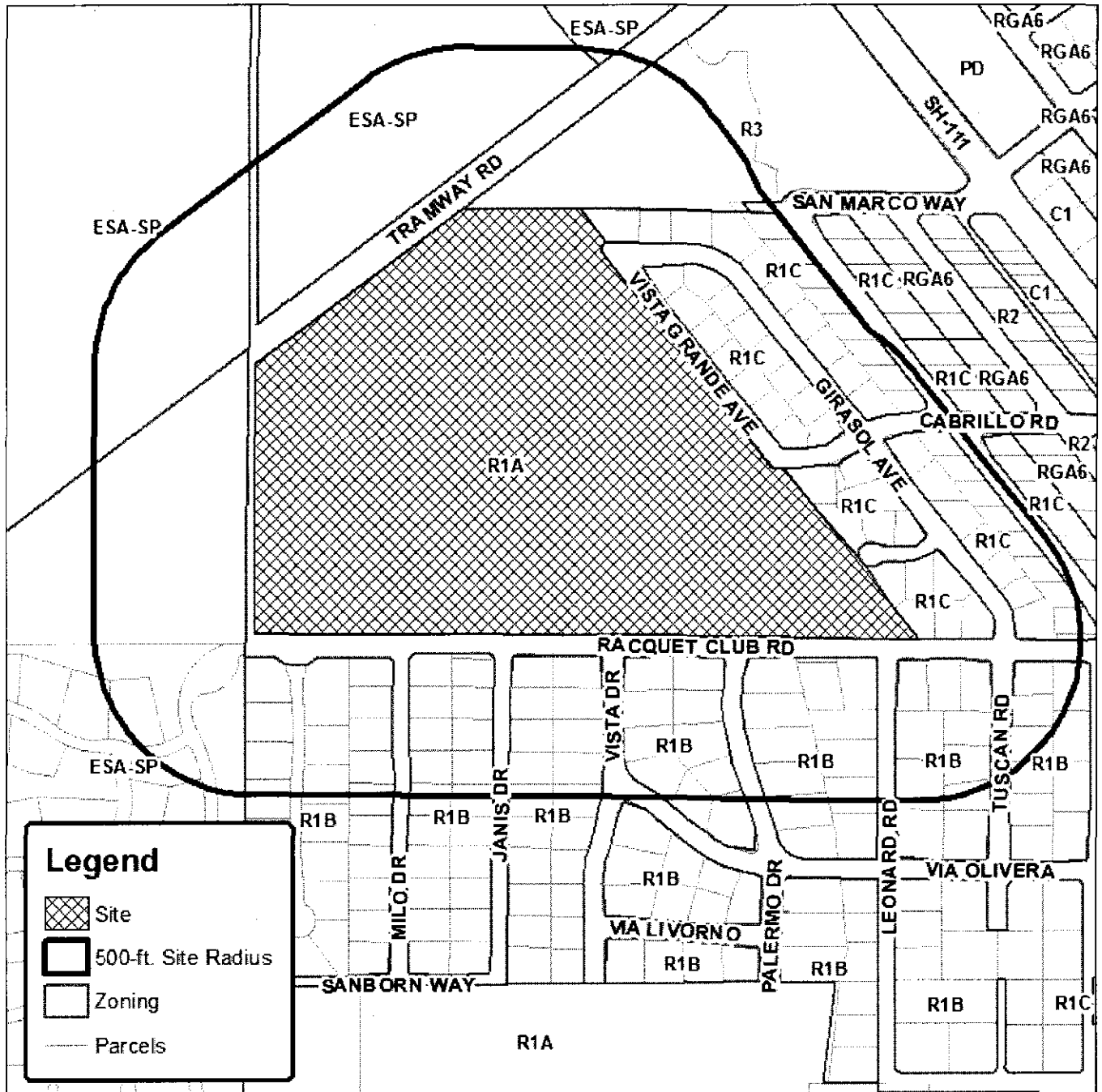
ATTACHMENTS:

1. Vicinity Map.
2. PDD 294 Site Plan
3. TTM 31766
4. Settlement and Release Agreement
5. Resolution Denying Appeal
6. Resolution Granting Appeal
7. Letter of extension request from the applicant dated June 13, 2016
8. Letter of Appeal dated August 11, 2016.
9. Letter requesting alternative proposal dated September 15, 2016

ATTACHMENT 1



Department of Planning Services Vicinity Map



CITY OF PALM SPRINGS

ATTACHMENT 2



CRESCENDO
PALM SPRINGS, CALIFORNIA
ILLUSTRATIVE LANDSCAPE PLAN



ATTACHMENT 3

ATTACHMENT 4

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the "Agreement") is made, entered into as of this 29 day of May, 2008 by and between Wessman Development Company, a California corporation, on behalf of itself and its successors and assigns (collectively, "WESSMAN"), Friends of Palm Springs Mountains (hereinafter "Friends"), and the City of Palm Springs, a Charter City (hereinafter, the "City"). Friends is sometimes referenced below as the "Petitioners". Wessman, Friends and City are sometimes hereinafter collectively referenced as the "Parties," and alternatively referenced as a "Party."

