



## **PLANNING COMMISSION STAFF REPORT**

**DATE:** February 28, 2024

PUBLIC HEARING

**SUBJECT:** A REQUEST BY DTPS B-3, LLC FOR A DEVELOPMENT AGREEMENT RELATED TO AN APPROVED MIXED-USE DEVELOPMENT INVOLVING 45 RESIDENTIAL CONDOMINIUM UNITS AND RETAIL ON BLOCK B OF THE DOWNTOWN PALM SPRINGS SPECIFIC PLAN AT THE NORTHEAST CORNER OF BELARDO ROAD AND MUSUEM WAY; 200 NORTH BELARDO ROAD, ZONE CBD (CASE DA-2023-0008)

**FROM:** Department of Planning Services

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### SUMMARY:

This is a request to establish a Development Agreement (“Agreement”) for an approved mixed-use project located within the downtown redevelopment project at the northeast corner of Belardo Road and Museum Way (“Project”). The Agreement would extend the Project entitlements and vest the approvals from the current expiration date of May 3, 2024, through July 31, 2030, allowing the Applicant/Developer time to resolve a dispute with the State Department of Industrial Relations (“DIR”).

### RECOMMENDATION:

Recommend approval of the Agreement to the City Council.

### SCOPE OF REVIEW:

1. The Planning Commission shall review the Development Agreement application (Case #DA-2023-0008) for conformance to the criteria listed in Palm Springs Zoning Code (PSZC) Section 94.08.00(A)(12).

### BUSINESS PRINCIPAL DISCLOSURE:

The application was filed by DTPS B-3, LLC, a California Limited Liability Company. The Public Integrity Disclosure Form for this entity is included as an attachment to the report.

**PROJECT DESCRIPTION:**

The Applicant, DTPS B-3, LLC has requested that the City approve a development agreement. Development agreements are a land use tool authorized under state law (Government Code Section 65864, et. seq.) and the Palm Springs Zoning Code (PSZC 94.08.00). As the name implies, a development agreement is a contract between a project applicant and the City. At a minimum, a development agreement must specify the duration of the agreement, the permitted uses of the property, the density or intensity of the use, the maximum height and size of proposed buildings, and provisions for reservation or dedication of land for public purposes.

The proposed Development Agreement is seeking to extend the existing entitlements associated with a mixed-use condominium building proposed on a 0.84-acre site identified as Block “B” in the Downtown Palm Springs Specific Plan, including:

- (1) A Major Architectural Review Application, Case 3.3908 MAJ, for the construction of a six-story, 73,300-square foot building with 45 residential condominiums and ground floor retail space<sup>1</sup> and
- (2) A Tentative Tract Map Application, TTM 37935, for a one-lot subdivision to map the 0.84-acre parcel for condominium purposes<sup>2</sup>

The Project site is bound by Andreas Road to the north, Belardo Road to the west, Museum Way to the south. The Downtown Park is located to the west and the Rowan hotel is located to the south. A pedestrian paseo and a two-story mixed-use building exist to the east.

**BACKGROUND INFORMATION:**

<i>Related Relevant City Actions</i>	
01/14/21	The City Council held a public hearing on the Major Architectural and Tentative Tract Map applications and adopted resolutions approving the entitlements.
05/03/21	The Architectural Advisory Committee reviewed a ground floor activation plan for the Major Architectural approval, as required by City Council conditions, and unanimously approved the plan subject to conditions.
01/25/23	The Planning Commission held a public hearing on an extension of the entitlements and granted a one-year extension from May 4, 2023, to May 3, 2024.

<sup>1</sup> City Council Resolution No. 24845

<sup>2</sup> City Council Resolution No. 24846

<i>Related Building Permits/Business Licenses</i>	
11/09/21	Applicant submitted building permit application to the Building & Safety Department and paid a deposit of \$24,938 for plan check review. (Set I for Building Permit Application #2021-5083)
03/29/22	Applicant submitted revised construction drawings to the Building & Safety Department. (Set II for Building Permit Application #2021-5083)
06/15/22	Applicant submitted revised construction drawings to the Building & Safety Department. (Set III for Building Permit Application #2021-5083)

<i>Neighborhood Notice</i>	
02/15/24	Notice of public hearing mailed to addresses within 500-feet of the site, notifying that the subject application would be considered by the Planning Commission at a public hearing on February 28, 2024.
02/15/24	Notice emailed to Neighborhood Organizations within one mile of the project site.
02/16/24	Notice of public hearing published in the local newspaper.

**ANALYSIS:**

The Applicant for the mixed-use building in question is requesting a Development Agreement, Case DA-2023-0008 in order to extend the Project entitlements and vest the approvals until July 2030, as identified in Section 3.02 (Term) of the Agreement. This is a period greater than normally permitted by the Palm Springs Zoning Code (PSZC), which generally limits entitlements to two years with up to additional two years through an extension of time process (a total of four years maximum). In this case, the Project was approved in 2021, valid for a period of two years, and granted a one-year extension by the Planning Commission in 2023. The Time Extension ordinance, PSZC Section 94.12.00, would permit one additional year, if approved by the Planning Commission. The Applicant would need to start construction and finalize the subdivision map to exercise the entitlements no later than May 3, 2025 if the additional one-year extension was granted.

The proposed Agreement is necessary to ensure the entitlements remain valid while a legal dispute is resolved with the State Department of Industrial Relations (“DIR”). Upon completing the initial phases of the downtown redevelopment, a claim was filed with the DIR that asserted the Rowan Hotel, the subject Project (formerly the Virgin Hotel site) and the other retail redevelopments associated with the Downtown Redevelopment as being subject to prevailing wage laws. The DIR determined that these projects are subject to prevailing wage laws as public works projects. The applicant continues to dispute this position in court, due to it impacting the cost of developing the Project and future phases of the overall downtown development. The City is a party to those legal proceedings and staff agree that an extension is necessary to maintain the entitlements while that process concludes.

The Development Agreement provides an opportunity for the City to negotiate an appropriate and proportional benefit in return for benefits being approved by the City. The benefit received by the Applicant is a longer term to exercise the proposed development and begin construction (from four years to roughly nine years). Section 4.03 of the Agreement identifies four items as public benefits, including the creation of housing opportunities, continuation of development in the Downtown Specific Plan and furthering economic health, creation of job opportunities, and creation of live/work environment downtown.

**FINDINGS:**

Section 94.08.00(A)(12)(b) of the Palm Springs Zoning Code (PSZC) requires that the Planning Commission make a recommendation to the City Council, after considering five criteria. Staff has analyzed the criteria as listed below:

	<i>Criteria and Findings [PSZC 94.08.00(A)(12)(b)]</i>	<i>Compliance</i>
1.	<p><i>The development agreement is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan;</i></p> <p>The Development Agreement provides more time to complete a portion of the overall redevelopment of the former Fashion Plaza with a mixed-use building consisting of residential condominiums and retail. The proposed development would provide residential options downtown and street-facing retail, which is consistent with the following policies:</p> <ul style="list-style-type: none"> <li>• General Plan Policy LU10.2: <i>Encourage development of housing and mixed-use land uses Downtown to increase activity in this area.</i></li> <li>• Downtown Palm Springs Specific Plan, Guiding Principle I.C.4.: <i>A balance of commercial and residential development which assures the success of the area by increasing the number of homes in the downtown, thereby increasing the customer base of the commercial uses.</i></li> <li>• Downtown Palm Springs Specific Plan, Guiding Principle I.C.5.: <i>The development of residential units which relate synergistically to the commercial development around them, and encourage a pedestrian lifestyle with little use for the automobile.</i></li> </ul> <p>The Agreement would aid the City in achieving the above policies and is consistent with policies in the General Plan and Downtown Palm Springs Specific Plan.</p>	Y

	<i>Criteria and Findings [PSZC 94.08.00(A)(12)(b)]</i>	<i>Compliance</i>
2.	<p><i>The development agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;</i></p> <p>The site associated with the Project is located within the Central Business District zone of the Downtown Palm Springs Specific Plan, which authorizes mixed-use buildings with multi-family dwellings/condominiums and retail as permitted pursuant to Table III-1. The Agreement would authorize previously granted entitlements to proceed at a future time that doesn't extend beyond July of 2030. These entitlements consist of a Major Architectural Review Application approved by City Council Resolution No. 24845 for the construction of a mixed-use building on Block "B" of the Downtown Palm Springs Specific Plan, and the Tentative Tract Map Application approved by City Council Resolution No. 24846 for a one-lot subdivision for condominium purposes. The Agreement doesn't seek to permit other uses that would not otherwise be inconsistent with the Downtown Palm Springs Specific Plan.</p>	Y
3.	<p><i>The development agreement is in conformity with public convenience, general welfare and good land use practice;</i></p> <p>The Agreement facilitates the future development of Block B of the Downtown Palm Springs Specific Plan. The Project will provide new opportunities for residential and retail downtown as part of the overall redevelopment of the former Fashion Plaza, while the applicant resolves a legal dispute impacting the financial feasibility of the project. This will provide greater certainty with costs associated with the Project, assuring expeditious completion of the development after commencement of construction and reducing exposure to public inconveniences with a delayed construction project. Once completed, the Project will improve the general welfare of the immediate surrounding by activating a vacant site and will complete another component of the Downtown Palm Springs Specific Plan in accordance with good land use practice.</p>	Y
4.	<p><i>The development agreement will not be detrimental to the health, safety and general welfare;</i></p> <p>The Project will be built in accordance with current uniform building codes with access to all necessary utilities and public services, ensuring the health, safety and general welfare are protected. Moreover, the terms of the Agreement would not result in detrimental impacts.</p>	Y

	<i>Criteria and Findings [PSZC 94.08.00(A)(12)(b)]</i>	<i>Compliance</i>
5.	<p><i>The development agreement will not adversely affect the orderly development of property or the preservation of property values.</i></p> <p>The Agreement would allow the future development of an entitled site to be developed with a project found to be consistent with the Downtown Palm Springs Specific Plan. Property values are not expected to be impacted by the approval of the Development Agreement, as the site will remain vacant and subject to the city’s Property Maintenance Standards ordinance (Section 93.19.00 of the Palm Springs Zoning Code).</p>	Y

**ENVIRONMENTAL ANALYSIS:**

The Project associated with the Development Agreement is part of a larger project (“Downtown Palm Springs Specific Plan,” formerly the “Museum Market Plaza Specific Plan”) evaluated and analyzed under the California Environmental Quality Act (“CEQA”). The City certified an Environmental Impact Report (EIR) which analyzed impacts related to the Museum Market Plaza Specific Plan in 2009, which was filed with the State Clearinghouse under SCH No. 2008061084. Subsequent addenda have been prepared to analyze changes within the Specific Plan area.

