



## **PLANNING COMMISSION STAFF REPORT**

**DATE:** May 23, 2024

PUBLIC HEARING

**SUBJECT:** PNG 1, LLC ON BEHALF OF PS COUNTRY CLUB, LLC FOR AN AMENDMENT OF THE DEVELOPMENT AGREEMENT FOR SERENA PARK – A RESIDENTIAL DEVELOPMENT CONSISTING OF 386 ATTACHED AND DETACHED RESIDENTIAL UNITS, STREETS, PRIVATE OPEN SPACE AND PUBLIC PARK ON 126 ACRES OF LAND LOCATED EAST OF SUNRISE WAY, NORTH OF VERONA ROAD AND SOUTHWEST OF THE WHITEWATER RIVER FLOODPLAIN WITHIN SECTION 1 AND 36 (CASE DA-2024-0002).

**FROM:** Department of Planning Services

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### SUMMARY:

This is a request to modify the amended development agreement associated with the 2016 entitlements for the Serena Park project, which involves the redevelopment of the former Palm Springs County Club golf course to residential use. The Development Agreement was approved in 2017 and amended in 2021; the City declared the owner in default of the Amended Development Agreement in 2022. The owner has entered escrow to sell the property PNG1, LLC (Suncal), which is proposing this amendment to the terms of the Amended Development Agreement and would take ownership if approved. Among other terms, the proposed amendment provides an increased Development Agreement Fee (from balance owed of \$2.5-million to \$3.2-million), a memorialized property maintenance obligation, a revised Performance Schedule and the City's cooperation in forming a community facilities district (or similar) to assist with financing of infrastructure and development impact fees.

### RECOMMENDATION:

Recommend City Council approve the amendment application.

### SCOPE OF REVIEW:

1. The Planning Commission shall review the Development Agreement Amendment for conformance to the criteria listed in PSZC Section 94.08.00(A)(12)(b).

**BUSINESS PRINCIPAL DISCLOSURE:**

The application was submitted by PNG1, LLC on behalf of the current owner, PS Country Club LLC. Serena 386, LLC is the assignee at the closure of the property sale. The completed Public Integrity Disclosure Forms are included as an attachment to the report.

**BACKGROUND INFORMATION:**

On September 7, 2016, the Council approved several discretionary entitlement applications associated with the redevelopment of the Palm Springs Country Club golf course, allowing for the conversion of open space to low density residential development of up to 92 attached single-family units and 294 detached single-family units (386 total residential units) on approximately 126 acres, referred to as the "Serena Park" project, as shown in Figure 1.



**Figure 1**

Specifically, in approving the Serena Park project, the Council approved the following actions:

- Adopted Resolution No. 24082, certifying an Environmental Impact Report for the Serena Park project
- Adopted Resolution No. 24083, approving a General Plan Amendment to modify land use designation from "Open Space - Parks/Recreation" to "Very Low Density Residential"
- Adopted Resolution No. 24084, approving a Major Architectural Application (Case 5.1327, PDD-366/MAJ)
- Adopted Resolution No. 24085 approving Tentative Tract Map 36691, and
- Adopted Ordinance No. 1898 approving Planned Development District (PD-366) in lieu of a change of zone

Included as part of the Council's conditional approval of the above entitlements is Administrative Condition, ADM #13, which states:

*Development Agreement. Approval of these land use entitlement applications is contingent upon the approval of a development agreement. The development agreement shall address the conversion of open space for development purposes, through in-kind replacement of open space, payment of in-lieu fees for the acquisition of open space, or replacement of open space through a density transfer, pursuant to Policy LU2.2 of the City of Palm Springs General Plan.*

To satisfy this condition, the Development Agreement was reviewed and approved by City Council's adoption of Ordinance No. 1931, on July 19, 2017. A minor amendment was approved by City Council on October 17, 2018, revising the manner in which the Development Agreement Fee is required and paid. The executed Development Agreement is attached to this report as **Attachment 8**.

On October 14, 2021, the City Council conditionally approved a Development Agreement Amendment for the Serena Park project by adopting Ordinance No. 2051. This amendment revised the Performance Schedule for construction, modified the payment dates of the Development Agreement Fee, memorialized phasing of utility undergrounding and approved other minor revisions. On November 1, 2021, the owner remitted \$500,000 of the Development Agreement Fee to the City, as required by the Development Agreement Amendment. The executed First Amended and Restated Development Agreement is attached to this report as **Attachment 7**.

A Maintenance and Security Plan was required by City Council as a part of the 2021 approval of the Development Agreement Amendment. This Plan was reviewed and accepted by the City Council on December 9, 2021 and is attached to this report as **Attachment 9**.

On September 21, 2022, due to a failure to comply with the agreed upon the Performance Schedule and Maintenance and Security Plan, the City notified the owner of default of the terms of the First Amended and Restated Development Agreement. In response, the owner improved efforts to maintain the property, but has yet to commence construction and pay the remaining balance due (\$2.5-million) of the Development Agreement Fee.

**ANALYSIS:**

In order to facilitate the sale of the property, the amendment to the Development Agreement is proposed by the property’s purchaser, PNG 1, LLC (owned by SunCal) and involves the current owner (PS Country Club, LLC), the assignee upon the property’s sale (Serena 386, LLC) and the City of Palm Springs. The owner authorized SunCal to submit the subject application on their behalf and staff met with the purchaser’s legal counsel to discuss the revised terms related to the Development Agreement Fee, Property Maintenance and Security, Performance Schedule and Assessment District Financing. The outcome of these discussions is described in further detail below.

**Development Agreement Fee.** When the Development Agreement was approved, a Development Agreement Fee of \$3,000,000 was required and scheduled for remittance to the City no later than November 1, 2021. With the 2021 Amendment, a portion of this Fee (\$500,000) was due and paid November 1, 2021, and the balance of \$2.5-million was due by November 1, 2022 but never paid. Staff requested that the outstanding balance be increased to account for the lost value of this Fee over time. The Amended Development Agreement Fee increases the amount due by \$700,000, for an outstanding balance due of \$3,200,000. Section 4.01 of the proposed Amendment specifies timeframes for submitting this outstanding balance with due dates starting by June 30, 2025 and concluding by November 30, 2027, and may be paid as lots are sold to third-party builders or as permits are issued for lots.

**Performance Schedule.** With most milestones missed in the Amended Development Agreement, Section 4.03 of the proposed Amendment provides for a new schedule, which is identified as Exhibit 2 and includes the following milestones:

<b>DATE</b>	<b>ACTIVITY</b>	<b>NOTE</b>
June 2025	Ready to record Phase 1A Map 51 Lots	
June 2025	Ready to Record Phase 1B Map 29 Lots	Park built this phase
March 2026	Ready to Record Phase 2 Map 61 Lots	
September 2026	Ready to Record Phase 3A Map 57 Lots	
January 2027	Ready to Record Phase 3B Map 31 Lots	
May 2027	Ready to Record Phase 4A Map 43 Lots	
May 2027	Ready to Record Phase 3C Map 20 Lots	
November 2027	Ready to Record Phase 4B Map 92 Lots	



**Property Maintenance and Security.** Property maintenance and security plans are proposed to be memorialized in the proposed Amendment. Section 4.04 provides minimum requirements for maintaining and securing the property, including monthly removal of trash, debris and graffiti (see Section 4.04.01), annual application of dust control sealant of the property (see 4.04.02), installation of surveillance cameras (see 4.04.03), daily patrols (4.04.04), and new “No Trespassing” signs (4.04.05).

**Assessment District Financing.** The Applicant requested the City to accept Community Facilities District (CFD) financing or other similar financing mechanism such as the Statewide Community Infrastructure Program (SCIP), to reimburse the Developer for public facilities costs for infrastructure to be owned by the City or other public agencies, and associated developer impact fees. Section 4.02 of the proposed agreement identifies the City cooperating in these efforts and proposes a Financing Plan as Exhibit 1 to the proposed Agreement.

While the City hasn’t regularly used this type of financing in the past, there are benefits to allowing this form for financing for the project. The SCIP program provides competitive bond financing that can minimize local agency staff time, due to it primarily being administered by the California Statewide Communities Development Authority (CSCDA). Additionally, the City Council adopted a resolution in 2014 authorizing the City to join the Statewide Community Infrastructure Program (“SCIP”) and further authorized the CSCDA to accept applications from property owners, conduct special assessment proceedings, and levy assessments within Palm Springs (Resolution No. 23671).

**FINDINGS – DEVELOPMENT AGREEMENT (Case DA-2024-0002):**

Section 94.08.00(A)(12)(b) of the Palm Springs Zoning Code (PSZC) requires that the Planning Commission consider five criteria when recommending a Development Agreement to the City Council. Staff has evaluated these criteria 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 Land Use Element of the General Plan identifies the project site as “Very Low Density Residential,” which permits a density of 2.1 to 4.0 dwelling units permit acre. The Serena Park project entitlements remain consistent with this designation and provide for 386 residential dwellings over 126-acres of land (or roughly 3 dwelling units per acre), and the requested revisions to the Amended Development Agreement will provide revised terms for performance and financing timelines of project. It will not alter previously approved land uses or density. The modifications will not result in inconsistencies to any objectives, policies, general plan land uses or programs.</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 uses will not be affected by the proposed amendment. The Development Agreement remains the same for the subject property and permits 386 residential units, streets, and park space.</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 Development Agreement remains consistent with the previously approved entitlements, which will allow attached and detached residential units that are compatible with adjacent and surrounding residential developments in the vicinity. The proposed amendment will memorialize maintenance and security measures to improve the general welfare of adjacent residents.</p>	Y
4.	<p><i>The development agreement will not be detrimental to the health, safety and general welfare;</i></p> <p>The proposed amendment to the Development Agreement will establish new terms for the Performance Schedule, payment of the Development Agreement Fee and memorialize obligations for site maintenance and security. The project benefits will still occur, including removal of blight and improvement of park space. Therefore, the development agreement is not anticipated to be detrimental to the health, safety and general welfare.</p>	Y
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 will permit orderly development of single-story homes in a density that is compatible with surrounding development patterns. The proposed amendment will only affect the time in which said development occurs, which is not anticipated to adversely affect the preservation of property values.</p>	Y

ENVIRONMENTAL ANALYSIS:

On September 7, 2016, the City Council adopted Resolution No. 24082, certifying the Environmental Impact Report (EIR) for the Serena Park project, as required by the California Environmental Quality Act (CEQA). The EIR is the controlling environmental document for the overall project, including the proposed Amendment to the Development Agreement. The preparation of further environmental documentation is not necessary because none of the circumstances triggering further environmental review have occurred since the adoption of the EIR:

- (i) There are no substantial changes in the project requiring major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

- (ii) There are no substantial changes with respect to the circumstances under which the project is being undertaken which will require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; and
- (iii) There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified showing that:
  - (a) The project will have one or more significant effects not discussed in the EIR;
  - (b) Significant effects previously examined will be substantially more severe than shown in the EIR;
  - (c) Mitigation measures previously found not feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the mitigation measures have not been adopted; or
  - (d) Mitigation measures considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment, but the mitigation measures have not been adopted.