RECITALS

- A. Wessman is the owner of certain real property in the City of Palm Springs, California consisting of approximately 42 acres lying south of Tramway Road, north of Racquet Club Drive and immediately west of Vista Grande Avenue (hereinafter referred to as the "Crescendo Property").
- B. Wessman proposed that the Crescendo Property be developed with 79 single family residences and related common area (hereinafter the "Project").
- C. To authorize development of the Project, Wessman submitted and the City processed the following entitlement applications (collectively referred to hereinafter as the "Entitlements"):
 - a. Planned Development District 294 and Planned Development Plan Case No: 5.0996-PD294 (hereinafter the "PD");

- b. Tentative Tract Map 31766 (hereinafter "TTM 31766") to subdivide the Crescendo Property into 79 single-family residential lots on an approximately 42-acre site;
- c. Street vacation for the Westerly 23 feet of Vista Grande Avenue right of way; (hereinafter the "Street Vacation").
- D. To comply with the requirements of the California Environmental Quality Act ("CEQA"), an Environmental Impact Report for the Crescendo Project, (hereinafter referred to as the "EIR") was prepared and was made available for public comment.
- E. On September 26, 2007, the Planning Commission of the City of Palm Springs, after a duly noticed public hearing, considered the EIR and the Entitlement applications and recommended that the City Council certify the EIR and approve the Entitlements.
- F. On October 17, 2007, the City Council of the City of Palm Springs, after a duly noticed public hearing, voted to certify the EIR and to approve the Entitlements.
- G. On December 12, 2007, Friends filed a Petition for Writ of Mandate Pursuant to the California Environmental Quality Act, Case No. RIC488512 (hereinafter the "Litigation") challenging the City's certification of the EIR and approval of the Entitlements.
- H. The Parties mutually desire, in their shared interest, to avoid the costs of litigation between them, and to settle and resolve, fairly, fully and finally, all matters in dispute

between them including expressly, but without limitation, any actual or potential claim arising from the Litigation.

1. The Parties have agreed to reach a comprehensive and conclusive settlement of all of their differences with, grievances about and claims against each other arising from the Litigation, all as discussed in further detail below.

NOW, THEREFORE, for good and valuable consideration, including but not limited to the mutual promises herein contained, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

1. SETTLEMENT

In consideration for the settlement of the Litigation and the promises and releases contained herein, the parties agree as follows:

- a. Wessman agrees to eliminate any rock crushing on the Crescendo Property. The parties acknowledge that elimination of rock crushing will necessitate export and import of material from the Crescendo Property. Wessman agrees to reasonably negotiate with the Tramway Authority for the right to use Tramway Road for the purpose of hauling material to and from the Crescendo Property. If the Tramway Authority does not agree to allow Wessman to so utilize Tramway Road for the hauling of material to and from the Crescendo Property as necessary under terms reasonably acceptable to Wessman, then the Parties agree that existing public roadways may be utilized for the hauling of material to and from the Crescendo Property. In the event that it is necessary to use public

roadways to haul material to or from the Crescendo Property, Wessman agrees to hold a meeting with the surrounding property owners in advance of initiating such hauling to advise them of the schedule for said hauling. Wessman further agrees that any hauling of material to or from the Crescendo Property shall comply with the limitations on hours and days of operation as set out in the City of Palm Springs' Municipal Code section 8.04.220.

Wessman further agrees to include several architectural styles within the Crescendo Project, including, but not limited to, Mid-Century Modern, Tuscan and Mediterranean architecture. Within each style, Wessman shall provide for at least three different floor plans and multiple elevations, and may also construct custom homes on the Crescendo Property, subject to City approval and review. Wessman agrees to conform to condition of approval 29(a) which provides that "No second story units shall be allowed along the perimeter of the project or adjacent to another second story unit. Second story units shall be limited to a maximum of 25% of the total number of lots (i.e. 19 total)."

- b. In consideration for the modifications to the project agreed to by Wessman and the other promises contained herein, the City agrees to and does hereby extend the Entitlements for a period of three years beyond the original two years approved by the City, such that the expiration of the Entitlements shall now be October 16, 2012. In the event that any State legislation is adopted which would extend the life of

any of the Entitlements, such an extension shall be in addition to the extension granted herein.

c. Friends agrees that upon execution of this Settlement Agreement by all Parties, and within three (3) business days of their receipt of reimbursement of attorneys fees and costs as set forth in a separate agreement between Friends and Wessman, Friends shall file with the Clerk of the Court, a Request for Dismissal With Prejudice, dismissing the Litigation in its entirety.