No further environmental review is required (Public Resources Code section 21166; CEQA Guidelines section 15162). No changed circumstances, changes in the environment or changes in regulations have occurred since the certification of the EIR or the adoption of the addenda. Based on the requirements of the Public Resources Code and the CEQA Guidelines, no additional environmental analysis is required for this Agreement and the mitigation measures previously imposed within the EIR will apply.

**CONCLUSION:**

The Development Agreement would extend the Project entitlements and vest the approvals from the current expiration date of May 3, 2024, through July 31, 2030, allowing the Applicant/Developer time to resolve a legal dispute with the DIR. Staff analyzed the findings necessary for recommending the Development Agreement to the City Council and found that Planning Commission may recommend the Agreement, in accordance with Section 94.08.00 of the Zoning Code.

**REVIEWED BY:**

Assistant Director:	David A. Newell, AICP
Planning Director:	Christopher Hadwin

ATTACHMENTS:

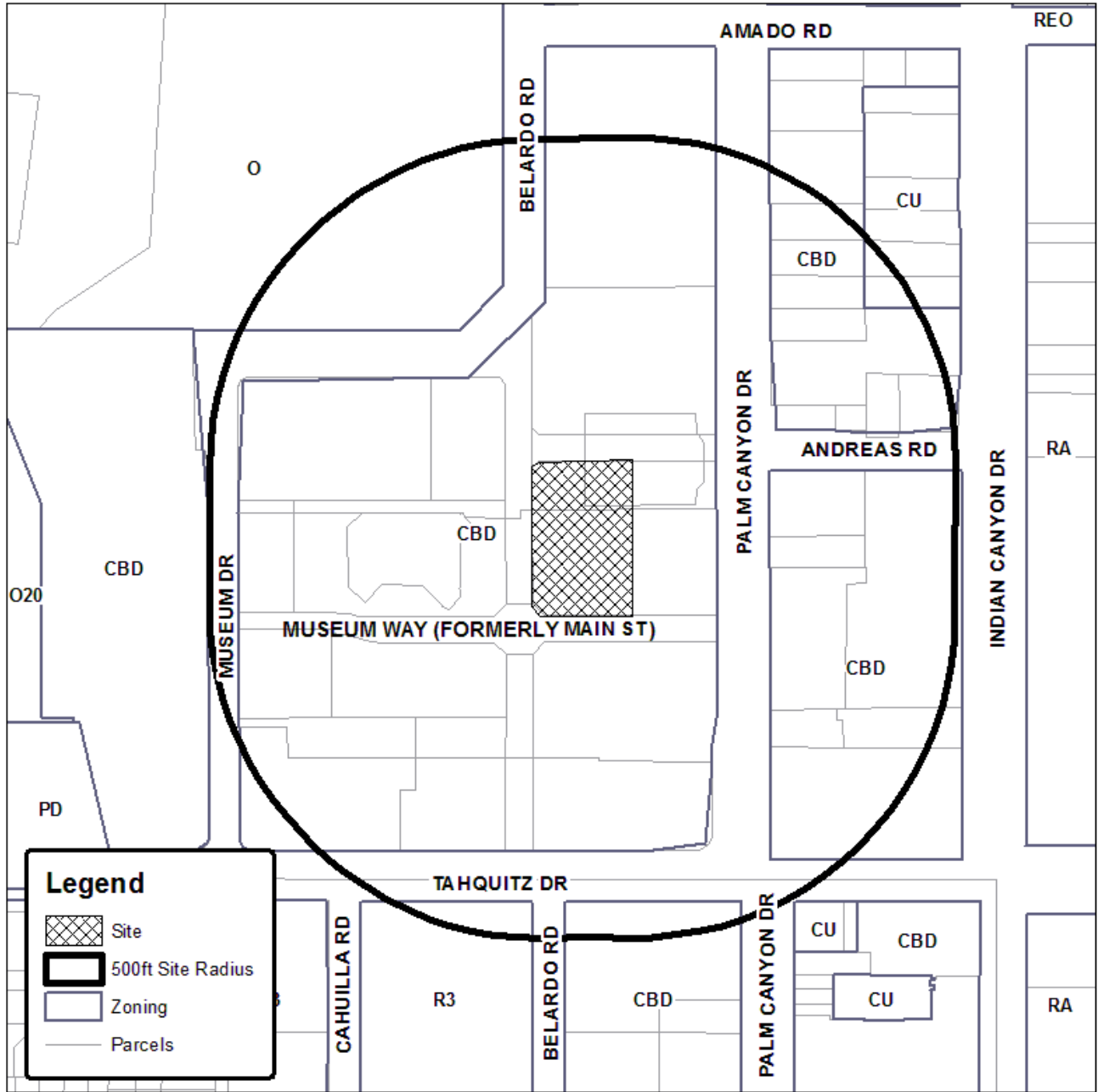
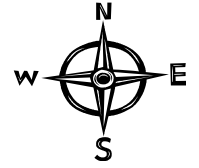
1. Vicinity Map
2. Aerial Map
3. Draft Resolution
4. Justification Letter
5. Draft Development Agreement
6. Public Integrity Disclosure Form

# **ATTACHMENT 1**





# Department of Planning Services Vicinity Map



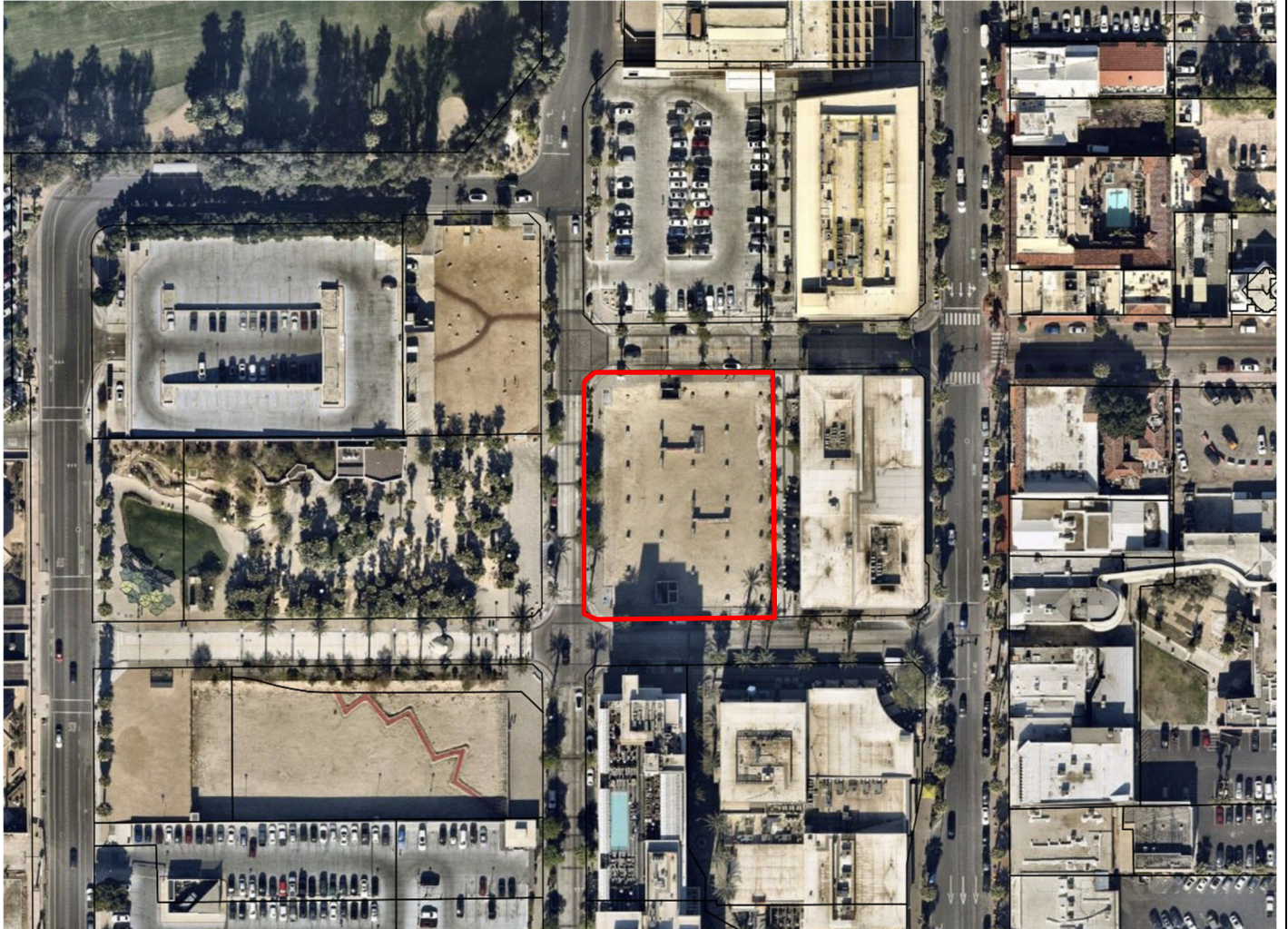
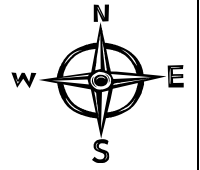
## CITY OF PALM SPRINGS