Accordingly, no further environmental review is required, pursuant to § 15162 of the California Environmental Quality Act.

**CONCLUSION:**

With the potential sale of the property, the applicant seeks to amend certain terms of the Amended Development Agreement, including a new performance schedule, memorialized maintenance/security obligations, and assessment district financing. The City will receive the outstanding balance owed of the Development Agreement Fee, plus nearly 25% of the balance owed. With the analysis of the findings in this report, staff recommends the Planning Commission recommend City Council approve the proposed amendment to the Amended Development Agreement.

**REVIEWED BY:**

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

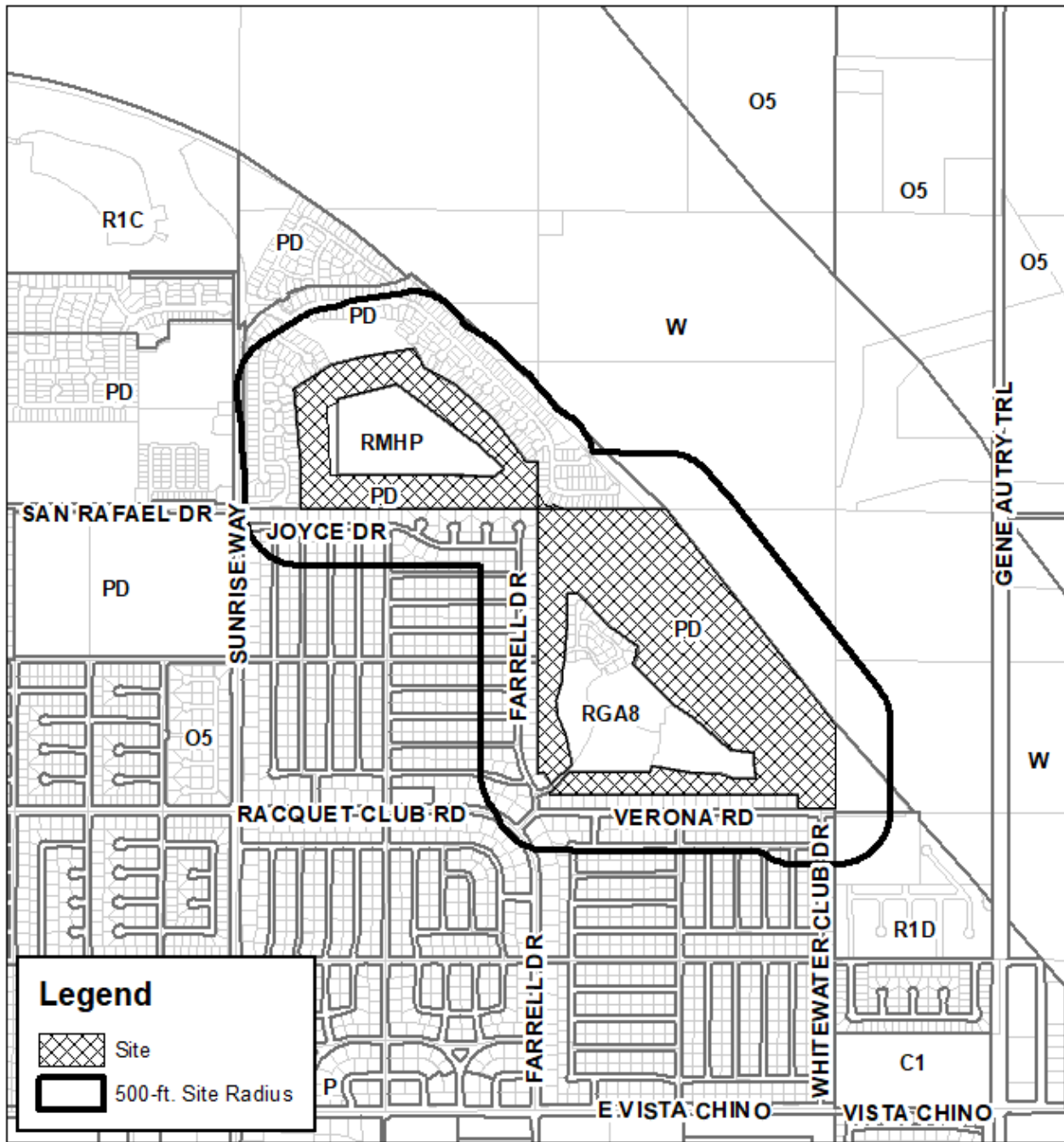
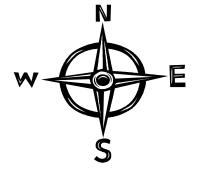
**ATTACHMENTS:**

1. Vicinity Map
2. Aerial Map
3. Draft Amendment to Development Agreement
4. Draft Resolution
5. Justification Letter
6. Public Integrity Disclosure Forms
7. Approved First Amended and Restated Development Agreement
8. Approved Development Agreement
9. 2021 Maintenance and Security Plan
10. Public Comment Letters



# **ATTACHMENT #1**



# Department of Planning Services Vicinity Map



**Legend**

-  Site
-  500-ft. Site Radius

## CITY OF PALM SPRINGS

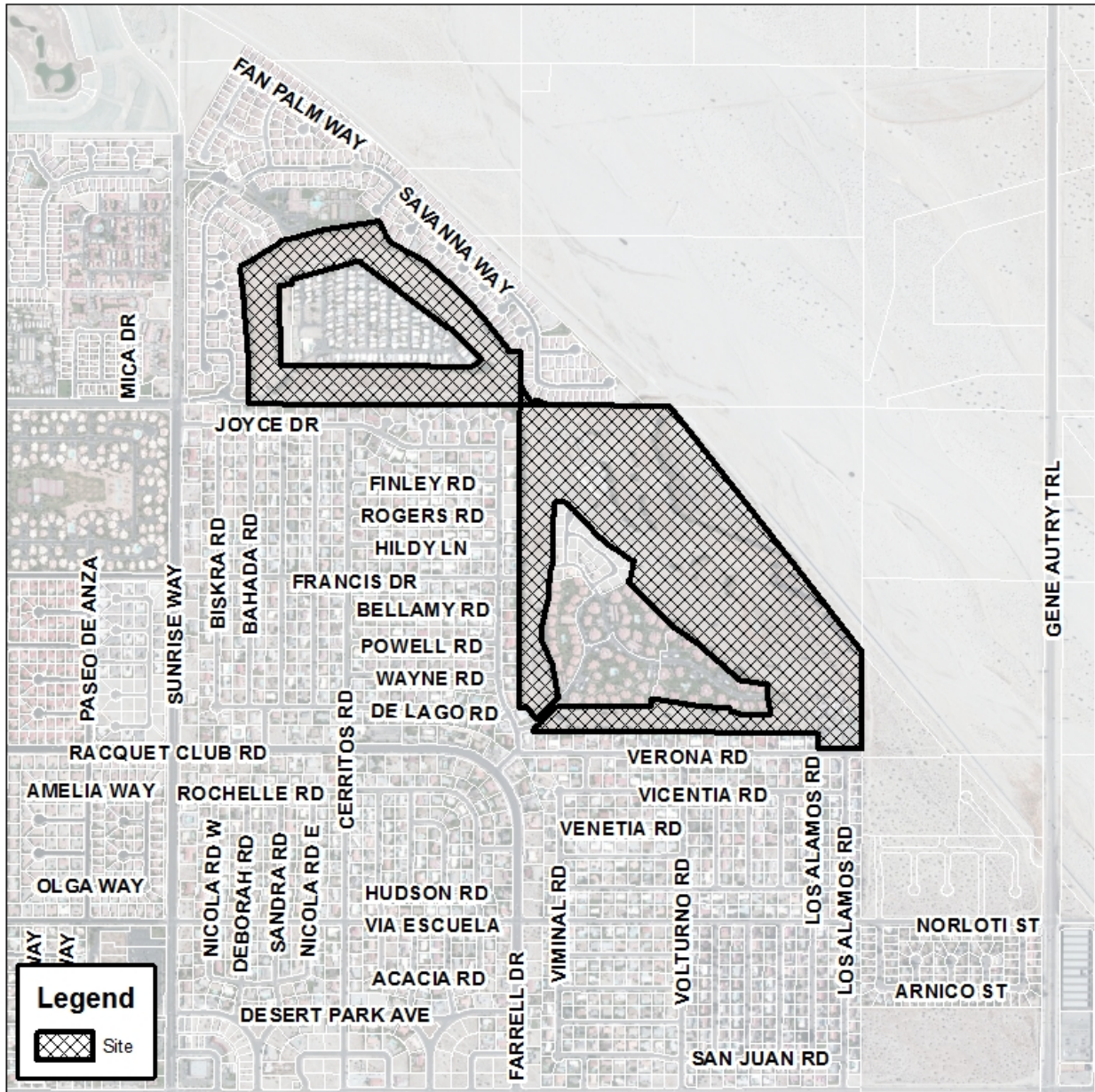
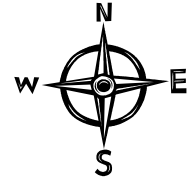
Development Agreement, Case No. DA-2024-0002  
PS COUNTRY CLUB, LLC AND PNG1, LLC



# **ATTACHMENT #2**



# Department of Planning Services Aerial Map



## CITY OF PALM SPRINGS

Serena Park Development Agreement  
Amendment, Case DA-2024-0002

# **ATTACHMENT #3**

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**

SPACE ABOVE FOR RECORDER'S USE ONLY

Pursuant to Government Code Section 6103, recording fees shall not apply

**FIRST AMENDMENT TO  
FIRST AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT BY AND BETWEEN**

**CITY OF PALM SPRINGS**

**AND**

**PS COUNTRY CLUB, LLC,  
A CALIFORNIA LIMITED LIABILITY COMPANY**

**AND**

**SERENA 386, LLC, A CALIFORNIA LIMITED LIABILITY  
COMPANY**

**FOR**

**SERENA PARK PROJECT  
CASE NO. 5.1327, PDD-366, TTM36691**

**THIS AREA FOR  
RECORDER'S**

# USE ONLY

## FIRST AMENDMENT TO THE FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT

THIS FIRST AMENDMENT TO FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT (this "Amendment") is entered into by and between the City of Palm Springs, a California Charter City and municipal corporation, ("City"), PS Country Club, LLC, a California Limited Liability Company ("PS Country Club"), and Serena 386, LLC, a California Limited Liability Company ("Serena 386" or "Developer"), pursuant to California Government Code § 65864 *et seq.*

### RECITALS

A. First Amended and Restated Development Agreement. On October 14, 2021, the City approved Agreement No. A9378, the First Amended and Restated Development Agreement between the City and PS Country Club, later executed by both parties ("Development Agreement"). The Development Agreement amended and restated a previous development agreement between the Parties.