2. RELEASE.

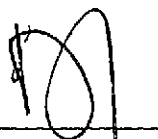
In consideration for the agreements as set forth herein, Friends, on behalf of themselves, and each of their respective members, associates, predecessors, successors, assigns, parents, subsidiaries, alter egos, and affiliates, if any (and each of their respective present and former officials, officers, employees, independent contractors, directors, shareholders, partners, agents, attorneys, insurers, accountants, heirs, and successors and assigns, if any) (collectively referred to as "Related Entities") hereby fully and forever waives and releases any and all rights, claims, suits, rights of administrative action or appeal, chose in action, and causes of action of every nature whatsoever ("Action") which they have or may have against Wessman or the City and each of their respective members, associates, predecessors, successors, assigns, parents, subsidiaries, alter egos, and affiliates, if any (and each of their respective present and former officials, officers, employees, independent contractors, directors, shareholders, partners, agents, attorneys, insurers, accountants, heirs, and successors and assigns, if any) arising from: (i) the Litigation and (ii) the City's approval of the Entitlements, including without limitation, the issuance of any findings, resolutions, ordinances, or entitlements

for the Project (collectively, the "Released Claims"). Notwithstanding the foregoing, the Released Claims shall not include any action to enforce the conditions of approval for the Project, or any action for personal injury and/or property damage which is caused directly by the implementation of the Project. Friends, on behalf of themselves and each of their respective Related Entities, hereby discharges Wessman and the City and their Related Entities from any and all Released Claims. Friends, on behalf of themselves and each of their Related Entities, covenants not to threaten, bring, commence, initiate, institute, file, join, maintain, prosecute, support, or threaten any Action based in whole or part upon any of the Released Claims. Each of the Parties understands and agrees that this Agreement may be pled as a full and complete defense and bar to, and may be used as the basis to dismiss with prejudice or enjoin, any Action based in whole or in part upon a Released Claim.

3. CALIFORNIA CIVIL CODE SECTION 1542.

Friends has read and has otherwise been informed of the meaning of Section 1542 of the California Civil Code, and has consulted with its counsel, to the extent that any was desired, and understands the provisions of Section 1542, and, as to the Released Claims, hereby expressly waives the rights and benefits conferred upon it by the provisions of Section 1542 of the California Civil Code, which provides:

"A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."


Friends Initials

4. INTEGRATION, MODIFICATION.

- a. The Parties acknowledge that this Agreement is signed and executed without reliance upon any actual or implied promises, warranties or representations made by any of the Parties or by any representative of any of the Parties, other than those which are expressly contained within this Agreement.
- b. This Agreement, including the true and correct Recitals above, incorporated by reference herein as operative covenants and specifically relied upon by the Parties in executing this Agreement, constitutes the entire agreement and understanding among and between the Parties.
- c. This Agreement supersedes all prior and contemporaneous agreements, understandings, terms, conditions, and representations, written or oral, made by the Parties hereto or their attorneys, concerning the matters covered by this Agreement.
- d. This Agreement cannot be modified or changed except by written instrument signed by all of the Parties.

5. SETTLEMENT, NO ADMISSION BY PARTIES.

Each of the Parties acknowledges that this Agreement relates to the settlement of the Litigation and the preclusion of Actions based in whole or in part upon Released Claims. The Parties, therefore, agree that this Agreement is not to be treated or

construed, at any time or in any manner whatsoever, as an admission that any of the allegations in the Litigation, or any actual or potential Released Claim, has any merit.

6. BINDING EFFECT.

To the maximum extent allowed by law and except as otherwise specified herein, this Agreement inures to the benefit of and is binding upon the Parties and all their respective predecessors, assigns, beneficiaries, employees, affiliated entities, shareholders, officers and directors, partners, joint venturers, dependents, spouses, respective representatives, agents, accountants, attorneys, insurance carriers, and successors.

7. RESPONSIBILITY FOR COSTS TO DATE.

The Parties agree that each of them shall bear their own costs and attorneys' fees, directly or indirectly relating to or arising from the Litigation and other matters covered by this Agreement, except as provided in a separate agreement by and between Wessman and Friends to be executed concurrently herewith, provided however that nothing contained herein shall be deemed to negate the indemnity obligations set forth in Planning Department Administrative Condition Number 2 with respect to the City.

8. INDEPENDENT LEGAL COUNSEL.

Each Party acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement or has knowingly and voluntarily declined to consult legal counsel, and

that each Party has executed this Agreement with the consent and on the advice of such independent legal counsel.

9. DRAFTING.

This Agreement shall be deemed to have been negotiated and drafted by the Parties and their respective attorneys. No provision herein shall be interpreted or construed in favor of or against any Party on the ground that said Party or its attorney drafted that provision of the Agreement. Uncertainty and ambiguity in a provision herein shall not be interpreted against that provision's drafter.