Development Agreement, Case No. DA-2023-0008  
 DTPS 3-B, LLC  
 Northeast corner of North Belardo Road and Museum Way

# **ATTACHMENT 2**



# Department of Planning Services Aerial Map



## CITY OF PALM SPRINGS

Development Agreement, Case No. DA-2023-0008  
DTPS 3-B, LLC  
Northeast corner of North Belardo Road and Museum Way

# **ATTACHMENT 3**

## RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVAL OF A DEVELOPMENT AGREEMENT, CASE DA-2023-0008, BETWEEN DTPS B-3, LLC RELATED TO AN APPROVED MIXED-USE DEVELOPMENT INVOLVING 45 RESIDENTIAL CONDOMINIUMS AND RETAIL ON BLOCK B OF THE DOWNTOWN PALM SPRINGS SPECIFIC PLAN AT THE NORTHEAST CORNER OF BELARDO ROAD AND MUSEUM WAY.

THE PLANNING COMMISSION FINDS AND DETERMINES AS FOLLOWS:

A. DTPS B-3, LLC, a California limited liability corporation, (“Applicant”) has filed an application with the City, pursuant to the Section 94.08.00 of the Zoning Code, for a Development Agreement (Case No. DA-2023-0008) for the development of a mixed-use building with forty-five residential condominiums and street-facing retail at the northeast corner of Belardo Road and Museum Way (“Project”).

B. On January 14, 2021, the City Council held a public hearing on the Project and approved the following applications:

1. A Major Architectural Review Application, Case 3.3908 MAJ, for the construction of a six-story, 73,300-square foot building with 45 residential condominiums and ground floor retail space (City Council Resolution No. 24845); and
2. A Tentative Tract Map Application, TTM 37935, for a one-lot subdivision to map the 0.84-acre parcel for condominium purposes (City Council Resolution No. 24846).

C. On February 28, 2024, a public hearing to consider the subject application, Case DA-2028-0008, was held by the Planning Commission in accordance with applicable law. At said meeting, the Planning Commission has carefully reviewed and considered all of the evidence presented in connection with the hearing on the application, including, but not limited to, the staff report, and all written and oral testimony presented.

D. The Project associated with the Development Agreement is part of a larger project (“Downtown Palm Springs Specific Plan,” formerly the “Museum Market Plaza Specific Plan”) evaluated and analyzed under the California Environmental Quality Act (“CEQA”). The City certified an Environmental Impact Report (EIR) which analyzed impacts related to the Museum Market Plaza Specific Plan in 2009, which was filed with the State Clearinghouse under SCH No. 2008061084. Subsequent addenda have been prepared to analyze changes within the Specific Plan area.

No further environmental review is required (Public Resources Code section 21166; CEQA Guidelines section 15162). No changed circumstances, changes in the environment or changes in regulations have occurred since the certification of the EIR or the adoption of the addenda. Based on the requirements of the Public Resources Code and the CEQA Guidelines, no additional environmental analysis is required for this Agreement and the mitigation measures previously imposed within the EIR will apply.

I. Pursuant to Section 94.08.00(A)(12)(b) of the Palm Springs Zoning Code, the Planning Commission make the following findings relative to the subject application:

1. *The development agreement is consistent with the objectives, policies, general land uses and programs specified in the general plan and any applicable specific plan.*

The Development Agreement provides more time to complete a portion of the overall redevelopment of the former Fashion Plaza with a mixed-use building consisting of residential condominiums and retail. The proposed development would provide residential options downtown and street-facing retail, which is consistent with the following policies:

- General Plan Policy LU10.2: *Encourage development of housing and mixed-use land uses Downtown to increase activity in this area.*
- Downtown Palm Springs Specific Plan, Guiding Principle I.C.4.: *A balance of commercial and residential development which assures the success of the area by increasing the number of homes in the downtown, thereby increasing the customer base of the commercial uses.*
- Downtown Palm Springs Specific Plan, Guiding Principle I.C.5.: *The development of residential units which relate synergistically to the commercial development around them, and encourage a pedestrian lifestyle with little use for the automobile.*

The Agreement would aid the City in achieving the above policies and is consistent with policies in the General Plan and Downtown Palm Springs Specific Plan.

2. *The development agreement is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located.*

The site associated with the Project is located within the Central Business District zone of the Downtown Palm Springs Specific Plan, which authorizes mixed-use buildings with multi-family dwellings/condominiums and retail as permitted pursuant to Table III-1. The Agreement would authorize previously granted entitlements to proceed at a future time that doesn't extend beyond July of 2030. These entitlements consist of a Major Architectural Review Application approved by City Council Resolution No. 24845 for the construction of a mixed-use building on Block "B" of the Downtown Palm Springs Specific Plan, and the

Tentative Tract Map Application approved by City Council Resolution No. 24846 for a one-lot subdivision for condominium purposes. The Agreement doesn't seek to permit other uses that would not otherwise be inconsistent with the Downtown Palm Springs Specific Plan.

3. *The development agreement is in conformity with public convenience, general welfare and good land use practice.*

The Agreement facilitates the future development of Block B of the Downtown Palm Springs Specific Plan. The Project will provide new opportunities for residential and retail downtown as part of the overall redevelopment of the former Fashion Plaza, while the applicant resolves a legal dispute impacting the financial feasibility of the project. This will provide greater certainty with costs associated with the Project, assuring expeditious completion of the development after commencement of construction and reducing exposure to public inconveniences with a delayed construction project. Once completed, the Project will improve the general welfare of the immediate surrounding by activating a vacant site and will complete another component of the Downtown Palm Springs Specific Plan in accordance with good land use practice.

4. *The development agreement will not be detrimental to the health, safety and general welfare.*

The Project will be built in accordance with current uniform building codes with access to all necessary utilities and public services, ensuring the health, safety and general welfare are protected. Moreover, the terms of the Agreement would not result in detrimental impacts.

5. *The development agreement will not adversely affect the orderly development of property or the preservation of property values.*

The Agreement would allow the future development of an entitled site to be developed with a project found to be consistent with the Downtown Palm Springs Specific Plan. Property values are not expected to be impacted by the approval of the Development Agreement, as the site will remain vacant and subject to the city's Property Maintenance Standards ordinance (Section 93.19.00 of the Palm Springs Zoning Code).

#### THE PLANNING COMMISSION RESOLVES:

SECTION 1. That the findings and determinations reflected above are true and correct, and are incorporated by this reference herein as the cause and foundation for the action taken by and through this Resolution.

SECTION 2. No further environmental review is required, pursuant to § 15162 of the California Environmental Quality Act.

SECTION 3. The Planning Commission recommends City Council approve the Amendment to the Development Agreement, Case DA-2023-0008.

ADOPTED THIS 28TH DAY OF FEBRUARY, 2024.

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

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Christopher Hadwin  
Director of Planning Services



# **ATTACHMENT 4**



December 6, 2023

Christopher Hadwin  
Director of Planning Services  
City of Palm Springs  
3200 E Tahquitz Canyon Way  
Palm Springs, CA 92262

Re: DTPS B-3, LLC / Development Agreement Application

Dear Mr. Hadwin:

The top priority in America, California and Palm Springs is immediate housing. Grit Development is prepared and eager to commence the construction of its approved 45 units housing project ("Block B Housing Project") in Downtown Palm Springs, addressing the critical need for housing and accommodation for the retiring demographic looking to relocate to the Coachella Valley.

A legal dispute between the Department of Industrial Relations (DIR) on the one hand, and Grit Development and the City of Palm Springs, on the other hand, currently exists ("DIR Dispute"). The outcome of the DIR Dispute has major implications for the construction budget of the Block B Housing Project, and the current ambiguity arising from that Dispute has, therefore, put on hold any further construction in the downtown area, including the Block B Housing Project. Given the possible prolonged legal dispute and the uncertainty surrounding the appeal process, securing a Development Agreement becomes crucial for this housing project in order to assure that entitlements are not lost while the City and Grit work to resolve the DIR Dispute. The proposed Development Agreement would afford the necessary time to address the challenges posed by the DIR Dispute followed by a more realistic timeframe to break ground without the risk of entitlements expiring.