B. In 2022, the City declared PS Country Club to be in default of the Development Agreement.

C. PS Country Club is in escrow to sell the development to SERENA 386/Developer. SERENA 386/Developer will not consummate the transaction without the City's approval of this Amendment.

D. The City's approval of this Amendment is contingent upon the acquisition of the project by SERENA 386/Developer. In such event:

1. City hereby approves the assignment of the Development Agreement to SERENA 386/Developer. Upon close of escrow, SERENA 386 shall assume all obligations of "Developer" pursuant to the Development Agreement, as amended.

2. City and SERENA 386/Developer intend to modify and restate all maintenance obligations concerning the Property while the Property is owned by Developer. Any and all prior oral or written commitments by PS Country Club to maintain the Property, including but not limited to a LANDSCAPE GROUND MAINTENANCE AGREEMENT dated December 12, 2012, and any settlement agreement between the parties, are hereby terminated and replaced with the maintenance requirements contained herein.

H. Planning Commission – Council Findings. The approval of this Amendment 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 any applicable 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;
- e. Will not adversely affect the orderly development of property or the preservation of property values.

## **AMENDMENT**

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. DEVELOPMENT AGREEMENT.**

Section 1.01. Development Agreement. All terms and definitions contained within the Development Agreement shall apply in this Amendment and remain in full force and effect unless specifically amended in this Amendment.

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

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

### **ARTICLE 3. EFFECTIVE DATE**

Section 3.01. Effective Date of this Amendment. This Amendment shall become effective as of the date PS Country Club sells the project to Developer (i.e. the close of escrow) (the "Amendment Effective Date").

### **ARTICLE 4. AMENDMENTS TO THE DEVELOPMENT AGREEMENT.**

Section 4.01. Development Agreement Fee. Section 4.03 e. of the Development Agreement is hereby deleted and replaced as follows:

"e. The Development Agreement Fee ("DA Fee") was established at Three Million Dollars (\$3,000,000) in the Development Agreement. In 2021, Developer paid Five Hundred Thousand Dollars (\$500,000) towards the DA Fee. The balance of the DA Fee of Two Million Five Hundred Thousand Dollars (\$2,500,000) was due no later than November 1, 2022, but was not paid by Developer. The Parties

agree to a new Development Agreement fee in the amount of Three Million Two Hundred Thousand Dollars (\$3,200,000) (“Amended DA Fee”). The Amended DA Fee is in addition to any amount previously paid towards the DA Fee. Unless paid sooner, the Amended DA Fee shall be paid no later than the following dates:

- i. \$663,212 (80 lots) on or before June 30, 2025
- ii. \$505,699.76 (61 lots) on or before March 31, 2026
- iii. \$472,539.12 (57 lots) on or before September 30, 2026
- iv. \$256,994.96 (31 lots) on or before January 31, 2027
- v. \$522,280.08 (63 lots) on or before May 31, 2027
- vi. \$762,703.92 (92 lots) on or before November 30, 2027

If development lots are sold to third-party builders or building permits are issued prior to the payment of the Amended DA Fee (or the *pro rata* amount of the Amended DA Fee for such lots), the Amended DA Fee shall be paid by Developer such that as construction of the Project occurs, and either *(i)* developed lots are sold to third-party builders, or *(ii)* building permits are issued for construction of residential dwelling units, the Developer shall pay to City a *pro-rata* portion of the unpaid principal at the time vacant lots are sold to third-party merchant builders or building permits are issued for construction of residential dwelling units. Each payment to the City shall take place within ten (10) business days following any sale of developed lots to a third-party builder, or concurrent with and as a condition precedent to the City issuance of a building permit. The *pro-rata* portion of the Amended DA Fee shall be calculated as the total Amended DA Fee divided by the total number of residential dwelling units ( $\$3,200,000 / 386$ ), for a per lot fee of \$8,290.16 (“Pro-rate Per Lot Fee”).”

Section 4.02. Infrastructure Financing. City acknowledges that the success of the Project may require the establishment of a Community Facilities District (“CFD”) or other similar alternative financing mechanism (i.e. Statewide Community Infrastructure Program (“SCIP”) (“Financing District”) to reimburse the Developer for public facilities costs for infrastructure to be owned by the City or other public agencies, and associated developer impact fees. At Developer's request, City shall cooperate with Developer in the establishment of an assessment district(s), community facilities district(s) or other public financing mechanism to finance any necessary public improvements for the Project substantially consistent with the financing plan (“Financing Plan”) set forth in Exhibit “1”.

Section 4.03. Exhibit D. Exhibit “D”, incorporated into the Development Agreement in Section 7.09 c. thereof, is deleted and replaced in its entirety with a new Exhibit “D”, attached hereto as Exhibit “2” to this Amendment.

Section 4.04. Property Maintenance Obligations. During the term of the Development Agreement, so long as Developer owns the Property, or any portion thereof, Developer shall be responsible to maintain the Property as set forth below.

4.04.01. Trash, Debris & Graffiti. No less than once per month,

Developer shall ensure the removal of all trash, debris and graffiti from the Property.

4.04.02. Dust Control. The Parties recognize that the area surrounding the Property is affected by blown dust and sand during wind events. The Parties also recognize that the area is adjacent to stormwater facilities that can also be the cause of dust and sand during wind events. So long as Developer applies a chemical soil stabilizer or binder no less than once annually, Developer shall not be deemed the cause of wind blown dust or sand in the area. Developer shall, within thirty (30) days of notification from City, re-apply a chemical soil stabilizer or binder more frequently than annual re-applications if the City notifies Developer that an area has been disturbed and the previously applied stabilizer/binder is no longer effective.

4.04.03. Surveillance Cameras. Within 60 days following the Amendment Effective Date, Developer shall install surveillance cameras at no less than four on-site locations, as designated by the City, and maintain their operation until home construction begins at each location. Each camera shall have video recording capabilities enabled 24 hours, seven day per week. Developer shall maintain video recordings of all four cameras for a rolling fourteen (14) day period, which recordings shall be made available to the City, upon request. If the Project is built in phases, City and Developer can mutually agree to reduce the number of cameras as each phase is built.

4.04.04. Patrols. Developer shall contract with a company to provide daily patrols of the Property to provide a deterrence to trespassers and inform Developer of any maintenance or disturbance issues witnessed at the Property.

4.04.05. Signs. "No trespassing" signs shall be posted and maintained by Developer at the three vehicular access point to the property (Verona/Whitewater, San Rafael/Golden Sands and Francis terminus) and no less than four locations along easterly boundary along the stormwater channel.

4.04.06. Contact Person. Developer shall designate a contact person who, at any time during normal business hours, is available to respond to calls or complaints from the City or neighbors concerning the Property's condition. This individual is responsible for promptly and effectively coordinating the correction of any observed violations of the Property Maintenance Obligations in this Amendment.

4.04.07. Default of Property Maintenance Obligations. Developer shall be in default of these Property Maintenance Obligations if a violation occurs, the City provides written notice to Developer to correct the violation, and the violation is not corrected by Developer within thirty (30) days for the Dust Control measure (Section 4.04.02) and seventy two (72) hours for all other property maintenance obligations.

Section 4.05. Additional Project Entrance. Developer agrees to cooperate with City in providing for a third additional vehicular entrance to the Project.

Section 4.06. Miscellaneous.

Section 6.06.01. Enforceability. The Parties agree that unless this Amendment is amended or terminated pursuant to the provisions of the Development Agreement, as amended, this Amendment 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 as of the Amendment Effective Date, as provided by California Government Code Section 65866.

Section 6.06.02. Severability. If any term or provision of this Amendment, or the application of any term or provision of this Amendment 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 Amendment, or the application of this Amendment 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 Amendment, 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 Amendment by providing written notice of such termination to the other party.

Section 6.06.03. 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 or this Amendment and to provide and secure to the other party the full and complete enjoyment of its rights and privileges hereunder.

Section 6.06.04. Construction. Each reference in this Amendment to this Amendment or any of the Project Approvals shall be deemed to refer to the Amendment 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 Amendment has been reviewed and revised by legal counsel for City, PS Country Club and Developer, respectively, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Amendment.

Section 6.06.05. 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 Amendment, the signer obligations are joint and several.

Section 6.06.06. Covenants Running with the Land. All of the provisions contained in this Amendment 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 Amendment 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 6.06.07. Entire Agreement, Counterparts and Exhibits. This Amendment is executed in duplicate, each of which is deemed to be an original. This Amendment consists of 9 pages and two exhibits which constitute, except for the Development Agreement, the full, final and exclusive understanding and amendment to the Development Agreement, and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof.

Section 6.06.08. Waiver. Any waivers of the provisions of this Amendment or any breach of covenants or conditions contained in this Amendment 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 6.06.09. Recordation of Development Agreement. No later than thirty (30) days after the Amendment Effective Date, the City Clerk shall record an executed copy of this Amendment in the Official Records of the County of Riverside.

Section 6.06.10. No Third Party Beneficiaries. 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, PS Country Club, and Developer, any rights, remedies, obligations or liabilities under or by reason of this Amendment.

Section 6.06.11. Titles of Parts and Sections. Any titles of the sections or subsections of this Amendment are inserted for convenience of reference only and shall be disregarded in interpreting any part of this Amendment's provisions.