10. APPLICABLE LAW AND VENUE.

This Agreement shall be deemed to have been executed and delivered within the State of California; the rights and obligations of the Parties hereunder shall be governed, construed and enforced in accordance with the laws of the State of California. The venue for any dispute arising from or related to this Agreement, its performance, and its interpretation shall be the Superior Court of California, County of Riverside, Indio Branch.

11. NO THIRD PARTY BENEFICIARIES.

It is expressly agreed that this Agreement is not for the benefit of any person or entity not a Party hereto. This Agreement is not intended to constitute a third party beneficiary contract.

12. RELATIONSHIP OF THE PARTIES.

It is hereby specifically understood and acknowledged that this Agreement is merely intended to settle the Litigation and preclude

Actions based in whole or in part upon Released Claims. No Party hereto will be deemed to be an agent of any other for any purpose whatsoever. The Parties hereby renounce the existence of any form of joint venture or partnership between or among them and agree that nothing contained herein or in any document executed in connection herewith shall be construed as making any Party a joint venturer or partner with another.

13. EFFECTIVE DATE, COUNTERPARTS AND ENFORCEMENT.

This Agreement shall be effective as of the date it is signed by all parties hereto ("Effective Date"). This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument. The Parties hereby agree that, following dismissal of the Litigation per paragraph 1(c) above, the Court shall retain jurisdiction over the Litigation's subject matter for purposes of enforcing this Agreement's terms.

14. INDEPENDENT INVESTIGATION.

Each Party to this Agreement has made an independent investigation of the facts pertaining to the provisions contained in this Agreement and all of the matters pertaining thereto as deemed necessary.

15. HEADINGS AND FORMATTING.

The headings and formatting in this Agreement are inserted for convenience only. They do not constitute part of this Agreement and shall not be used in its construction.

16. TIME OF ESSENCE.

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

17. BREACH AND REMEDIES.

Notwithstanding any provision of this Agreement to the contrary, no Party hereto shall be deemed to be in default under this Agreement with respect to any obligation owed to another unless the Party proposing to terminate or modify the rights of another shall have first delivered a written notice of any alleged default to the allegedly defaulting Party that specifies the nature of such default. If such default is not cured by the allegedly defaulting Party within thirty (30) days after receipt of such notice of default, or with respect to defaults that cannot be cured within such period, the allegedly defaulting Party fails to commence to cure the alleged default within thirty (30) days after receipt of the notice of default, or thereafter fails to diligently pursue the cure of such default, the Party alleging default by another may bring an action to enforce this Agreement or, at the option of the party claiming default, bring a motion to enforce this Agreement under Section 664.6 of the Code of Civil Procedure. The foregoing thirty (30) day cure period in the event of a default shall not apply if Wessman initiates rock crushing on the Crescendo Property in violation of this Agreement, in which case, Friends shall be entitled to immediately seek an injunction to stop said rock crushing on the Crescendo Property.

In the event that a breach of this Agreement occurs, irreparable harm is likely to occur to the non-breaching Party and damages will be an inadequate remedy. To the extent permitted by law, therefore, it is expressly recognized that injunctive relief and specific enforcement of this Agreement are proper and desirable remedies, and it is agreed that any claim by a Party alleging a default against an allegedly defaulting Party

for an alleged breach of this Agreement may be remedied by injunctive relief or an appropriate action for specific enforcement of this Agreement in addition to any other remedy available at law or equity.

18. WAIVER.

Failure by a Party to insist upon the strict performance of any of this Agreement's provisions by another Party, or the failure by a Party to exercise its rights upon an alleged default of another 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.

19. NOTICE.

All notices or other communications required or permitted hereunder shall be in writing and shall be either personally delivered (which shall include delivery by means of professional overnight courier service which confirms receipt in writing [such as Federal Express or UPS], sent by telecopier or facsimile ("Fax") machine capable of confirming transmission and receipt, or sent by certified or registered mail, return receipt requested, postage prepaid, or sent via e-mail provided the recipient confirms receipt, to the following parties at the following addresses or numbers:

If to City:

City of Palm Springs
3200 Tahquitz Canyon Way
Palm Springs, California 92262
Attention: City Manager and City Attorney
Telephone: (760) 323-8299
Fax: (760) 323-8207
e-mail: _____

With copy to:

Woodruff, Spradlin & Smart
Attn: Douglas C. Holland
555 Anton Boulevard
Suite 1200
Costa Mesa, California 92626
Telephone: (714) 564-2642
Fax: (714) 565-2542
e-mail: DHolland@wss-law.com

If to Wessman:

Wessman Development Company
Attn: Michael Braun
300 S. Indian Canyon Drive.
Palm Springs, California 92262
Telephone: (760) 325-3050
Fax: (760) 325-5848
e-mail: Martha@Wessmandevelopment.com