Grit can show that it has made significant investment in and reasonable progress on the Block B Housing Project thus far, as it has finalized Construction Documents and secured a construction loan. However, the unresolved DIR issue is a crucial hurdle, preventing the lender from proceeding with the funding of the \$60 million project. The resolution of the DIR matter is essential to unlock the financial support needed in the challenging economic climate with high interest rates and escalating construction costs.

The City of Palm Springs and Grit Development are working together in attempting to reach a settlement with the DIR concerning our private-public partnership and the impending prevailing wages claim on Phase 1 of Downtown. Any offer to settle the matter in no way constitutes an admission of guilt by either the developer or the City, but rather would be a good faith offer and compromise to close this matter, put it behind us and move forward building new dwelling units in Palm Springs. This prompt resolution vs years of litigation could be more beneficial for all parties involved and enable Grit Development to break ground immediately thereafter on the approved forty-five residential multifamily units in Downtown. Until such time as meaningful progress can be made with respect to settlement of the DIR Dispute, we must find means of minimizing the negative consequences of the outstanding dispute. A Development Agreement for the Block B Housing Project assures that entitlements which have been fully vetted and approved by the City, which are responsive to the need for development of housing in the City

**201 N. Palm Canyon Drive, Suite 200, Palm Springs, CA 92262-5525**



and which conform to the Downtown Specific Plan are not negatively impacted the DIR Dispute. The Development Agreement would, instead, hold the approved Block B entitlements valid for its term. This justifies the developer continuing his pre-development process, and places the developer in a position of being able to move forward, confident in the entitlements, as soon as possible after resolution of the DIR Dispute.

Thank you for your consideration.

A handwritten signature in blue ink, appearing to read "Michael Braun", is written over the typed name.

Michael Braun

# **ATTACHMENT 5**

RECORDING REQUESTED BY:

CITY OF PALM SPRINGS

AND WHEN RECORDED MAIL TO:

CITY OF PALM SPRINGS  
OFFICE OF THE CITY CLERK  
3200 E. TAHQUITZ CANYON WAY  
PALM SPRINGS, CA 92262

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DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
CITY OF PALM SPRINGS

AND

DTPS B-3, LLC,  
A CALIFORNIA LIMITED LIABILITY COMPANY

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THIS AREA FOR RECORDER'S USE ONLY

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement” or “Development Agreement”) is entered into by and between the City of Palm Springs, a California Charter City and municipal corporation, (“City”), and DTPS B-3, LLC, a California limited liability company (“Developer”), pursuant to California Government Code § 65864 et seq.

### RECITALS

A. Development Agreement Statute. To eliminate uncertainty in planning, strengthen the public planning process, encourage private participation in comprehensive planning, provide for the orderly development of projects, and reduce the economic risk of development, the Legislature of the State of California has enacted California Government Code § 65864 et seq. (the "Development Agreement Statute"), which authorizes City to enter into an agreement with any person having a legal or equitable interest in real property regarding the development of such property. The purpose of the Development Agreement Statute is to authorize municipalities, in their discretion, to establish certain development rights in real property for a period of years regardless of intervening changes in land use regulations, to vest certain rights in the Developer, and to meet certain public purposes of the municipality. This Development Agreement has been processed, considered, and executed in accordance with the procedures and requirements as set forth in the Development Agreement Statute.

B. City Ordinance. Pursuant to Government Code section 65865(c), City has adopted Palm Springs Municipal Code § 94.08.00, which sets forth local rules and regulations establishing procedures and requirements for consideration of development agreements. The parties acknowledge:

- a. This Agreement will assure adequate public facilities at the time of development.
- b. This Agreement will assure development in accordance with City's land use policies and goals.
- c. This Agreement will provide for orderly growth consistent with the City's General Plan, and other public policies.
- d. This Agreement is intended to provide certainty in the development approval process by vesting the permitted uses, densities and intensity of use with respect to the Project (defined below).
- e. The execution of this Agreement furthers the public health, safety and general welfare of the community.
- f. This Agreement will allow development of 45 residential condominium units in the City.

C. Binding Effect of Development Agreement. By electing to enter into this Development Agreement, City shall bind future City Councils of the City by the obligations specified herein and limit the future exercise of certain government and proprietary powers of the City.

D. Developer Interest in Property. Developer represents and warrants that it has an ownership, leasehold or similar legal interest in certain real property as legally described in Exhibit

A and shown on the map in Exhibit B, attached hereto (the "Project Site"). This Agreement applies only to the Project Site.

E. Entitlements. On January 14, 2021 the City approved the following land use entitlements for the Project, which Entitlements remain in effect and are subject to this Agreement:

- a. City Council Resolution Number 24845 approving Major Architectural Approval: Case No. 3.3908 MAJ (the "Project")
- b. City Council Resolution Number 24846 approving Tract Map Case No. TTM 37935 (the "Map").

The above Entitlements are part of larger project known as the Museum Market Plaza Specific Plan/Downtown Palm Springs Specific Plan ("Project Specific Plan.") In 2009, the City certified an Environmental Impact Report ("Project EIR") which analyzes the impacts of the entire Project Specific Plan, and in approving the Entitlements, the Council found the Entitlements to be consistent with the approved Project EIR. The Entitlements have been approved subject to various conditions and requirements with which Developer will be required to comply in order to develop the Project on the Project Site ("Conditions of Approval"). The approvals described above, including without limitation the Conditions of Approval as referenced in this Recital and this Agreement, are referred to herein as the "Entitlements" and have been reviewed and approved in accordance with the Municipal Code, California Environmental Quality Act, California Public Resources Code Section 21000 et seq. ("CEQA"), and all other applicable local, state, and federal laws and regulations. The Entitlements, Conditions of Approval, and this Agreement shall be collectively referred to as "the Project Approvals."

F. Substantial Costs to Developer. Developer will incur substantial costs in order to comply with the Project Approvals and to construct the infrastructure improvements requested by the City to assure development of the Project in accordance with the terms of this Agreement.

G. Vesting of Rights. Due to a dispute ("DIR Dispute") between the State Department of Industrial Relations ("DIR") on the one hand, and the City and an affiliate of Developer on the other hand related to the applicability of state prevailing wage laws to property within the Project Specific Plan area, the initiation of construction of the improvements contained in the Entitlements is delayed. In light of the delay induced by the pending DIR Dispute and in exchange for the benefits to City described in the preceding Recitals, together with the other public benefits that will result from the development of the Project, Developer will receive by this Agreement assurance that it may proceed with the Project in accordance with the "Applicable Law" (defined below) and therefore desires to enter into this Agreement.

H. Planning Commission - Council Findings. The approval of this Agreement is made pursuant to findings by the Planning Commission and the Council that this Development Agreement:

- a. Is consistent with the objectives, policies, general land uses and programs specified in the General Plan and the Downtown Specific Plan;

- b. Is compatible with the uses authorized in, and the regulations prescribed for, the land use district in which the real property is located;
- c. Is in conformity with public convenience, general welfare and good land use practice;
- d. Will not be detrimental to the health, safety and general welfare; and
- e. Will not adversely affect the orderly development of property or the preservation of property values.

I. City Council Actions. City Council, after giving due notice of intention, conducting required public hearings, considering the recommendations of the Planning Commission and conducting extensive environmental analysis, approved the following entitlements for the Project the Project Site:

- a. Case No. 3.3908 MAJ
- b. TTM 37935

### **AGREEMENT**

NOW, THEREFORE, in consideration of the promises, covenants, and provisions set forth herein, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

#### **ARTICLE 1. DEFINITIONS**

- o "Agreement" shall mean this Development Agreement by and between Developer and City, dated [\_\_\_\_\_].
- o "Applicable Law" shall have that meaning set forth in Section 7.03 of this Agreement.
- o "Changes in the Law" shall have that meaning set forth in Section 7.08 of this Agreement.
- o "City" is the City of Palm Springs, a California Charter City and municipal corporation.
- o "Conditions of Approval" shall have that meaning set forth in Section 4.04 of this Agreement.
- o "Default" shall have that meaning set forth in Section 11.01 of this Agreement.
- o "Default Notice" shall have that meaning set forth in Section 11.01 of this Agreement.
- o "Development Agreement Statute" shall have that meaning set forth in Recital A of this Agreement.
- o "Developer" DTPS B-3, LLC, a California limited liability company.
- o "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a



development project for the purpose of defraying all or a portion of the cost of public facilities related to the development project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies that provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). For purposes of this Agreement only, "Development Impact Fee" shall not include processing fees and charges of imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits; filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superceded, including by amendment or replacement.

- "Entitlements" shall have that meaning set forth in Recital E of this Agreement.
- "Effective Date" shall have that meaning set forth in Section 3.01 of this Agreement.
- "Excusable Delay" shall have that meaning set forth in Section 11.04 of this Agreement.
- "Force Majeure" shall have that meaning set forth in Section 11.04 of this Agreement.
- "Project" shall have that meaning set forth in Recital D of this Agreement.
- "Project Site" shall have that meaning set forth in Recital D of this Agreement.
- "Project Approvals" shall have that meaning set forth in Recital E of this Agreement.
- "Prompt Review" means review of all plans, specifications, and applications by Developer in accordance with Section 7.11, below.
- "Reasonable Progress" shall mean commercially reasonable efforts by Developer to achieve full build-out and completion of all executory obligations herein within ten years in accordance with Section 7.10, below, subject to any Force Majeure or Excusable Delay.
- "Term" shall have that meaning set forth in Section 3.02 of this Agreement.