Section 6.06.12. Discretion of City. City's execution of this Amendment 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 6.06.13. Representations of Authority. As to each person signing this Amendment on behalf of an entity, all necessary legal prerequisites to that party's execution of this Amendment have been satisfied and he or she has been authorized to sign this Amendment and bind the party on whose behalf he or she signs.



*[SIGNATURES ON NEXT PAGE]*

DRAFT

IN WITNESS WHEREOF, the City of Palm Springs California, a California Charter City and municipal corporation, has authorized the execution of this Development Agreement Amendment in duplicate by its City Manager and attestation by its City Clerk, and approved by the Council of the City on the \_\_ day of \_\_\_\_\_, 2024, and adopted by City Council Ordinance No. [\_\_\_\_], and PS Country Club and Developer have caused this Amendment to be executed by its authorized representative.

**“CITY”  
City of Palm Springs**

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

**APPROVED AS TO FORM:**

**ATTEST**

By: \_\_\_\_\_ By: \_\_\_\_\_  
Jeffrey S. Ballinger  
City Attorney  
Brenda Pree, MMC  
City Clerk

**APPROVED BY CITY COUNCIL:**

**Date: \_\_\_\_\_ Agreement No. \_\_\_\_\_**

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.

*[SIGNATURES CONTINUE ON NEXT PAGE]*

**“DEVELOPER”  
SERENA 386, LLC,  
a California limited liability company**

By \_\_\_\_\_ By \_\_\_\_\_  
Signature (Notarized) Signature (Notarized)  
\_\_\_\_\_  
Printed Name/Title Printed Name/Title

**“PS COUNTRY CLUB”  
PS Country Club, LLC,  
a California limited liability company**

By \_\_\_\_\_ By \_\_\_\_\_  
Signature (Notarized) Signature (Notarized)  
\_\_\_\_\_  
Printed Name/Title Printed Name/Title

DRAFT

## EXHIBIT "1"

### FINANCING PLAN

This Financing Plan sets forth the basic terms and conditions pursuant to which City and Developer will cooperate to establish a Community Facilities District or Community Facilities Districts (each, a "District") pursuant to the Mello-Roos Act to finance the acquisition or construction of certain public improvements in connection with the Project. Capitalized terms not otherwise defined in this Financing Plan shall be defined as provided in the Development Agreement ("Agreement").

1. Objectives. The principal objectives of this Financing Plan are to:
  - a. Provide City and Developer reasonable certainty that any District will be established in accordance with the Goals and Policies, except as any specific goal or policy may be explicitly supplemented, amended or waived as set forth herein.
  - b. Provide for the issuance of bonds by or for the District or Districts or any Improvement Areas (defined below) therein in one or more series in order to minimize carrying costs and improve overall bondholder security.
  - c. Implement and document certain determinations by City pursuant to the Goals and Policies.

To the extent this Financing Plan is inconsistent with other parts of the Agreement to which this Financing Plan is an exhibit, the provisions of this Financing Plan shall govern.

2. Formation. City shall initiate proceedings to establish a District, upon Developer's written request and submittal of the City's standard application form and receipt of an advance from the Developer in an amount determined by the City to pay for the City's estimated costs to be incurred in undertaking the proceedings to establish the District ("Formation Proceeding Costs"). City agrees that all such advanced City costs incurred in connection with the formation of such District shall be eligible for reimbursement out of the first available District bond proceeds and/or special taxes. The exact terms and conditions for the advance of funds by Developer and the reimbursement of such advances as mutually agreed upon shall be memorialized in a separate agreement between the City and the Developer. City agrees to use its best efforts to complete the proceedings to form such District and record the notice of special tax lien within two hundred ten (210) days after City's receipt of Developer's complete application and deposit. In the event such District is not or cannot be formed by the City or bonds cannot be issued for such District to finance the facilities as provided for in this Financing Plan due to unforeseen changes in state or federal law or other reasons, City shall reasonably cooperate with Developer in using the Statewide Community Infrastructure Program ("SCIP") or other community facilities district financing program available through the California Statewide Communities Development Authority to finance, acquire, and/or construct the public improvements described herein.

3. Boundary. The District boundary shall encompass the Project and may contain multiple improvement areas (each, an “Improvement Area”) based on phasing of the Project. It is currently contemplated that the District will contain both residential and non-residential land uses and may be subject to the levy of special taxes by the District as set forth herein.

4. Eligible Public Facilities and Discrete Components and Fee Facilities. Subject to the condition set forth in the following paragraph, the City will authorize the District to finance the following types of public improvements (“Eligible Public Facilities”) and fee facilities (“Fee Facilities”) which by the approval of the Agreement City has determined are consistent with the Goals and Policies or constitute an approved exception to the Goals and Policies for the Project may include, but is not limited to the following Eligible Public Facilities:

- a. Public Streets and other related improvements within public right of way
- b. Potable and Non-Potable Water Facilities
- c. Sewer Facilities
- d. Dry Utilities
- e. Public Parks, Open Space and Landscaping
- f. Storm Water Drainage, Retention and Detention Facilities
- g. Fire Facilities, Police Facilities and other Government Facilities

The Eligible Public Facilities shall be financed with the proceeds of special taxes and/or bonds of the District (“District Proceeds”) regardless of the Improvement Area(s) from which such District Proceeds are derived. Costs of the Eligible Public Facilities to be constructed by Owner that are eligible to be financed with District Proceeds are as follows:

- (i) The actual hard costs for the construction or the value of an Eligible Public Facility, including labor, materials and equipment costs;
- (ii) The costs of grading related to an Eligible Public Facility;
- (iii) The costs incurred in designing, engineering and preparing the plans and specifications for an Eligible Public Facility;
- (iv) The costs of environmental evaluation and mitigation of or relating to the Eligible Public Facility;
- (v) Fees paid to governmental agencies for, and costs incurred in connection with, obtaining permits, licenses or other governmental approvals, including the Amended DA Fee (if eligible), for an Eligible Public Facility;



(vi) Costs of construction administration and supervision up to five percent (5.0%) of the total cost of the Eligible Public Facility;

(vii) Professional costs associated with each Eligible Public Facility, such as engineering, legal, accounting, inspection, construction staking, materials and testing and similar professional services;

(viii) Costs of payment, performance and/or maintenance bonds and insurance costs directly related to the construction of an Eligible Public Facility; and

(ix) Fee Facilities includes all fees established and imposed upon the Project by the City or any other participating agencies.

City and Developer agree that “Discrete Components” of each Eligible Public Facility may be approved for payment from District Proceeds in an amount equal to actual cost of the Discrete Component less a 25% retention, and that City shall not accept an Eligible Public Facility of which a Discrete Component is a part, or pay any prior retention relating to such Discrete Component, until the entire Eligible Public Facility has been completed. Each Discrete Component is a component of an Eligible Public Facility that City has agreed can be separately identified and/or inspected. City acknowledges that a Discrete Component that consists of construction or installation work does not have to be accepted by City as a condition precedent to the payment of acquisition thereof, but City shall not be obligated to make such payment until such Discrete Component has been “substantially completed,” which shall mean that it is substantially complete for its intended use in accordance with its plans and specifications, notwithstanding any final “punch list” items still required to be completed. Master Developer shall be entitled to make a separate payment request to City for the costs of final “punch list” items and other eligible costs not previously reimbursed upon completion of such work.

The Eligible Public Facilities shall be bid, contracted for and constructed in accordance with a funding and acquisition agreement (“Acquisition Agreement”) to be entered into between City and Developer at the time of formation of the District. The Acquisition Agreement shall provide additional detail, consistent with the provisions of this Development Agreement, with respect to the District and the acquisition and construction of the Eligible Public Facilities with District Proceeds.

5. Financing Parameters. City agrees to levy special taxes of the District and issue District bonds in one or more series to finance the acquisition and construction of the Eligible Public Facilities using the parameters set forth below:

a. A precondition to the issuance of bonds shall be that the value of the real property subject to special taxes required to repay the bonds shall be at least three (3) times the amount of the bonds and any other governmentally-imposed land-secured debt (excluding any proceeds of the bonds to be deposited in an escrow fund); provided, however, that City, its bond counsel, its financial advisor and the underwriter of the bonds do not view such ratio as posing an unusual credit risk. In order to reduce issuance, administrative and interests costs, provide certainty as to the availability of the proceeds

of the bonds to fund the Eligible Public Facilities, and facilitate efficiency in such funding and the construction of the Eligible Public Facilities, bonds may be issued and a portion of the proceeds escrowed that is reasonably expected by the City to be released within three (3) years pending increases in the value of property subject to special taxes to achieve a 3:1 value-to-lien ratio.

b. Each series of bonds shall have a minimum term of thirty (30) years; provided, however, the term of any individual series of bonds may be less than thirty (30) years if the District's authority to levy the special taxes securing the payment of such bonds or the underwriting conditions in the market for land secured bonds at the time of the issuance of such bonds require the issuance of such bonds with a shorter term.

c. Each series of bonds may include up to eighteen (18) months of capitalized interest or such other lesser amount as may be requested by Developer.

d. Each series of District bonds to be issued for an Improvement Area shall be sized based upon the estimated annual special tax revenues from such Improvement Area at build-out being equal to one hundred ten percent (110%) of (i) annual debt service, plus (ii) priority annual administrative expenses. Priority administrative expenses shall not exceed \$20,000 for the first series of bonds issued for an Improvement Area.

e. The total effective tax rate within each Improvement Area applicable to any residential parcel on which a residential dwelling has or is to be constructed, taking into account all ad valorem property taxes, voter-approved ad valorem property taxes in excess of one percent (1%) of assessed value, the annual special taxes of existing community facilities districts and community facilities districts under consideration and reasonably expected to be established, the annual assessments (including any administrative surcharge) of existing assessment districts and assessment districts under consideration and reasonably expected to be established, and the special taxes of the District, shall not exceed two percent (2.00%) of the projected initial sales price of the residential dwelling unit and such parcel, as projected at the time of District formation.

f. Special taxes shall be levied on Developed Property within an Improvement Area at the maximum assigned special tax rate prior to the issuance of bonds to finance the Eligible Public Facilities. "Developed Property" means a parcel for which a building permit has been issued. "Undeveloped Property" shall mean all other taxable property. Special Taxes may be levied on Undeveloped Property within an Improvement Area only after the issuance of bonds and only to the extent the annual debt service on the bonds, administrative expenses, the delinquency rate for special taxes levied in the previous fiscal year within the Improvement Area for all subsequent fiscal years in which the special taxes are levied, and the reserve fund replenishment amount is not able to be paid in full from Developed Property special taxes levied and collected within the applicable Improvement Area.

g. Any affordable housing units, rental units or non-residential land uses may, at Developer's option, be exempted from special taxes of the District.

h. Full or partial prepayment of the special taxes shall be permitted.

i. As permitted by the Goals and Policies, at Developer's election at the time of submittal of its written request, the City shall allow the special taxes within an Improvement Area to escalate by two percent (2%) per year and debt service on the bonds to escalate at the same rate as the special tax escalation.