With copy to:

Ealy, Hemphill, Blasdel & Oleson, LLP
777 E. Tahquitz Canyon Way, Suite 328
Palm Springs, CA 92262
Attention: Emily Perri Hemphill
Telephone: (760) 320-5977;
Fax (760) 320-9507
e-mail: EPHemphill@aol.com

If to Friends:
Mountains

Friends of ~~Palm Springs~~ Mountains
P.O. Box 3172
Palm Springs CA 92264
Telephone: ~~760~~ 218-0483
Fax: _____

e-mail: FRIENDS of Palm Springs Mountains.org

With Copy To:

Chatten-Brown & Carstens
Attn: Jan Chatten-Brown
2601 Ocean Park Boulevard
Suite 205
Santa Monica, California 90405
Telephone: (310) 314-8040
Fax (310) 314-8050
e-mail: _____

Notices sent in accordance with this Section 21 shall be deemed delivered upon the: (a) date of delivery as indicated on the written confirmation of delivery (if sent by overnight courier service); (b) date of actual receipt (if personally delivered by other means); (c) date of transmission (if sent by telecopier or facsimile machine); or (d) date of delivery as indicated on the return receipt (if sent by certified or registered mail, return receipt requested). Notice of change of address shall be given by written notice in the manner detailed in this Section 21 and shall be effective three (3) days after mailing by the above-described procedure.

20. FURTHER COOPERATION.

Each of the Parties agrees to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and regulations to consummate and make effective the terms and conditions of this Agreement.

21. AUTHORITY OF SIGNATORIES.

Each of the individuals executing this Agreement warrants and represents that they are authorized to so execute this Agreement on behalf of the party they purport to represent, and that by so signing this Agreement they are creating a binding obligation for the party they purport to represent.

IN WITNESS WHEREOF, each of the Parties has executed this Agreement on the day and year written below:

City of Palm Springs, a Charter City

Dated: 5-29-08

Stephen P. Bougnet

Stephen P. Bougnet
Mayor, City of Palm Springs

Attest:

City Clerk

APPROVED AS TO FORM:

WOODRUFF, SPRADLIN &
SMART

Douglas C. Holland

Douglas C. Holland, Esq.
City Attorney, City of Palm
Springs

Wessman Development Company

Dated: _____

By: _____

Its: _____

APPROVED AS TO FORM:

IN WITNESS WHEREOF, each of the Parties has executed this Agreement on the day and year written below:

City of Palm Springs, a Charter City

Dated: _____

Steve Pougnet
Mayor, City of Palm Springs

Attest:

City Clerk

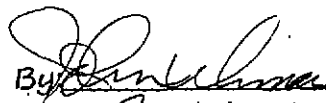
APPROVED AS TO FORM:

WOODRUFF, SPRADLIN &
SMART

Douglas C. Holland, Esq.
City Attorney, City of Palm
Springs

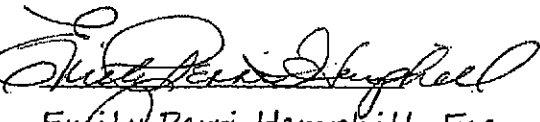
Wessman Development Company

Dated: 5/8/08

By: 
My: President

APPROVED AS TO FORM:

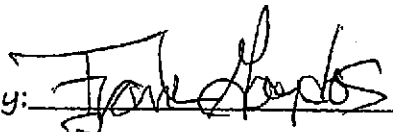

EALY, HEMPHILL, BLASDEL &
OLESON, LLP

By: 
Emily Perri Hemphill, Esq.
Attorneys for Real Parties in Interest,
Wessman Development Company

[Signature page continues.]
[Signature page continued.]

Friends of Palm Springs
Mountains

Dated: 5-8-2008


By: 
Itv: 

APPROVED AS TO FORM:

CHATTEN-BROWN & CARSTENS

By: _____
Jan Chatten-Brown, Esq.
Attorneys for Plaintiff/Petitioner
Friends of Palm Springs Mountains

EALY, HEMPHILL, BLASDEL &
OLESON, LLP

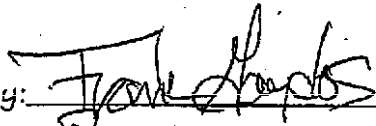

By: 
Emily Perri Hemphill, Esq.
Attorneys for Real Parties in Interest,
Wessman Development Company

[Signature page continues.]

[Signature page continued.]