## **ARTICLE 2. INCORPORATION OF RECITALS.**

Section 2.01. Recitals. The Recitals set forth above, the introductory paragraph preceding the Recitals, and all defined terms set forth in both, are hereby incorporated into this Agreement as if set forth herein in full.

## **ARTICLE 3. EFFECTIVE DATE AND TERM**

Section 3.01. Effective Date. This Agreement became effective as of the date the City Council of City approved this Agreement, [ \_\_\_\_\_ ] (the "Effective Date").

Section 3.02. Term. The term of this Agreement (the "Term") shall commence upon the Effective Date and continue until July 31, 2030, unless the Term is terminated or modified as set forth in this Agreement or by mutual consent of the parties hereto.

## **ARTICLE 4. OBLIGATIONS OF DEVELOPER**

Section 4.01. Obligations of Developer Generally. In consideration of City entering into this Agreement, Developer agrees that, in developing the Project, it will comply with this Agreement and with all Project Approvals. The Project is hereby made subject to this Agreement. Development of the Project Site is hereby authorized and shall be carried out only in accordance with the terms of this Agreement. The parties acknowledge and agree that City's agreement to perform and abide by the covenants and obligations of City set forth in this Agreement is a material consideration for Developer's agreement to perform and abide by its long term covenants and obligations, as set forth herein. The Parties further acknowledge that this agreement only applies to the Project and not the Expansion Project or any other approved development on the Project Site not related to the Project, including but not limited to the Expansion Project.

### Section 4.03. Public benefits provided by Developer.

- a. Creation of new housing opportunities in the downtown area, responding to the City's need for additional housing opportunities.
- b. Continuing the development of the overall Downtown Specific Plan, thereby promoting the economic health of the community and the success of downtown businesses.
- c. Creating job opportunities within the city.
- d. Creating a "live/work" atmosphere in downtown where residents can access community businesses and economic opportunities in the heart of the City without the need for vehicular transportation.

Section 4.04. Compliance with Project Conditions. In addition to any and all obligations contained in this Agreement, Developer shall comply with and fulfill any and all Conditions of Approval. The Development of the Project shall be governed by the terms of the Conditions of Approval and this Agreement. The Conditions of Approval and this Agreement shall, to the fullest extent possible, be read and considered as fully integrated documents, and shall be interpreted so as to avoid inconsistencies, comply with all applicable federal and state laws and City Law, and ensure that the objectives of the parties will be fully realized.

Nothing in this Agreement is intended to supersede, terminate, modify or otherwise affect any provision of the Conditions of Approval, except to the extent that a provision of this Agreement is in direct conflict with a provision of such Condition of Approval. Then, and only in that event, the provisions of this Agreement shall prevail over the contradictory provisions of any such Condition of Approval. The execution of this Agreement by the parties hereto shall in no way otherwise affect the validity of any or all of the provisions of the Conditions of Approval.

## **ARTICLE 5. OBLIGATIONS OF CITY**

Section 5.01. Obligations of City Generally. In consideration of Developer entering into this Agreement, City agrees that it will comply with the terms and conditions of this Agreement. The parties acknowledge and agree that Developer's agreement to perform and abide by its covenants and obligations set forth in this Agreement is a material consideration for the City's agreement to perform and abide by the long term covenants and obligations of the City, as set forth herein.

## **ARTICLE 6. COOPERATION - IMPLEMENTATION**

The parties agree to cooperate in good faith to implement this Agreement.

## **ARTICLE 7. STANDARDS, LAWS AND PROCEDURES GOVERNING THE PROJECT**

Section 7.01. Vested Right to Develop Project. Subject to the terms of this Agreement, Developer shall have a vested right to build out the Project through the Term on the Project Site in accordance with, and to the extent of, the terms and conditions of the Project Approvals.

Section 7.02. Permitted Uses Vested by This Agreement. Except as otherwise provided in this Agreement, the permitted uses of the Project, the density and intensity of use of the Project, the maximum height, bulk and size of proposed buildings, provisions for reservation or dedication of land for public purposes and the location of public improvements, the general location of public utilities, and other terms and conditions of development applicable to the Project shall be as set forth in the Entitlements and Project Approvals, including applicable Conditions of Approval.

Section 7.03. Applicable Law. Except as otherwise provided in this Agreement, the rules, regulations, official policies, standards and specifications applicable to the Project (the "Applicable Law") shall be those set forth in the Project Approvals, and, with respect to matters not addressed by the Project Approvals, those rules, regulations, official policies, standards and specifications (including City ordinances and resolutions) governing permitted uses, building

locations, timing of construction, densities, design, and heights in force and effect on the Effective Date of this Agreement.

Section 7.04. Uniform Codes. Subject to Section 7.05 below, City may apply to the Project, at any time during the Term, the then current Uniform building construction, fire or other codes, as the same may be adopted or amended from time to time by City, and City's then current design and construction standards for public improvements, as the same may be adopted or amended from time to time, provided any such uniform code or standard has been adopted and uniformly applied by City on a citywide basis, and provided that no such code or standard is adopted for the purpose of preventing or otherwise limiting construction of all or any part of the Project.

Section 7.05. No Conflicting Subsequent Enactments. City shall not impose on the Project (whether by action of the City Council or by initiative, referendum or other means) any ordinance, resolution, rule, regulation, standard, directive, condition or other measure or any amendment or revision to any of the foregoing (each individually, a "City Law") that is in conflict with Applicable Law, or the Project Approvals, or that reduces the development rights or assurances provided by this Agreement with respect to the Project, except where such City Law is enacted to address a significant public health or safety issue. Any City Law shall be deemed to conflict with Applicable Law, or the Project Approvals, or reduce the development rights provided hereby if it would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which applies to or affects the Project Approvals applicable to the Project.

Approvals:

- a. Change any land use designation or permitted use of the Project existing as of the Effective Date of this Agreement;
- b. Limit or control the availability of public utilities, services or facilities or any privileges or rights to public utilities, services, or facilities (for example, water rights, water connections or sewage capacity rights, sewer connections, etc.) for the Project.
- c. Limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations included in the Project Approvals;
- d. Limit or control the rate, timing, phasing or sequencing of the approval, development or construction of all or any part of the Project in any manner inconsistent with the Project Approvals;
- e. Apply to the Project any City Law otherwise allowed by this Agreement that is not uniformly applied on a citywide basis to all substantially similar types of development projects and project sites;

- f. Result in Developer having to substantially delay construction of the Project or require the issuance of additional permits or approvals by the City other than those required by the Project Approvals or Applicable Law;
- g. Substantially increase the cost of constructing or developing the Project or any portion thereof;
- h. Establish, enact, increase, or impose against the Project or Project Site any Development Impact Fee(s), taxes (including without limitation general, special and excise taxes), assessments, liens or other monetary obligations other than those specifically permitted by this Agreement;
- i. Impose against the Project any condition, dedication or other exaction not specifically authorized by the Project Approvals or Applicable Law;
- j. Grant any development right, entitlement or approval for any portion of the Project of the Project Site that will reduce, limit or encumber Developer's rights to develop the Project hereunder, or
- k. Unreasonably limit the timing, processing or procuring of applications and approvals for the Project.

If City attempts to apply to the Project a City Law that Developer believes to conflict with Applicable Law or the Project Approvals, Developer shall provide to City in writing a notice describing the legal and factual basis for Developer's position. The parties shall meet and confer within thirty (30) days after the date of such written notice with the objective of attempting to arrive at a mutually acceptable solution to this disagreement. If no mutually acceptable solution can be reached, either party may take such action as may be permitted under Section 11.07, below.

Section 7.06. Initiatives and Referenda.

- a. To the maximum extent permitted by law, if any City Law is enacted or imposed by initiative or referendum, or by the City Council directly or indirectly in connection with any proposed initiative or referendum, which City Law would conflict with Applicable Law, or the Project Approvals or reduce the development rights provided by this Agreement, such City Law shall not apply to the Project.
- b. Without limiting the generality of any of the foregoing and to the maximum extent permitted by law, no moratorium or other limitation (whether relating to the rate, timing, phasing or sequencing of development) affecting building permits or other entitlements to which Developer is entitled pursuant to the Project Approvals shall apply to the Housing Project.
- c. To the maximum extent permitted by law, City shall take reasonable actions to prevent any City Law from invalidating or prevailing over all or any part of this Agreement, and City shall cooperate with Developer and shall undertake such reasonable actions as may be necessary to ensure this Agreement remains in full force and effect.

- d. Except as required by State or Federal law, City shall not adopt or enact any City Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement.
- e. Developer reserves the right to challenge in court any City Law that is enacted after the Effective Date of this Agreement that would conflict with Applicable Law or this Agreement or reduce the development rights provided by this Agreement.

Section 7.07. Environmental Determination. The parties understand that (i) all procedures of CEQA have been satisfied, (ii) an initial study evaluating the environmental impacts of the Project, and all other Entitlements has been completed, and (iii) as a result, the City evaluated, analyzed and certified the Project EIR in 2009, and upon approval of the Entitlements in 2021, the City found that the Entitlements are consistent with said Project EIR.