DRAFT

**EXHIBIT “2”**

*REPLACES EXHIBIT “D” OF DEVELOPMENT AGREEMENT*

**SERENA PARK**

**DEVELOPMENT AGREEMENT PERFORMANCE SCHEDULE**

<b>DATE</b>	<b>ACTIVITY</b>	<b>NOTE</b>
June 2025	Ready to record Phase IA Map 51 Lots	
June 2025	Ready to Record Phase IB Map 29 Lots	Park built this phase
March2026	Ready to Record Phase 2 Map 61 Lots	
September 2026	Ready to Record Phase 3A Map 57 Lots	
January 2027	Ready to Record Phase 3B Map 31 Lots	
May 2027	Ready to Record Phase 4A Map 43 Lots	
May2027	Ready to Record Phase 3C Map 20 Lots	
November 2027	Ready to Record Phase 4B Map 92 Lots	

# **ATTACHMENT #4**

## RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA, RECOMMENDING CITY COUNCIL APPROVAL OF AN AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE SERENA PARK PROJECT – A RESIDENTIAL DEVELOPMENT CONSISTING OF 386 UNITS, STREETS AND PARK SPACE LOCATED ON 126 ACRES OF LAND LOCATED EAST OF SUNRISE WAY, NORTH OF VERONA ROAD AND SOUTHWEST OF THE WHITEWATER RIVER WITHIN SECTIONS 1 AND 36.

THE PLANNING COMMISSION FINDS AND DETERMINES AS FOLLOWS:

A. PNG1, LLC and PS Country Club, LLC (“Applicant”) have filed an application (Case DA-2024-0002) with the City, pursuant to the Section 94.08.00 of the Zoning Code, for a modification to an approved Development Agreement (Case 5.15327 DA AMEND) for the Serena Park Project located on 126 acres of land formerly operated as the Palm Springs Golf Course within Sections 1 and 36, currently identified as APNs: 501-190-002, 501-190-011, 669-480-027, 669-590-066 (the “Project” also known as Serena Park). Among other terms, the proposed amendment (Case DA-2024-0002) provides an increased Development Agreement Fee (from balance owed of \$2.5-million to \$3.2-million), a memorialized property maintenance obligation, a revised Performance Schedule and the City’s cooperation in forming a community facilities district (or similar) to assist with financing of infrastructure and development impact fees.

B. On September 7, 2016, the City Council held a public hearing on the Project and approved the following actions:

1. Adopted Resolution No. 24082, certifying an Environmental Impact Report for the Project
2. Adopted Resolution No. 24083, approving a General Plan Amendment to modify land use designation from "Open Space - Parks/Recreation" to "Very Low Density Residential"
3. Adopted Resolution No. 24084, approving a Major Architectural Application (Case 5.1327, PDD-366/MAJ)
4. Adopted Resolution No. 24085 approving Tentative Tract Map 36691, and
5. Adopted Ordinance No. 1898 approving Planned Development District (PD-366) in lieu of a change of zone

The approvals included Administrative Condition #13, which states:

*Development Agreement. Approval of these land use entitlement applications is contingent upon the approval of a development agreement. The development agreement shall address the conversion of open space for development purposes, through in-kind replacement of open space, payment of in-lieu fees for the acquisition of open space, or replacement of*

*open space through a density transfer, pursuant to Policy LU2.2 of the City of Palm Springs General Plan.*

C. On July 19, 2017, the Council held a public hearing and approved a Development Agreement by Ordinance #1931 for the Project.

D. On October 17, 2018, in response to a request from the Applicant for a proposed revision to the Development Agreement related to the manner in which the Development Agreement Fee is required and paid, the Council held a public hearing and approved a proposed amendment to the Development Agreement.

E. The Development Agreement was recorded on March 14, 2019 with the County of Riverside Clerk.

F. On October 14, 2021, the City Council conditionally approved a Development Agreement Amendment for the Serena Park project by adopting Ordinance No. 2051. This amendment revised the Performance Schedule for construction, modified the payment dates of the Development Agreement Fee, memorialized phasing of utility undergrounding and approved other minor revisions. Related to this Development Agreement Amendment (identified as the First Amended and Restated Development Agreement), the following occurred:

1. On November 1, 2021, PS Country Club, LLC remitted \$500,000 of the Development Agreement Fee to the City.
2. On December 9, 2021, a Maintenance and Security Plan was accepted by the City Council.
3. On September 21, 2022, due to a failure to comply with the agreed upon the Performance Schedule and Maintenance and Security Plan, the City notified the owner of default of the terms of the First Amended and Restated Development Agreement. In response, the owner improved efforts to maintain the property, but has yet to commence construction and pay the remaining balance due (\$2.5-million) of the Development Agreement Fee.

G. On May 22, 2024, a public hearing to consider the subject application, Case DA-2024-0002, was held by the Planning Commission in accordance with applicable law. At said meeting, the Planning Commission 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.

H. The proposed Amendment is considered a “project” as defined by the California Environmental Quality Act (“CEQA”), Public Resources Code Section 21000 et. seq. The preparation of further environmental documentation is not necessary because none of the circumstances triggering further environmental review have occurred since the adoption of the EIR:

- (i) There are no substantial changes in the project requiring major revisions of the EIR due to the involvement of new significant environmental effects or a

- substantial increase in the severity of previously identified significant effects;
- (ii) There are no substantial changes with respect to the circumstances under which the project is being undertaken which will require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified effects; and
  - (iii) There is no new information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified showing that:
    - (a) The project will have one or more significant effects not discussed in the EIR;
    - (b) Significant effects previously examined will be substantially more severe than shown in the EIR;
    - (c) Mitigation measures previously found not feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but the mitigation measures have not been adopted; or
    - (d) Mitigation measures considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment, but the mitigation measures have not been adopted.

I. Pursuant to Section 94.08.00(A)(12)(b) of the Palm Springs Zoning Code, the Planning Commission must 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 Land Use Element of the General Plan identifies the project site as "Very Low Density Residential," which permits a density of 2.1 to 4.0 dwelling units permit acre. The Serena Park project entitlements remain consistent with this designation and provide for 386 residential dwellings over a 126-acres of land (or roughly 3 dwelling units per acre), and the requested revisions to the Amended Development Agreement will provide revised terms for performance and financing timelines of project. It will not alter previously approved land uses or density. The modifications will not result in inconsistencies to any objectives, policies, general plan land uses or programs.

*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 uses will not be affected by the proposed amendment. The Development Agreement remains the same for the subject property and permits 386 residential units, streets, and park space.



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

The Development Agreement remains consistent with the previously approved entitlements, which will allow attached and detached residential units that are compatible with adjacent and surrounding residential developments in the vicinity. The proposed amendment will memorialize maintenance and security measures to improve the general welfare of adjacent residents.

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

The proposed amendment to the Development Agreement will establish new terms for the Performance Schedule, payment of the Development Agreement Fee and memorialize obligations for site maintenance and security. The project benefits will still occur, including removal of blight and improvement of park space. Therefore, the development agreement is not anticipated to be detrimental to the health, safety and general welfare.

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

The agreement will permit orderly development of single-story homes in a density that is compatible with surrounding development patterns. The proposed amendment will only affect the time in which said development occurs, which is not anticipated to adversely affect the preservation of property values.

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. The proposed amendment does not require the preparation of further environmental documentation, pursuant to § 15162 of the California Environmental Quality Act.

SECTION 3. The Planning Commission recommends City Council approve the proposed amendment, Case DA-2024-0002, to the Development Agreement, Case 5.1327 DA AMEND, subject to the following:

ADOPTED this 22nd day of May, 2024.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

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Christopher Hadwin  
Director of Planning Services

# **ATTACHMENT #5**

April 25, 2024

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

Re: Serena Park DA Amendment  
Justification Letter

Dear Christopher:

This letter shall constitute the justification for the FIRST AMENDMENT TO FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT BY AND BETWEEN CITY OF PALM SPRINGS AND PS COUNTRY CLUB, LLC.

On July 26, 2017, the City of Palm Springs ("City") approved Ordinance No. 1931, approving the Development Agreement ("DA") for the Serena Park project, Case No. 5.1327 ("Project"). The DA was subsequently amended on October 17, 2018 to revise the security specified in the DA. The DA was subsequently recorded as amended on March 14, 2019.

On October 14, 2021, the City approved the FIRST AMENDED AND RESTATED DEVELOPMENT AGREEMENT by Ordinance No. 2051 which allowed the Project to pay \$500,000 of the DA fee by November 1, 2021 with balance of the DA fee of \$2,500,000 due by November 1, 2022. The Project paid the \$500,000 due by November 1, 2021 but subsequently failed to pay the balance of the DA fee due on November 1, 2022. With the failure to pay the balance of the DA fee, the City has considered the Developer to be in default of the DA.

The Developer has entered into escrow with PNG1, LLC ("SunCal") for SunCal to acquire the Project. SunCal cannot acquire the Project while the DA is considered in default. SunCal and City staff have negotiated a proposed amendment to the DA to allow SunCal to acquire the Project and provide a reasonable time frame to pay the DA to the City. Significantly, the proposed amendment increases the DA fee to the City by \$700,000, a nearly 25% increase.

The DA Amendment will provide both SunCal and the City a path forward to begin construction of the homes and ultimately the completion of the Project. Should you need further justification for the DA Amendment, please let me know.

Cordially,

  
Robert A. Bernheimer

# **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, or designee, 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 as the applicant entity (e.g. as a member of the 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 (ii) 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 the Office of the City Clerk, (760) 323-8206, [cityclerk@palmspringsca.gov](mailto:cityclerk@palmspringsca.gov).