Friends of Palm Springs
Mountains,

Dated: 5-8-2008

By: 
Itv: 

APPROVED AS TO FORM:

CHATTEN-BROWN & CARSTENS

By: 
Jan Chatten-Brown, Esq.
Attorneys for Plaintiff/Petitioner
Friends of Palm Springs Mountains

ATTACHMENT 5

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, UPHOLDING THE PLANNING COMMISSION'S DECISION TO DENY AN EXTENSION OF TIME REQUEST FOR THE CRESCENDO PLANNED DEVELOPMENT DISTRICT 294 FOR THE CONSTRUCTION OF 79 CUSTOM SINGLE-FAMILY RESIDENTIAL HOMES ON A 42.2-ACRE PARCEL LOCATED AT WEST RACQUET CLUB ROAD AND VISTA GRANDE AVENUE (CASE 5.0996-PDD 294)

The City Council of the City of Palm Springs finds:

- A. On August 11, 2016, Michael Braun of Wessman Development, LLC, submitted an extension of time request to the City of Palm Springs for a previously approved Planned Development District PDD 294 commonly called the "Crescendo".
- B. The Crescendo property is located at West Racquet Club and Vista Grande Avenue and is zoned PDD-294 (Planned Development District 294); the entitlement is valid for two years and had previously been granted four (4) one-year extensions of time.
- C. The Planning Commission considered the extension of time request at its public hearing meeting of August 10, 2016, and determined that the appellant has not demonstrated a good cause for one more extension and denied the request.
- D. On August 11, 2016, Michael Braun, pursuant to Chapter 2.05 and Section 8.05.230 of the Palm Springs Municipal Code, filed an appeal of the action of the Planning Commission to deny the extension of time request.
- E. On September 21, 2016, the City Council held a public hearing to consider the Applicant's appeal of the Planning Commission's action to deny the request by Robert Herscu for a one-year extension of time.
- F. At its public hearing conducted on September 21, 2016, the City Council has carefully reviewed and considered all of the evidence presented in connection with the appeal, including, but not limited to, the staff report, and all written and oral testimony presented.

The City Council of the City of Palm Springs resolves:

SECTION 1. The above findings are all true and correct.

SECTION 2. The City Council hereby denies the appeal submitted by Michael Braun of Wessman Development, regarding the denial of a one-year extension of time request by the Planning Commission for a previously approved Planned Development District 294 for the development of seventy-nine (79) single-family residential homes.

ADOPTED this 21st day of September, 2016.

DAVID H. READY, CITY MANAGER

ATTEST:

JAMES THOMPSON, CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. _____ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on February 3, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMES THOMPSON, CITY CLERK
City of Palm Springs, California

ATTACHMENT 6

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, OVERTURNING THE PLANNING COMMISSION'S ACTION TO DENY AN EXTENSION OF TIME REQUEST FOR THE CRESCENDO PLANNED DEVELOPMENT DISTRICT 294; AND GRANTING A LIMITED EXTENSION OF TIME FOR A PERIOD OF THREE MONTHS TO ALLOW THE APPELLANT TIME TO SUBMIT AN AMENDED CRESCENDO PLANNED DEVELOPMENT DISTRICT (PDD 294) FOR THE 42.2-ACRE PARCEL LOCATED AT WEST RACQUET CLUB ROAD AND VISTA GRANDE AVENUE (CASE 5.0996-PDD 294)

The City Council of the City of Palm Springs finds:

- A. On August 11, 2016, Michael Braun of Wessman Development, LLC, submitted an extension of time request to the City of Palm Springs for a previously approved Planned Development District PDD 294 commonly called the "Crescendo".
- B. The Crescendo property is located at West Racquet Club and Vista Grande Avenue and is zoned PDD-294 (Planned Development District 294); the entitlement is valid for two years and had previously been granted four (4) one-year extensions of time.
- C. The Planning Commission considered the extension of time request at its public hearing meeting of August 10, 2016, and determined that the appellant has not demonstrated a good cause for one more extension and denied the request.
- D. On August 11, 2016, Michael Braun, pursuant to Chapter 2.05 and Section 8.05.230 of the Palm Springs Municipal Code, filed an appeal of the action of the Planning Commission to deny the extension of time request.
- E. On September 21, 2016, the City Council held a public hearing to consider the Applicant's appeal of the Planning Commission's action to deny the request by Robert Herscu for a one-year extension of time.
- F. At its public hearing conducted on September 21, 2016, the City Council has carefully reviewed and considered all of the evidence presented in connection with the appeal, including, but not limited to, the staff report, and all written and oral testimony presented.

The City Council of the City of Palm Springs resolves:

SECTION 1. The above findings are all true and correct.

SECTION 2. The City Council hereby overturns the Planning Commission's decision to deny an extension of time for the Crescendo Planned Development District 294 (PDD 294) and hereby grants a limited extension of time of three (3) months to allow the applicant submit an amended Crescendo Planned Development District 294 for the 42.2-acre parcel previously approved for seventy-nine (79) single-family residential homes.

ADOPTED this 21st day of September, 2016.