Section 7.08. State and Federal Law. As provided in California Government Code § 65869.5, this Agreement shall not preclude the application to the Project of changes in laws, regulations, plans or policies, to the extent that such changes are specifically mandated and required by changes in state or federal laws or regulations, or by any regional governmental agency that, due to the operation of state law, has binding legal authority on City ("Changes in the Law"). In the event Changes in the Law prevent or preclude compliance with one or more provisions of this Agreement, such provisions of the Agreement shall be modified or suspended, or performance thereof delayed, as may be necessary to comply with Changes in the Law, and City and Developer shall take such action as may be required pursuant to this Agreement including, without limitation, Article 10 (Cooperation-Implementation) and Section 11.04 (Force Majeure and Excusable Delays; Extension of Time of Performance). Nothing in this Agreement shall preclude City from imposing on Developer any fee specifically mandated and required by state or federal laws and regulations, provided that nothing shall limit Developer's ability to challenge such laws and the imposition of such fees.

Section 7.09. Timing of Project Construction and Completion. The parties acknowledge that neither City nor Developer can predict the timing, rate, order or actual timing of development of the Project with certainty. The parties further acknowledge that the construction of the Project is dependent on numerous factors outside the Developer control, including but not limited to the time needed for resolution of the DIR Dispute. Since the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that, subject to the terms of this Agreement, Developer shall have the right to develop the Project in such order and at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment, subject only to any timing or phasing requirements set forth in the Project Approvals or this Agreement.

Section 7.10. Annual Review. City shall, at least every twelve (12) months during the Term of this Agreement, and, prior to issuance of building permits for the Project, review the extent of good faith substantial compliance by Developer with the terms of this Agreement. The review may

specifically include a review of whether Developer is making Reasonable Progress. To assess such progress, the City Planning Director may require at any time subsequent to the execution of this Agreement, and as frequently as annually thereafter, a development planned schedule showing initiation of construction prior to the expiration of this Agreement, and completion of construction within twenty-four (24) months after purchase of the first required building permit for development under this Agreement. Reasonable Progress shall take into account not only market conditions, State and federal funding sources and prudent construction practices, but also the status of the DIR Dispute and any related claims on the Project or any portion of the Downtown Specific Plan Area. Reasonable Progress is expressly subject to City's obligation of Prompt Review specified in Section 7.11, below. Such periodic review shall be limited in scope to good faith compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1 and Palm Springs Municipal Code Section 94.08.00. Said review shall be diligently completed according to Palm Springs Municipal Code Section 94.08.00. Notice of such annual review shall include the statement that any review may result in amendment or termination of this Agreement. A finding by City of good faith compliance by Developer with the terms of the Agreement shall conclusively determine said issue up to and including the date of said review. However, if a finding is made by City that there is not good faith compliance by Developer, the City shall follow those procedures set forth in Palm Springs Municipal Code Section 94.08.00. City shall mail to Developer a copy of all staff reports concerning contract performance at least seven (7) calendar days prior to such periodic review. Developer shall be permitted an opportunity to be heard orally or in writing regarding its performance under this Agreement before the City Council and, if the matter is referred to a City Planning Commission, before said Commission. Notwithstanding anything to the contrary set forth in this Agreement, upon issuance of building permits for the Project, Developer shall be deemed to have satisfied the obligation to make Reasonable Progress and the City shall have no right to terminate or amend this Agreement as a result of any review by the City pursuant to this Section 7.10.

Section 7.11 Review by the City. City and Developer shall cooperate and use reasonable efforts to timely review and approve the development design review process, building plan review process, improvement plan review process, and if necessary, the entitlement review process for the Project. Review of any application provided by this subparagraph shall not be deemed to waive any of the Applicable Law pertaining to review or approval of such application, including, but not limited to, a public hearing, if any, required therefore. In the event the Parties agree to use an expedited process to perform any review pursuant to this subparagraph, Developer authorizes the imposition of City Fees paid to the City sufficient to cover City's estimated costs of utilizing City staff, retaining an outside consultant or any combination thereof in order to expedite the review process. Any such process shall terminate upon the expiration or termination of this Agreement or the issuance of the final certificate of occupancy for development within the Project, whichever occurs first.

Section 7.12. Tentative Tract Map Extension. In accordance with the provisions of Section 66452.6 of the Government Code, each tentative subdivision map or tentative parcel map, heretofore or hereafter approved in connection with development of the Property, shall be deemed to have been granted an extension of time to and until the Termination Date; provided however, that the City Council may, in its discretion, extend any such map for a period of up to an additional five (5) years.

Section 7.13. Prevailing Wage Laws. Developer covenants that it shall comply with California's prevailing wage laws codified at California Labor Code §1770 et seq.) "Prevailing Wage Laws") in the development of the Project at the Project Site where applicable, and shall contractually require its contractors to do the same. If applicable, Developer shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to construct the Project available to interested parties upon request, and shall post copies at the Developer's principal place of business and at the Project Site. Developer shall be solely responsible for determining the applicability of Prevailing Wage Laws to the Project. Developer shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws in the construction of the improvements described in the Project Approvals which are the subject of this Agreement. The parties agree that the foregoing indemnification applies only to development under this Agreement, and shall have no retroactive effect to any previous agreements between the City on the one hand and the Developer or its affiliated entities on the other hand.

## **ARTICLE 8. AMENDMENT**

This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the parties hereto or their successors in interest, in accordance with the Development Agreement Statute.

## **ARTICLE 9. ASSIGNMENT, TRANSFER AND NOTICE**

Section 9.01. Assignment of Interests, Rights and Obligations. Developer may only transfer or assign all or any portion of its interests, rights or obligations under this Agreement to another person or entity acquiring an interest or estate in the Project or any portion thereof including, without limitation, purchasers or ground lessees of lots, parcels or facilities that accepts all of the then-applicable responsibilities of the Developer.

Section 9.02. Limits of Liability. To the extent the Developer's responsibilities are transferred in good faith to another person or entity, Developer shall be free from any and all liabilities accruing on or after the date of any assignment or transfer with respect to those obligations assumed by a transferee pursuant to a Transfer Agreement. No breach or default hereunder by any person succeeding to any portion of Developer's obligations under this Agreement shall be attributed to Developer, nor may Developer's rights hereunder be canceled or diminished in any way by any breach or default by any such person.

## **ARTICLE 10. COOPERATION IN THE EVENT OF LEGAL CHALLENGE**

### Section 10.01. Cooperation.

- a. In the event of any administrative, legal or equitable action or other proceeding instituted by any person not a party to this Agreement challenging the validity of any provision of the Agreement or any Project Approval, the parties shall cooperate in defending such



action or proceeding. The parties shall use best efforts to select mutually agreeable legal counsel to defend such action, and Developer shall pay compensation for such legal counsel; provided, however, that such compensation shall include only compensation paid to counsel not otherwise employed as salaried City staff and shall exclude, without limitation, City staff overhead costs and normal day-to-day business expenses incurred by City. In the event City and Developer are unable to select mutually agreeable legal counsel to defend such action or proceeding, each party may select its own legal counsel.

- b. The parties agree that this Section 10.01 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this section, which shall survive such invalidation, nullification or setting aside.

#### Section 10.02. Waiver of Challenges to Project Approvals.

- a. As a condition precedent to receiving the benefits of this Agreement, Developer, its successors in interest, transferees, assignees, etc., expressly waive any legal or equitable right to challenge any Project Approvals or other act, entitlement, fee, or approval expressly set forth in this Agreement, including without limitation, all acts of protest pursuant to California Government Code Sections 66008 and 66009 as to any fee against which Developer has vested in accordance with this Agreement.
- b. The parties agree that this Section 10.03(b) shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this section, which shall survive such invalidation, nullification or setting aside.

### **ARTICLE 11. DEFAULT; REMEDIES; TERMINATION**

Section 11.01. Defaults. Any failure by either party to perform any term or provision of this Agreement, which failure continues uncured for a period of thirty (30) days following written notice of such failure from the other party (unless such period is extended by mutual written consent), shall constitute a default under this Agreement ("Default"). Any written notice ("Default Notice") shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within such 30-day period, then the commencement of the cure within such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such 30- day period. Upon the occurrence of a Default under this Agreement, the non-defaulting party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material Default, terminate this Agreement. If the Default is cured, then no Default shall exist and the noticing party shall take no further action. Notwithstanding the foregoing, no Default with respect to the Expansion Project or any other development on the project site not related to the Project shall cause Default as to the Project. The Partnership and the investor limited partner of

the Partnership shall receive notice of any Default and shall have the right, but not the obligation, to cure any Default hereunder on the same terms and within the same time periods as Developer.

Section 11.02. Termination. If City elects to consider terminating this Agreement due to a material Default of Developer, then City shall give a notice of intent to terminate this Agreement. City shall give written notice of termination of this Agreement to Developer by certified mail and this Agreement shall thereby be terminated sixty (60) days thereafter. Notwithstanding the foregoing, City shall have no right to terminate this Agreement due to a Default with respect to the Expansion Project or any other development on the Project Site not related to the Project.

Section 11.03. Default by City or Developer.

- (a) It is acknowledged by the parties that City would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof. In general, each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that City shall not be liable in damages to Developer, or to any successor in interest of Developer, or to any other person, and Developer covenants not to sue for damages or claim any damages:
  - (i) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or
  - (ii) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or
  - (iii) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions of this Agreement.
- (b) The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:
  - (i) Money damages are unavailable against City as provided in subsection (a) above.
  - (ii) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, Developer may be foreclosed from other choices it may have had to utilize the Property or portions thereof. Developer has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money which would adequately compensate Developer for such efforts.
- (c) Except for non-damage remedies, including the remedy of specific performance and judicial review, Developer, for itself, its successors and assignees, hereby releases the City, its officers, agents and employees from any and all claims, demands, actions, or suits of any kind or nature arising out of any liability, known

or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other liability or damage, whatsoever, upon the City because it entered into this Agreement or because of the terms of this Agreement.