## PUBLIC INTEGRITY DISCLOSURE APPLICANT DISCLOSURE FORM

1. Name of Entity
Serena 386, LLC
2. Address of Entity (Principle Place of Business)
3080 Bristol Street, Suite 630, Costa Mesa, CA 92626
3. Local or California Address (if different than #2)
--
4. State where Entity is Registered with Secretary of State
California
<i>If other than California, is the Entity also registered in California?</i> <input type="checkbox"/> Yes <input type="checkbox"/> No
5. Type of Entity
<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)
6. Officers, Directors, Members, Managers, Trustees, Other Fiduciaries (please specify) <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>
Suncal Serena, LLC _____ <input type="checkbox"/> Officer <input type="checkbox"/> Director <input checked="" type="checkbox"/> Member <input checked="" type="checkbox"/> Manager [name]
<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner
<input type="checkbox"/> Other _____
SP Serena Park LLC _____ <input type="checkbox"/> Officer <input type="checkbox"/> Director <input checked="" type="checkbox"/> Member <input type="checkbox"/> Manager [name]
<input type="checkbox"/> General Partner <input type="checkbox"/> Limited Partner
<input type="checkbox"/> Other _____
See Section 6 Supplement Attached _____ <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 _____

<b>7. Owners/Investors with a 5% beneficial interest in the Applicant Entity or a related entity</b>	
<b>EXAMPLE</b>  <i>JANE DOE</i>  <hr/> [name of owner/investor]	<i>50%, ABC COMPANY, Inc.</i>  <hr/> [percentage of beneficial interest in entity and name of entity]
<b>A.</b>  See Section 7 Supplement Attached  <hr/> [name of owner/investor]	<hr/> [percentage of beneficial interest in entity and name of entity]
<b>B.</b>  <hr/> [name of owner/investor]	<hr/> [percentage of beneficial interest in entity and name of entity]
<b>C.</b>  <hr/> [name of owner/investor]	<hr/> [percentage of beneficial interest in entity and name of entity]
<b>D.</b>  <hr/> [name of owner/investor]	<hr/> [percentage of beneficial interest in entity and name of entity]
<b>E.</b>  <hr/> [name of owner/investor]	<hr/> [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

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



**City of Palm Springs – Public Integrity Disclosure – Applicant Disclosure Form**

**Serena 386, LLC**

Section 6 Supplement – Business Entity Disclosure

Suncal Serena, LLC (15% managing member of Serena 386, LLC)

- PNG1, LLC (sole member)
  - Kendra Elieff (manager and sole member)
  - Jeffrey Benice (manager)
  - J. Randolph Poag (manager)

SP Serena Park LLC (85% member of Serena 386, LLC)

- SP Serena Parent LLC (sole member and manager)
  - Silverpeak Co-Invest LLC (sole member/manager)
    - Non-Member Managers: Brett Bossung and Mark Walsh
    - AD SP Holdings LLC (5% member)
      - Arash Dilmanian (sole 99% member/manager)
    - Silverpeak Capital V LLC (82.55% member/manager)
    - VARK Investments LLC (33.33% member)
      - Kaushik Amin (manager / 65.3949% direct & beneficial member)
      - Rosebud Elijah (34.6051% direct & beneficial member)
    - Silverpeak Capital Holdings LLC (66.67% member/manager)
    - Silverpeak Capital LLC (sole member/manager)
      - Brett Bossung and Kenneth Bossung (50% beneficial members)
      - Mark Walsh and Lisa Walsh (50% beneficial members)
    - No other member has 5% or more interest

Section 7 Supplement – Natural persons with beneficial financial interest in Serena 386, LLC

	<u>Name</u>	<u>Percentage of beneficial interest and name of entity</u>
A.	Kendra Elieff	100% PNG1, LLC
B.	Kaushik Amin	65.3939% VARK Investments LLC
C.	Rosebud Elijah	34.6051% VARK Investments LLC
D.	Brett Bossung	50% Silverpeak Capital LLC (with Kenneth)
E.	Kenneth Bossung	
F.	Mark Walsh	50% Silverpeak Capital LLC (with Lisa)
G.	Lisa Walsh	
H.	Arash Dilmanian	99% AD SP Holdings LLC

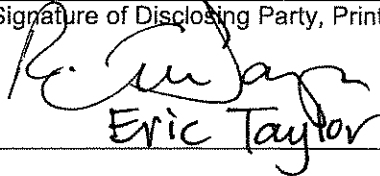


PUBLIC INTEGRITY DISCLOSURE
APPLICANT DISCLOSURE FORM

1. Name of Entity: PS COUNTRY CLUB LLC
2. Address of Entity (Principle Place of Business): 1200 No. Bundy Dr. Los Angeles CA 90024
3. Local or California Address (if different than #2): PO Box 78 Somis CA 93066
4. State where Entity is Registered with Secretary of State: CALIFORNIA
5. Type of Entity: Limited Liability Company
6. Officers, Directors, Members, Managers, Trustees, Other Fiduciaries (please specify): Eric Taylor, Behrooz Haverim, Matthew Haverim

7. Owners/Investors with a 5% beneficial interest in the Applicant Entity or a related entity	
EXAMPLE  JANE DOE	50%, ABC COMPANY, Inc.
[name of owner/investor]	[percentage of beneficial interest in entity and name of entity]
A. Eric Taylor	10%
[name of owner/investor]	[percentage of beneficial interest in entity and name of entity]
B. Matthew Haverim	5%
[name of owner/investor]	[percentage of beneficial interest in entity and name of entity]
C. Behrooz Haverim	85%
[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  Eric Taylor	Date 12.3.19
--	-----------------

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

# **ATTACHMENT #7**

**2024-0130895**

05/06/2024 11:52 AM Fee: \$ 0.00

Page 1 of 33

Recorded in Official Records  
County of Riverside  
Peter Aldana  
Assessor-County Clerk-Recorder



805

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

SPACE ABOVE FOR RECORDER'S USE ONLY

Pursuant to Government Code Section 6103, recording fees shall not apply

**FIRST AMENDED AND RESTATED  
DEVELOPMENT AGREEMENT BY AND BETWEEN**

**CITY OF PALM SPRINGS**

**AND**

**PS COUNTRY CLUB, LLC,  
A CALIFORNIA LIMITED LIABILITY COMPANY**

**FOR**

**SERENA PARK PROJECT  
CASE NO. 5.1327, PDD-366, TTM36691**

Title of Document

**THIS AREA FOR  
RECORDER'S  
USE ONLY**

**FIRST AMENDED AND  
RESTATED  
DEVELOPMENT AGREEMENT**

THIS FIRST AMENDED AND RESTATED 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 PS Country Club, LLC, a California Limited Liability Company ("Developer"), pursuant to California Government Code § 65864 *et seq.*

**RECITALS**

A. Development Agreement Statute. To strengthen the public planning process, encourage private participation in comprehensive planning, 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. 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 Ord. 1829 § 3, 2013; Ord. 1294, 1988 [PSMC § 94.08.00], that set forth 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 subject property.
- e. The execution of this Agreement furthers the public health, safety and general welfare of the community.
- f. This Agreement will remove a nuisance situation and potential liability due to the blight at no cost to City.
- g. This Agreement will protect residents and the City from the issues that typically accompany blighted areas.
- h. This Agreement will allow development of a blighted area with appropriate housing and open space that is compatible with the surrounding neighborhoods.
- i. This Agreement will reduce potential trespasses and nuisances affecting adjacent neighborhoods.



- j. This Agreement will reduce air pollution by reason of a significant reduction in wind borne dust and sand to adjacent neighborhoods.
- k. This Agreement will increase parkland in an underserved area of the City.
- l. This Agreement will allow legal commitments by Developer over and above those allowed by state law and the Palm Springs Municipal Code requirements.

C. Description of the Project and Project Site. Developer represents and warrants that it has a legal interest in certain real property as legally described in Exhibit A attached hereto (the "Project Site"). The residential project on the Project Site, along with all related public and private improvements and obligations, is the "Project."

D. Conversion of Open Space – Parks/Recreation Land. The Developer acknowledges the Project Site is currently designated as "Open Space – Parks/Recreation" in the City's adopted General Plan and is zoned as "Open Space" and is therefore subject to the City's Land Use Policy LU2.2 for the conversion of open space to developable areas. The Parties acknowledge the Developer shall cooperate with the City to secure the replacement of converted open space areas on the Project Site through the use of density transfer of property designated for residential development within the City.

E. Entitlements. Concurrent with the approval of this Agreement, City approved the following land use entitlements for the Project Site, which entitlements are also the subject of this Agreement:

- a. General Plan Amendment: From "Open Space – Parks/Recreation" (OS-P/R) to Very Low Density Residential (VLDR) for the residential portions of the project.
- b. Planned Development District in lieu of Change of Zone: From "Open Space" (0, 0-5) to Planned Development District (PDD).
- c. Tentative Tract Map: To subdivide the property into residential lots, privately owned common areas and a public park.
- d. Major Architectural Approval: Conceptual architectural and landscape plans will be part of the preliminary PDD.
- e. Transfer of Density Agreement: To cooperate in the transfer of residential density from the other areas in the City including the Chino Cone Specific Plan to the Project Site consistent with the provisions of the City's General Plan and the Chino Cone Specific Plan at the ratio of 1.2 units for each unit removed from the Chino Cone.

The above Entitlements have been approved subject to various conditions and requirements with which Developer will be required to comply in order to develop 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 additional infrastructure improvements requested by the City to assure development of the Project Site in accordance with the terms of this Agreement.

G. Vesting of Rights. 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 any applicable 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;
- e. Will not adversely affect the orderly development of property or the preservation of property values.

I. City Council Actions. City Council, after public hearings and extensive environmental analysis, approved the following entitlements:

- a. By Resolution No. 24083, dated September 7, 2016, amended City's General Plan Land Use Designation for the subject property from "Open Space – Parks/Recreation" (OS-P/R) to Very Low Density Residential (LDR) for the residential portions of the project.
- b. By Ordinance No. 1898, effective October 21, 2016, conditionally adopted the Planned Development District in lieu of Change of Zone, changing the zoning from "Open Space" (0, 0-5) to the Planned Development District (PDD-366).
- c. By Resolution No. 24085, dated September 7, 2016, conditionally approving Tentative Tract Map 36691, to subdivide the property into residential lots, privately owned common areas, and a public park.
- d. By Resolution No. 24083, dated September 7, 2016, conditionally approving Major Architectural Approval: Conceptual architectural and landscape plans.