DAVID H. READY, CITY MANAGER

ATTEST:

JAMES THOMPSON, CITY CLERK

CERTIFICATION

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. _____ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on February 3, 2016, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMES THOMPSON, CITY CLERK
City of Palm Springs, California

ATTACHMENT 7

RECEIVED

JUN 14 2016

PLANNING SERVICES
DEPARTMENT
TTM 31766

June 13th 2016

Flinn Fagg
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92263

Dear Mr. Fagg:

As you know, an affiliate of Wessman Development currently owns the two projects in the City of Palm Springs known as Boulders and Crescendo and we intend to start actual construction of these projects in late 2017. As a first step towards this goal we have submitted plans and are currently in plan check for the final map for each of these projects, however, we are concerned that the time necessary to obtain final sign off on the plans, plus scheduling of the necessary meetings, may delay the approval of the final map to a period shortly after the current expiration of these two maps. Given state legislative actions, the maps are both currently scheduled to expire in October, 2016, and we are therefore requesting that the City approve only a six month extension of Tentative Map 31766 (Crescendo) and Tentative Map 31095 ("Boulders"). Such an extension is well within the City's authority under the Subdivision Map Act, and as we are proceeding as analyzed in the respective EIR's, no further environmental review is permitted under CEQA.

To give the Council assurance that this will be our only extension request, I want to review with you the actions which we have taken toward our final map. First, as you may know, we were required to defend a CEQA suit that was filed on Crescendo. That suit was settled, but resulted in delays and significant cost to the developer. Further, the settlement modified the project mitigation measures by prohibiting rock crushing on the Crescendo project site.

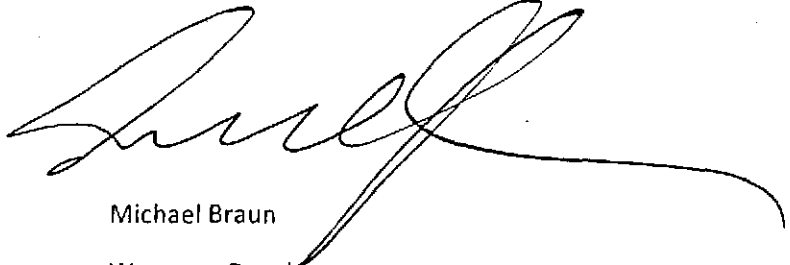
Of course the historic downturn in the economy that occurred in recent years meant that development of either project was simply not possible. As the economy improved, we began our construction drawings and all related plans including streets, grading, storm drain, sewer and water plans. These have all been submitted to the city for final review for both projects, with Boulders currently in its second round of plan check and Crescendo in its first round of comments.

We were recently advised by the Agua Caliente Tribe that they will require an update on the archeological surveys that were done when the project was originally approved. This request is outside the CEQA process, and unusual at this point. Regardless we have engaged a consultant to comply with the request, but are concerned that the time it will take to complete this process for both projects may take us beyond the expiration date of the Tentative Map. Further, staff has indicated that given summer schedules, it may be difficult for the City to complete the review of the already submitted plans within

the allowable time. This is particularly true given the complex set of mitigation measures we must be sure to abide by. In that context please note that Wessman Development has invested over 4 years' time and effort and in excess of \$1 million in design work, entitlements and multiple studies requested by the city and the adjacent neighborhoods.

Given the fact that we have made significant progress in the past four months and have spent in excess of \$800,000 on consultants for the submittal process for the final map, we respectfully request to be heard by Planning Commission at the June 22nd meeting to approve a six month extension of the TTM 31766 and TTM 31095.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Braun', with a long horizontal flourish extending to the right.

Michael Braun

Wessman Development

ATTACHMENT 8

August 11, 2016

Flinn Fagg
Planning Director
City of Palm Springs

RE: PD for Crescendo

Dear Mr. Fagg:

Please accept this letter as part of Wessman Development's appeal of the Planning Commission's denial of the extension of PDD924 for the Crescendo project. Our appeal is based upon the fact that we have submitted substantially all documents necessary for filing of the final map. Under State law, the City may not deny or condition a final map if the developer has complied with all conditions of approval attached to the tentative map. Therefore, we will be completing the recording of the map shortly.

The PDD provided the residential designs that fit within the map parameters, and should therefore run concurrently with the map.

The objections raised at the Planning Commission were based on both factual and legal misrepresentations.

The objection that the CEQA document is 9 years old and therefore no longer valid runs in direct opposition to the State laws regarding CEQA. Under state law, the City may not require further environmental analysis unless there are changed circumstances such that the project will generate significant impacts that were not previously analyzed or will significantly increase impacts beyond those analyzed. Those circumstances do not exist in this case. As staff notes in its staff report, there have been no changes on the property, and there are no changes in circumstances which could justify requiring additional environmental review.