Section 11.04. Force Majeure and Excusable Delay: Extension of Time of Performance. In addition to specific provisions of this Agreement, neither party shall be deemed to be in Default where delays in performance or failures to perform are due to, and a necessary outcome of, war, insurrection, strikes or other labor disturbances, walk-outs, riots, floods, earthquakes, fires, casualties, acts of God, pandemics, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations, stay at home orders and shelter in place orders), enactment of conflicting state or federal laws or regulations, judicial decisions, or similar basis for excusable performance which is not within the reasonable control of the party to be excused (collectively "Force Majeure"). Litigation attacking the validity of this Agreement or any of the Project Approvals, or any permit, ordinance, entitlement or other action of a governmental agency other than City necessary for the development of the Project pursuant to this Agreement, shall also be deemed to create an excusable delay as to Developer (collectively "Excusable Delay"). The party whose performance is prevented or delayed by such event of Force Majeure or Excusable Delay shall give prompt written notice thereof to the other party and both parties shall have agreed that performance is appropriately excused or delayed pursuant to this Section 11.04. In the event of Force Majeure or Excusable Delay, the parties shall memorialize in writing the extension of time for the performance of any obligation whose performance has been so prevented or delayed. The term of any such extension shall be equal to the period of the Excusable Delay or Force Majeure or such other period as may be mutually agreed upon by both parties.

Section 11.05. Legal Action. Either party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation thereof, recover damages for any default, enforce by specific performance the obligations and rights of the parties hereto, or to obtain any remedies consistent with the purpose of this Agreement.

Section 11.06. California Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California. Venue for any action shall be in Riverside County, California.

Section 11.07. Resolution of Disputes. With regard to any dispute involving development of the Project, the resolution of which is not provided for by this Agreement or Applicable Law, Developer and City shall, at the request of the party, meet and shall attempt in good faith to resolve any such disputes. Nothing in this Section 11.07 shall in any way be interpreted as requiring that Developer and City and/or City's designee reach an agreement with regard to those matters being addressed, nor shall the outcome of these meetings be binding in any way on City or Developer unless expressly agreed to by the parties to such meetings.

Section 11.08. Attorneys' Fees. In any legal action or other proceeding brought by either party to enforce or interpret a provision of this Agreement, each party shall bear its own costs and expenses, including attorneys' fees.

Section 11.09. Hold Harmless. Developer shall, at its sole expense, defend and hold City and its elected and appointed officers, agents, employees, and representatives harmless from all claims, costs, and liabilities for any personal injury, death, or property damage which arises directly or indirectly as a result of the construction of the Project, or of operations performed under this Agreement by Developer or by Developer's contractors, subcontractors, agents or employees, whether such operations were performed by Developer or any of Developer's contractors, subcontractors, agents, or by any one or more persons directly or indirectly employed by or acting as agent for Developer or any of Developer's contractors or subcontractors. Nothing in this section shall be construed to mean that Developer shall hold City or its elected and appointed officers, agents, employees, or representatives harmless from any claims of personal injury, death or property damage arising from, or alleged to arise solely from, any negligent or intentional act, or failure to act, on the part of City, its elected and appointed representatives, officers, agents, employees or representatives. Notwithstanding the forgoing, neither Developer, nor any successor or assign of either, shall have any obligation under this Section 11.09 to hold harmless, defend or indemnify the City or any of its elected and appointed officers, agents, employees, and representatives harmless with respect to any other development on the Project Site other than the Project. This section 11.09 shall have no retroactive effect to any previous agreement between the City on the one hand, and the Developer or its affiliated entities on the other hand.

This hold harmless agreement applies to all damages or claims for damages suffered or alleged to have been suffered by reason of the operations referred to in this section regardless of whether or not City prepared, supplied or approved plans or specifications, or both, for the Project and/or Project Site.

The parties agree that this Section 11.09 shall constitute a separate agreement entered into concurrently, and that if any other provision of this Agreement, or the Agreement as a whole, is invalidated, rendered null, or set aside by a court of competent jurisdiction, the parties agree to be bound by the terms of this section, which shall survive such invalidation, nullification or setting aside.

## **ARTICLE 12. NO AGENCY, JOINT VENTURE OR PARTNERSHIP**

It is specifically understood and agreed to by and between the parties hereto that: (i) the subject development is a private development; (ii) City has no interest or responsibilities for, or duty to, third parties concerning any improvements until such time that City accepts the same pursuant to the provisions of this Agreement or in connection with the various Project Approvals; (iii) Developer shall have full power over and exclusive control of the Project herein described, subject only to the limitations and obligations of Developer under this Agreement, the Project Approvals and Applicable Law; and (iv) City and Developer hereby renounce the existence of any form of agency relationship, joint venture or partnership between City and Developer and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between City and Developer.

## ARTICLE 13. MISCELLANEOUS

Section 13.01. Enforceability. City and Developer agree that unless this Agreement is amended or terminated pursuant to the provisions of this Agreement, this Agreement shall be enforceable by any party hereto, notwithstanding any change hereafter enacted or adopted (whether by ordinance, resolution, initiative, or any other means) in any applicable general plan, specific plan, zoning ordinance, subdivision ordinance, or any other land use ordinance or building ordinance, resolution or other rule, regulation or policy adopted by City that changes, alters or amends the rules, regulations and policies applicable to the development of the Project Site at the time of the approval of this Agreement as provided by California Government Code Section 65866.

Section 13.02. Severability. If any term or provision of this Agreement, or the application of any term or provision of this Agreement to a particular situation, is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining terms and provisions of this Agreement, or the application of this Agreement to other situations, shall continue in full force and effect unless amended or modified by mutual consent of the parties. Notwithstanding the foregoing, if any material provision of this Agreement, or the application of such provision to a particular situation, is held to be invalid, void or unenforceable, either City or Developer may (in their sole and absolute discretion) terminate this Agreement by providing written notice of such termination to the other party.

Section 13.03. Other Necessary Acts. Each party shall execute and deliver to the other all such other further instruments and documents as may be reasonably necessary to carry out the Project Approvals and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Section 13.04. Construction. Each reference in this Agreement to this Agreement or any of the Project Approvals shall be deemed to refer to the Agreement or the Project Approvals as they may be amended from time to time, whether or not the particular reference refers to such possible amendment. This Agreement has been reviewed and revised by legal counsel for both City and Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

Section 13.05. Other Miscellaneous Terms. The singular shall include the plural; the masculine gender shall include the feminine; "shall" is mandatory; "may" is permissive. If there is more than one signer of this Agreement, the signer obligations are joint and several.

Section 13.06. Covenants Running with the Land. All of the provisions contained in this Agreement shall constitute covenants or servitudes which shall run with the land comprising the Project Site and the burdens and benefits hereof shall be binding upon and inure to the benefit of the parties and their respective heirs, successors in interest, transferees and assignees, representatives, lessees, and all other persons acquiring all or a portion of the Project or the Project Site, or any interest therein, whether by operation of law or in any manner whatsoever. All of the provisions contained in this Agreement shall be enforceable as equitable servitudes and shall

constitute covenants running with the land pursuant to California law including, without limitation, Civil Code Section 1468.

Section 13.07. Notices. Any notice or communication required hereunder between City or Developer must be in writing, and may be given either personally, by facsimile or electronic mail (with original forwarded by regular U.S. Mail) by registered or certified mail (return receipt requested), or by Federal Express or other similar courier promising overnight delivery. If personally delivered, a notice shall be deemed to have been given when delivered to the party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any party hereto may at any time, by giving ten (10) days written notice to the other party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the parties at their addresses set forth below:

If to the City, to:

City Manager  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Fax: (760) 322-8362  
Email: [\_\_\_\_\_]

With Copies to:

City Attorney  
City of Palm Springs  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Fax: (760) 323-8299  
Email: [\_\_\_\_\_]

If to Developer, to:

DTPS B-3, LLC,  
201 N. Palm Canyon Drive  
Suite 200  
Palm Springs, CA 92262  
Tel: [\_\_\_\_\_]  
Fax: [\_\_\_\_\_]  
Email: [\_\_\_\_\_]

Section 13.08. Entire Agreement, Counterparts and Exhibits. This Agreement is executed in duplicate, each of which is deemed to be an original. This Agreement consists of 19 pages and 2 exhibits which constitute in full, the final and exclusive understanding and agreement of the parties.

Section 13.09. Waiver. Any waivers of the provisions of this Agreement or any breach of covenants or conditions contained in this Agreement shall be effective only if in writing and signed by the appropriate authorities of City and Developer. A waiver of one provision or breach shall not be considered as a continuing waiver, shall not constitute a waiver of any other conditions or covenants and shall not operate to bar or prevent the other party from declaring a forfeiture or exercising its rights for any succeeding breach of either the same or other condition or covenant.

Section 13.10. Recordation of Development Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the Riverside County Recorder by the City Clerk within the ten (10) days after the CITY executes this Agreement, as required by Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement as provided for herein and in Government Code Section 65868, or if the CITY terminates or modifies the agreement as provided for herein and in Government Code Section 65865.1 for failure of the applicant to comply in good faith with the terms or conditions of this Agreement, the City Clerk shall have notice of such action recorded with the San Bernardino County Recorder.