J. Ordinance. On July 26, 2017, Council adopted Ordinance No. 1931 approving



this Agreement and authorizing the City Manager to execute the Agreement and its concomitant Transfer of Density Agreement. The Ordinance was effective on August 25, 2017; a copy of the Ordinance is attached hereto as Exhibit B. On October 14, 2021 following a duly noticed public hearing, the City Council adopted Ordinance No. 2051, approving this First Amended and Restated Development Agreement and authorizing the City Manager to execute this Agreement.

## **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**

- “Agreement” shall mean this First Amended and Restated Development Agreement by and between Developer and City, dated October 14, 2021. The original Development Agreement, dated November 1, 2018, was recorded .
- “Applicable Law” shall have that meaning set forth in Section 7.03 of this Agreement.
- “Changes in the Law” shall have that meaning set forth in Section 7.08 of this Agreement.
- “City” is the City of Palm Springs, a California Charter City and municipal corporation.
- “Conditions of Approval” shall have that meaning set forth in Section 4.04 of this Agreement.
- “Default” shall have that meaning set forth in Section 11.01 of this Agreement.
- “Default Notice” shall have that meaning set forth in Section 11.01 of this Agreement.
- “Deficiencies” shall have that meaning set forth in Section 10.02 of this Agreement. “Development Agreement Statute” shall have that meaning set forth in Recital A of this Agreement.
- “Developer” is PS Country Club, LLC, a California Limited Liability Company.
- “EIR” shall mean the Final Environmental Impact Report certified by City Council on September 7, 2016.
- “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 11.05 of this Agreement.
- “Force Majeure” shall have that meaning set forth in Section 11.05 of this Agreement.
- “Judgment” shall have that meaning set forth in Section 10.02 of this Agreement.
- “Project” is defined above.
- “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.
- “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, October 17, 2018 (the “Effective Date”).

Section 3.02. Term. The term of this Agreement (the “Term”) shall commence upon the Effective Date and continue for a period of twenty (20) years, 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 it will comply with this Agreement and with all Project Approvals. 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 Developer may discharge all of its obligation under the Agreement by agreeing to have all the property returned to an Open Space designation.

Section 4.02. Fees Paid by Developer. As a material consideration for the long term assurances and vested rights provided by this Agreement, Developer shall pay fees, exactions, and charges to City as set forth in the Project Approvals not to exceed the amounts specified in City Council adopted ordinances and resolutions as of the Effective Date ("City Fees"), per dwelling unit, structure, or improvement, for all fees and charges imposed by the City and payable no earlier than City's issuance of a building permit. The amount of the City Fees will be adjusted on the fifth, tenth, and fifteenth annual anniversary of the Effective Date to reflect and equal the City's fees then in effect on each such anniversary. The term "City Fees" as used in this Section 4.02 for the purpose of limiting the ability of the City to increase certain fees, exactions, and charges does not include fees or charges required or otherwise assessed by any public agency other than the City or a fee or charge levied by the City to fund an enterprise account, including without limitation the City's Sewer Fund or Engineering plan check fees. The City Fees shall be adjusted to include credits against any and all park fees, including but not limited to, Quimby Fees pursuant to California Government Code §66477, included in the City Fees, for the costs of both land and improvements provided by the Developer to build the public park.

Section 4.03. Public benefits provided by Developer.

- a. All conditions of approval of the Project adopted and accepted by the Developer.
- b. Reservation of lands for public use, owned and maintained by Developer or any successor HOA, in accordance with Exhibit C attached hereto.
- c. Construction of a portion of an alternate for the CV Link Trail from Verona Road and Whitewater Club Drive to Sunrise Way across development.
- d. Indemnification over and above the indemnification allowed under the Map Act.
- e. Payment of Development Agreement Fee over and above the fees referred to in paragraph 4.02, above, to be used by the City for acquisition of open space for the purposes of Developer's compliance with the City's General Plan Land Use Policy 2.2 in generating land use density for the subject property. The Development Agreement Fee shall be Three Million Dollars (\$3,000,000.00) paid to City, including Five Hundred Thousand Dollars (\$500,000) due no later than November 1, 2021 and the remainder of Two Million, Five Hundred Thousand Dollars (\$2,500,000) due no later than November 1, 2022. If development lots are sold to third-party builders or building permits are issued prior to one or more of those dates, the Development Agreement Fee shall be paid such that as construction of the Project occurs, and either *(i)* developed lots are sold to third-party builders, or *(ii)* building permits are issued for construction of residential dwelling units, the Developer shall pay to City a *pro-rata* portion of the unpaid principal at the time vacant lots are sold to third-party



merchant builders or building permits are issued for construction of residential dwelling units. Each payment to the City shall take place within ten (10) business days of any sale of developed lots to a third-party builder, or concurrent with City issuance of a building permit. The *pro-rata* portion of the Development Agreement Fee shall be calculated as the total Development Agreement Fee divided by the total number of residential dwelling units (\$3,000,000 / 386), for a per lot fee of \$7,772.02. By November 1, 2022, the entire unpaid principal on the Development Agreement Fee shall immediately become due and payable to the City. Failure to pay the initial Five Hundred Thousand Dollars (\$500,000) by November 1, 2021 or the remainder of the Development Agreement Fee by November 1, 2022, shall constitute a default pursuant to Section 11.01 of this Agreement, whereupon, in addition to such other remedies otherwise available to the City, the City may, in its sole discretion, withhold issuance of building permits or other ministerial approvals related to the Project Site, until such default is adequately cured to the City's satisfaction.

- f. Conversion of a portion of Golden Sands Drive from a private to a public street to match the current and projected use patterns and more fairly apportion the burden of maintenance and liability from the Four Seasons HOA.
- g. Developer will build and maintain a public park in the approximate location shown on Exhibit C. Prior to City acceptance of the Park improvements or final acceptance of any subdivision improvements for the Project, Developer shall assign all of its rights and obligations to the Homeowners' Association with responsibility over the Project to maintain the Park and to preserve public access to the Park in perpetuity. Construction of the public park shall occur as part of Phase 1.
- h. Developer will provide 67 acres of open space within the development over and above City requirements and the Public Park.
- i. Fixed development standards and enforceable commitments to the adjacent HOA's:
  - 1) The maximum height of any buildings in the development shall be no higher than 19 feet;
  - 2) Planting of landscape trees adjacent to existing homes shall be of species and spacing that minimize blocking of existing views;
  - 3) New walls adjacent to any phase of the Whitewater Condominiums shall be built per the landscape exhibits in the Planned Development Permit prior to the commencement of grading on any areas adjacent to that phase;
  - 4) Property lines adjacent to Phases 1, 2, 3 and 5 of the Whitewater Condominiums shall be changed with lot line adjustments in accordance with the tentative map exhibits or as requested by the HOA of the adjoining phase prior to the recordation of any final map;
  - 5) The connection of Francis Drive to the Property shall be for emergency access, only. A Knox-Box type gated entry control for police and fire services shall be provided;



- 6) Four pedestrian gates shall be provided connecting the Whitewater Condominiums to the Property, one in Phase 1, one in Phase 3 and one on either side of Whitewater Club Drive near the entrance gates to the Whitewater Condominiums;
  - 7) A Knox-Box style gated entry for police and fire services shall be installed at the end of each of the cul de sacs adjacent to the entry road at Whitewater Club Drive;
  - 8) Landscaping and Irrigation incorporating existing mature trees shall be provided in an eight foot wide landscape area on both sides of Whitewater Club Drive within the Property;
  - 9) A six foot high slumpstone wall shall be built eight feet behind the existing paved road on both sides of Whitewater Club Drive, except where pedestrian and emergency access gates are provided.
- j. Securities submitted in conjunction with a Subdivision Improvement Agreement required with the City's approval of any final map shall include a contingency to assure that if the Developer fails to timely complete public improvements as provided under any subdivision agreement or allows any portion of the property to remain in a disturbed condition or in violation of any ordinance of the City regarding property maintenance for more than thirty (30) days after the expiration or termination of any permit applicable to the affected property, the City may find the Developer to be in default in which case the default provisions of this Agreement, including notice provisions shall apply. In addition to whatever other remedies the City may have, the City may demand the Developer restore such property to a natural and safe condition and remove any fencing along or adjacent to such property. The City may use self-help upon refusal or non-compliance by Developer. This obligation may be secured through such other security as the Developer and City Manager may agree.

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 and Project Site 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.

In accordance with the Developer's written request dated July 8, 2021, which is incorporated by reference herein, the City will accept a proposal to underground overhead utilities required by Project Conditions. Said utilities shall be installed underground prior to, and as a condition precedent to, the issuance of the first certificate of occupancy permit for Phase 3B.

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**

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. Developer shall have a vested right to build out the Project through the Term on the Project Site in accordance with the terms and conditions of the Project Approvals.

Section 7.02. Permitted Uses Vested by This Agreement. The permitted residential use of the Project Site, the density and intensity of use of the Project Site, 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, are set forth in the Project Approvals.

Section 7.03. Applicable Law. 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, heights, fees, exactions, and taxes in force and effect on the Effective Date of this Agreement.

Section 7.04. Uniform Codes. City may apply to the Project Site, 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 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 (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. Without limiting the generality of the foregoing, such City Law may be allowed to address a significant public health or safety issue. Without limiting the generality of the foregoing, 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:

- a. Change any land use designation or permitted use of the Project Site 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, unless such limitation is necessary to address significant health and safety issues;
- 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 the 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 fees, 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 Property that will reduce, limit or encumber Developer's rights hereunder, or
- k. Unreasonably limit the timing, processing or procuring of applications and approvals.

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 11.08, 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 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. City shall not support, adopt or enact any City Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement or the Project Approvals.



- 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 Mitigation. The parties understand that the EIR was intended to be used in connection with all of the Project Approvals needed for the Project.

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 11.05 (Force Majeure and Excusable Delays; Extension of Time of Performance). Not in limitation of the foregoing, 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.

- a. Project Timing. The parties acknowledge that Developer cannot predict the timing, rate, order or actual timing with certainty. The timing, order and rate of development shall be in Developer's sole discretion, except as otherwise provided in the Project Approvals.
- b. In light of the foregoing, the parties agree that Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. the City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly 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' desire to avoid that result by acknowledging that Developer shall have the right to develop the Project at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment, provided that such schedule is consistent with this Agreement.
- c. The Developer shall use its best efforts to meet the Agreed Proposed Schedule



attached hereto as Exhibit "D".