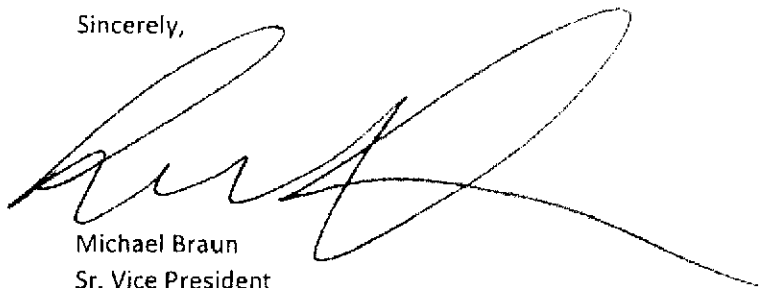
Project opponents cite the development that has occurred in Desert Palisades to say that the EIR must be revised, however, this is incorrect. When the EIR for Crescendo was completed, it included a cumulative impact analysis that considered the City's build out scenario and all foreseeable projects planned for the area. When the EIR for Desert Palisades was completed, it too included a cumulative impact analysis that considered all projects in the area. Therefore, there has been complete environmental review of these projects, and all of those environmental documents are now beyond challenge.

Crescendo was a hard fought entitlement when it was originally granted. There were two major EIR revisions to make certain all issues were covered, and the neighbors still filed a CEQA suit against the project at that time. The neighbors ultimately agreed to and did settle that CEQA suit, releasing all claims against Crescendo, and in return, the developer made concessions to the neighborhood including a commitment there would be no mass grading. The neighbors now attempting to fight this project appears to be a violation of their obligations under the settlement agreement.

The opponents also made claims that this developer had already impacted the area with work on the site. That is a factual error in that there has been no work on the site. The photographs that were produced by the project opponents were pictures of work being done in the area by other developers. The berm which they object to, for example, was originally a requirement of the Desert Palisades project. There is simply no justification for penalizing this developer because they don't like what others have done.

As staff is aware, Wessman Development has completed virtually all the plans for the final map on this site. Having endure the expense of those plans, the entitlement process, two EIR rounds, and a lawsuit, it is fair and reasonable to allow the developer the time to make use of the map by extending the PDD.

Sincerely,

A large, stylized handwritten signature in black ink, appearing to read 'Michael Braun'.

Michael Braun
Sr. Vice President
Wessman Development Company

ATTACHMENT 9

WESSMAN

HOLDINGS / DEVELOPMENT COMPANY

September 15, 2016

City of Palm Springs
Attn: Marcus Fuller
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

Re: Approval of Final Map and PD Extension Crescendo

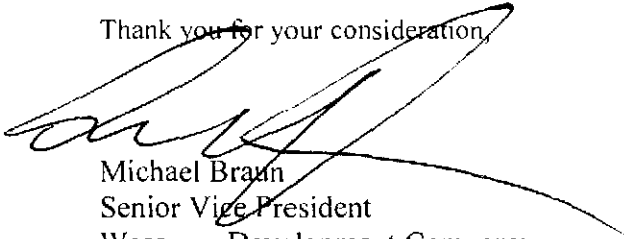
Dear Marcus:

In order to facilitate the recording of the Final Map on Crescendo and granting a short extension of the PD, Wessman Development is proposing to amend the PD approvals by giving up the architectural approvals, however preserving the already approved lot configuration and set backs of the project. By relinquishing the already approved Architectural portion of the PD the project would essentially be a custom home subdivision. In addition we are asking to delete the condition requiring that the final PD be submitted before the final map can be recorded. This approach would require future owners of the custom home lots to go through the city approval process for each individual home. This should have appeal to the neighbors, as one of the comments frequently made during the approval process was that they did not want similar homes on the site, however they preferred custom home lots. By giving up the architectural approvals portion of the PD, we would be responding to the neighbor's main concerns, while maintaining the extensive investment in the Project. In addition we would agree to commit to direct all construction traffic during on and offsite grading operations and related utility work to Tramway Road (the already submitted Final Map package has an easement granted by the Tramway Board allowing construction traffic on Tramway Road). As you are aware the Final Map package has been processed during the past 6 months and deemed complete and ready for recording by staff. This requested action should allow you to schedule the recording of the Final Map immediately requiring possibly only a 3 months PD extension at the upcoming council meeting September 21st.

I would like to add:

First, in terms of the extension of the PD, the project was approved during the depths of the economic downturn, which was recognized by the state in the map act extensions. In addition, the Desert Palisades project, which is very near Crescendo, has been under construction for the last few years. When we went through the EIR process, one of the issues that was raised was the need to do the projects sequentially, and not concurrently, to avoid excess impacts to the surrounding neighbors. Therefore, while Desert Palisades was under construction, the delay in the start of Crescendo served the mitigation measure designed to assure only one project was under construction at any given time.

Thank you for your consideration,



Michael Braun
Senior Vice President
Wessman Development Company