Section 13.11. No Third Party Beneficiaries. Except as set forth in this Agreement, no person or entity shall be deemed to be a third party beneficiary hereof and nothing in this Agreement (either express or implied) is intended to confer upon any person or entity, other than City, Developer and the Partnership, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

Section 13.12. Titles of Parts and Sections. Any titles of the sections or subsections of this Agreement are inserted for convenience of reference only and shall be disregarded in interpreting any part of this Agreement's provisions.

Section 13.13. Discretion of City. City's execution of this Agreement in no way limits the discretion of City in the permit or approval process in connection with any site plan approvals, subsequent entitlements, land use decisions, construction or improvements which are within City's jurisdiction, except to the extent expressly and unequivocally stated herein.

Section 13.14. Representations of Authority. As to each person signing this Agreement on behalf of an entity, all necessary legal prerequisites to that party's execution of this Agreement have been satisfied and he or she has been authorized to sign this Agreement and bind the party on whose behalf he or she signs.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the City of Palm Springs California, a California Charter City and municipal corporation, has authorized the execution of this Development Agreement in duplicate by its City Manager and attestation by its City Clerk, and approved by the Council of the City on the [\_\_\_\_\_], and Developer has caused this Agreement to be executed by its authorized representatives.

**“CITY”  
CITY OF PALM SPRINGS**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Scott Stiles  
City Manager

**APPROVED AS TO FORM:**

**ATTEST**

By: \_\_\_\_\_  
Jeffrey S. Ballinger  
City Attorney

By: \_\_\_\_\_  
Brenda Pree, MMC  
City Clerk

**APPROVED BY CITY COUNCIL:**

**Date:** [\_\_\_\_\_]: **Agreement No.**  
[\_\_\_\_\_]  
**Ordinance #** [\_\_\_\_\_]

**“DEVELOPER”**

DTPS B-3, LLC, A California limited liability company

By: \_\_\_\_\_ By: \_\_\_\_\_  
Michael Braun, Manager (Notarized) Octavio Fernandez, Manager (Notarized)

Corporations require two notarized signatures. One signature must be from Chairman of Board, President, or any Vice President. The second signature must be from the Secretary, Assistant Secretary, Treasurer, Assistant Treasurer, or Chief Financial officer.



**EXHIBIT A**  
**PROPERTY DESCRIPTION**

**EXHIBIT B**  
**MAP OF PROPERTY**

# **ATTACHMENT 6**



# **CITY OF PALM SPRINGS PUBLIC INTEGRITY DISCLOSURE (INSTRUCTIONS FOR APPLICANTS)**

## **Who Must File?**

Applicants that are NOT a natural person or group of natural people that will be identified on the application, and seek a City approval determined by a vote of City officials. Examples include corporations, limited liability companies, trusts, *etc.* that seek a City Council approval, or an approval by one of the City's board or commissions.

## **Why Must I File?**

The City of Palm Springs Public Integrity Ordinance advances transparency in municipal government and assists public officials in avoiding conflicts of interest. The City's Public Integrity Ordinance, codified in Chapter 2.60 of the municipal code, reflects the City's interest in ensuring that companies (and other legal entities that are not natural people) doing business in the community are transparent and make disclosure as to their ownership and management, and further that those companies disclose the identity of any person, with a beneficial ownership interest of five percent (5%) or more.

## **When Must I File?**

You must file this form with the Office of the City Clerk at the same time when you file your application for a City approval determined by a vote of City officials, whether elected or appointed.

## What Must I Disclose?

- A. The names of all natural persons who are officers, directors, members, managers, trustees, and other fiduciaries serving trusts or other types of organizations (attorneys, accountants, etc.).

**Note:** (1) you must make these disclosures in relation to the applicant entity, and also in relation to any related entity that owns a part of, or makes a profit based upon the business of the applicant entity. Disclosures may include parent, subsidiary or affiliated entities of the applicant entity; (2) if any entity that is not a natural person serves the applicant entity (e.g., as a member of an applicant LLC), then all officers, directors, members, managers, trustees, etc., of the second entity must be disclosed).

- B. The names of persons owning a beneficial interest of five percent (5%) or more in your entity. Owners/investors who have such an interest hold either investment power or voting power, i.e., they can (i) sell or transfer their interest, or (i) vote their interest in management decisions.

NOTE: USE ADDITIONAL PAGES AS NECESSARY

## What if I Have Questions?

If you have any questions about how to complete this form, please contact:  
City Attorney, Edward Z. Kotkin (email: [Edward.Kotkin@palmspringsca.gov](mailto:Edward.Kotkin@palmspringsca.gov))

## PENALTIES

Falsification of information or failure to report information required to be reported may subject you to administrative action by the City.



# PUBLIC INTEGRITY DISCLOSURE APPLICANT DISCLOSURE FORM

<b>1.</b>	<b>Name of Entity</b> DTPS B-3 LLC						
<b>2.</b>	<b>Address of Entity (Principle Place of Business)</b> 201 N. Palm Canyon Dr. Ste 200, Palm Springs CA 92262						
<b>3.</b>	<b>Local or California Address (if different than #2)</b>						
<b>4.</b>	<b>State where Entity is Registered with Secretary of State</b>  California  <i>If other than California, is the Entity also registered in California?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No						
<b>5.</b>	<b>Type of Entity</b>  <input type="checkbox"/> Corporation <input checked="" type="checkbox"/> Limited Liability Company <input type="checkbox"/> Partnership <input type="checkbox"/> Trust <input type="checkbox"/> Other (please specify)						
<b>6.</b>	<b>Officers, Directors, Members, Managers, Trustees, Other Fiduciaries (please specify)</b> <i>Note: If any response is not a natural person, please identify all officers, directors, members, managers and other fiduciaries for the member, manager, trust or other entity</i>						
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 45%; border-bottom: 1px solid black; padding-bottom: 5px;">Michael Braun</td> <td style="padding: 5px;"> <input type="checkbox"/> Officer <input type="checkbox"/> Director <input type="checkbox"/> Member <input checked="" type="checkbox"/> Manager         </td> </tr> <tr> <td style="text-align: center; padding: 5px;">[name]</td> <td style="padding: 5px;"> <input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner         </td> </tr> <tr> <td></td> <td style="padding: 5px;"> <input type="checkbox"/> Other _____         </td> </tr> </table>	Michael Braun	<input type="checkbox"/> Officer <input type="checkbox"/> Director <input type="checkbox"/> Member <input checked="" type="checkbox"/> Manager	[name]	<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner		<input type="checkbox"/> Other _____
Michael Braun	<input type="checkbox"/> Officer <input type="checkbox"/> Director <input type="checkbox"/> Member <input checked="" type="checkbox"/> Manager						
[name]	<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner						
	<input type="checkbox"/> Other _____						
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 45%; border-bottom: 1px solid black; padding-bottom: 5px;">Octavio Fernandez</td> <td style="padding: 5px;"> <input type="checkbox"/> Officer <input type="checkbox"/> Director <input type="checkbox"/> Member <input checked="" type="checkbox"/> Manager         </td> </tr> <tr> <td style="text-align: center; padding: 5px;">[name]</td> <td style="padding: 5px;"> <input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner         </td> </tr> <tr> <td></td> <td style="padding: 5px;"> <input type="checkbox"/> Other _____         </td> </tr> </table>	Octavio Fernandez	<input type="checkbox"/> Officer <input type="checkbox"/> Director <input type="checkbox"/> Member <input checked="" type="checkbox"/> Manager	[name]	<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner		<input type="checkbox"/> Other _____
Octavio Fernandez	<input type="checkbox"/> Officer <input type="checkbox"/> Director <input type="checkbox"/> Member <input checked="" type="checkbox"/> Manager						
[name]	<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner						
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	<input type="checkbox"/> Officer <input type="checkbox"/> Director <input type="checkbox"/> Member <input type="checkbox"/> Manager						
[name]	<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner						
	<input type="checkbox"/> Other _____						

7. Owners/Investors with a 5% beneficial interest in the Applicant Entity or a related entity	
<b>EXAMPLE</b>	
<i>JANE DOE</i>	<i>50%, ABC COMPANY, Inc.</i>
[name of owner/investor]	[percentage of beneficial interest in entity and name of entity]
A. Palm Springs Promenade, LLC 100% ownership of Capital and all voting rights 80% Profits interest	PSP LLC owned 91% GRIT Development LLC and 8% Michael Braun. GRIT Development owned by Wessman Family Trust, Trustees Sandra Wessman and Michael Braun
[name of owner/investor]	[percentage of beneficial interest in entity and name of entity]
B. Michael Braun -	Economic Interest only, no voting rights, 10% Profits Interest
[name of owner/investor]	[percentage of beneficial interest in entity and name of entity]
C. Octavio Fernandez	Economic Interest only, no voting rights, 10% Profits Interest
[name of owner/investor]	[percentage of beneficial interest in entity and name of entity]
D.	
[name of owner/investor]	[percentage of beneficial interest in entity and name of entity]
E.	
[name of owner/investor]	[percentage of beneficial interest in entity and name of entity]

**I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF CALIFORNIA THAT THE FOREGOING IS TRUE AND CORRECT.**

Signature of Disclosing Party, Printed Name, Title	Date
Michael Braun Manager	December 27, 2018