Section 7.10. Annual Review. City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner 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 a ten-year (or less) completion schedule. Reasonable Progress shall take into account market conditions, commercial realities, the sensitivities of adjacent residents and prudent construction practices. Reasonable Progress is expressly subject to City's obligation of Prompt Review specified in Section 7.11, below. City may charge fees as necessary to cover the costs of conducting the annual review. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1. Said review shall be diligently completed. 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 and Landowner with the terms of the Agreement shall conclusively determine said issue up to and including the date of said review. City shall deposit in the mail or fax to Developer and/or Landowner a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least seven (7) calendar days prior to such periodic review. Developer or Landowner 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

Section 7.11 Prompt Review by the City. City and Developer shall cooperate and use commercially 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 residential and other developments to be located within 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. Exempting Fees Imposed by Outside Agencies. Except as specified in 7.08, above, City agrees to exclude Developer from any and all collection agreements regarding fees, including, but not limited to, development impact fees which other public agencies or responsible agencies request City to impose at City's discretion on the Project or the Project Site after the Effective Date through the Term of this Agreement,



provided, however, that Developer will not be exempted from fees included in the Project Approvals.

#### **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 the Project Approvals 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 City staff and shall exclude, without limitation, City Attorney time and overhead costs and other 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 notice given pursuant to the preceding sentence ("Default Notice") shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily 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.

Section 11.02. Enumerated City Rights and Remedies for Developer Default. City and Developer agree that notwithstanding any provision of this Agreement, in the event of any Default by Developer, the City, in addition and cumulative to all rights and remedies provided in this Agreement, shall have two (2) enumerated rights and remedies, each in an exercise of City's absolute discretion, enumerated in this Section 11.02. First, City may initiate and approve the Project Site's reversion to acreage in conformance with California Government Code, Title 7, Division 2, Chapter 6, Reversions and Exclusions (Sections 66499.11 through 66499.29) and Municipal Code, Title 9, Chapter 9.66 Reversions (Sections 9.66.010 through 9.66.110), unless City waives said Municipal Code provisions. Second, the City may take unilateral action to summarily abate any condition representing a nuisance at the Project Site or any portion



thereof. City abatement pursuant to this Section 11.02 shall conform to to the “summary abatement” process reflected in Municipal Code Section 11.72.245, as that provision may be amended from time to time. The scope and nature of any City abatement hereunder shall be restoration of the Project Site, and any part thereof, to a natural and safe condition as determined, in an exercise of absolute discretion, by the City. The costs of the City’s abatement shall be recoverable by the City pursuant to Municipal Code Chapter 11.72.

Section 11.03. 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.

Section 11.04. Default by City or Developer. In the event that City or Developer defaults under the terms of this Agreement, the City or Developer shall have all rights and remedies provided herein or under law.

Section 11.05. 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, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), 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 11.05. 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 11.06. 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 11.07. 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 11.08. 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 11.08 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 11.09. 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 11.10. 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, the Project Site, 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 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 and employees.

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 11.10 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, and only 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 (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:

Scott Stiles  
City Manager  
3200 E. Tahquitz Canyon Way

Palm Springs, CA 92262  
Fax: (760) 322-8362  
Teresa.Gallavan@palmsprings-ca.gov



With Copies to:

Jeffrey Ballinger  
City Attorney  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Fax: (760) 323-8299  
Jeff.Ballinger@bbklaw.com

If to Developer, to:

Eric Taylor  
Somis Investments  
300 E. Esplanade, Suite 1785  
Oxnard, CA 93036  
Tel: 805-633-1037  
Fax: 805-633-4523  
etaylor@somisinvestments.com

With Copies to:

Mark C. Allen, III  
The Claremont Land Group Attorneys  
5861 Pine Avenue, Suite A-1  
Chino Hills, CA 91709-6540  
Tel: (909) 398-4404;  
Fax: (909) 398-1883  
(909) 333-5254 - Direct  
Mark@mcallen3.com

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 21 pages and four exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous agreements of the parties with respect to all or any part of the subject matter hereof.

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. No later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this

Agreement in the Official Records of the County of Riverside.

Section 13.11. No Third Party Beneficiaries. 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 and Developer, 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 17<sup>th</sup> day of October, 2018, and amended by City Council Ordinance No. 2051, and Developer has caused this Agreement to be executed by its authorized representative.

**"CITY"**  
**City of Palm Springs**

Date: 5/1/24 By: [Signature]  
Scott Stiles  
City Manager

**APPROVED AS TO FORM:**

**ATTEST**

By: [Signature] Jeffrey S. Ballinger  
City Attorney

By: [Signature] Brenda Pree  
City Clerk

**APPROVED BY CITY COUNCIL:**

Date: 9/30/2021 Item 2.A  
Agreement No. A7251

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.

**"DEVELOPER"**  
**Palm Springs Country Club, LLC,**  
**a California limited liability company**

By: [Signature] Signature (Notarized)  
BEHROUZ HAYERIM Printed Name/Title

By: [Signature] Signature (Notarized)  
Matthew Hayerim/owner Printed Name/Title

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

All that certain real property conveyed from Palm Springs Country Club Investors, LLC, a California limited liability company and Jeffrey G. Gomberg, a single man, to PS Country Club, LLC, a California limited liability company, by Grant Deed recorded March 6, 2013, as Document No. 2013-0111566, as further described herein:

All that certain real property situated In the County of Riverside, State of California, described as follows:

**Parcel 1: (501-190-002, and a portion of 501-190-011)**

The Northeast quarter of Section 1, Township 4 South, Range 4 East, San Bernardino Meridian, in the City of Palm Springs, County of Riverside, State of California, according to the official plat thereof.

Except any portion lying within the following subdivisions:

A. Desert Park Estates No. 10, as per map recorded in Book 33 Page 20 of Maps, in the office of the County Recorder of said County.

B. Ranch Country Club Estates No. 1, as per map recorded In Book 36, Page 64 of Maps, in the office of the County Recorder of said County.

C. Tract No. 4362, as per Map recorded in Book 70, Pages 89 and 90 of Maps, in the office of the County Recorder of said County.

D. Tract No. 4362-1, as per Map recorded in Book 81, Pages 29 and 30 of Maps, in the office of the County Recorder of said County.

E. Tract 9317, as per Map recorded in Book 91, Pages 44 and 45 of Maps, in the office of the County Recorder of said County.

F. Tract 14029, as per Map recorded In Book 112, Pages 61and 62 of Maps, in the office of the County Recorder of said County.

**Parcel 2: (a portion of 501-190-011)**

Lot 1 of Ranch Country Estates No.1, in the City of Palm Springs, County of Riverside, State of California, as per map recorded in Book 36, Page 64, of Maps, in the office of the County Recorder of said County.



**CALIFORNIA ACKNOWLEDGMENT**

CIVIL CODE § 1189

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

State of California }  
County of Riverside }  
On May 1, 2024 before me, Brent Rasi, Notary public  
Date Here Insert Name and Title of the Officer  
personally appeared Scott Stiles  
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature Brent Rasi  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

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

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

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

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

Corporate Officer – Title(s): \_\_\_\_\_  Corporate Officer – Title(s): \_\_\_\_\_

Partner –  Limited  General  Partner –  Limited  General

Individual  Attorney in Fact  Individual  Attorney in Fact

Trustee  Guardian or Conservator  Trustee  Guardian or Conservator

Other: \_\_\_\_\_  Other: \_\_\_\_\_

Signer is Representing: \_\_\_\_\_ Signer is Representing: \_\_\_\_\_

## ACKNOWLEDGMENT

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

State of California  
County of Los Angeles )

On APRIL 3, 2024 before me, Mark C. Glode Notary Public  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature \_\_\_\_\_

(Seal)



## ACKNOWLEDGMENT

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

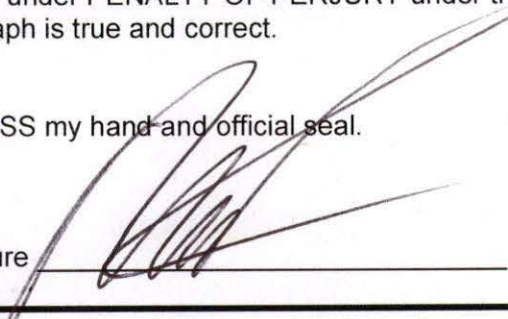
State of California  
County of Los Angeles )

On APRIL 3, 2024 before me, Mark C. Glode Notary Public  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature  (Seal)





**Parcel 3: (669-480-027)**

Parcel 1 of that Lot Line Adjustment No. 02-12 recorded February 26, 2004 as Instrument No.2004-134481 of Official Records, described as follows:

A parcel of land, situated in the City of Palm Springs, County of Riverside, State of California, lying over a portion of the Southwest Quarter of Section 36, Township 3 South, Range 4 East, San Bernardino Base and Meridian, being more particularly described as follows:

Beginning at the South Quarter corner of said Section 36;  
Thence, along the North-South centerline of said Section 36, North 0°12'43" East 420.46 feet;  
Thence, leaving said North-South centerline North 89°59'13" West 88.65 feet;  
Thence North 38°24'39" West 476.26 feet;  
Thence North 47°46'07" West 450.07 feet;  
Thence North 61°23'04" West 329.68 feet;  
Thence North 28°04'13" West 200.02 feet;  
Thence South 80°57'45" West 440.06 feet;  
Thence South 75°05'43" West 318.05 feet;  
Thence South 58°00'55" West 386.18 feet;  
Thence South 5°14'30" East 769.65 feet to the Intersection of a line parallel to, and 554.00 feet Easterly, when measured at right angles, to the West line of said Section 36, with a line parallel to, and 300.00 feet Northerly, when measured at right angles, to the South line of said Section 36;  
Thence, along said line parallel to the West line of said Section 36, South 00°15'30" West 300.00 feet, to the South line of said Section 36;  
Thence, along said South line of Section 36, South 89°45'52" East 2100.33 feet to the point of beginning.

Excepting therefrom that portion of said parcel of land being more particularly described as follows:

Commencing at the Southwest corner of said Section 36;  
Thence, along the South line of said Section 36, South 89°45'52" East 814.00 feet;  
Thence, leaving said South line, parallel to the West line of said Section 36, North 0°15'30" East 300.00 feet to a line parallel to, and 300.00 feet Northerly of, said South line of Section 36 and the True Point of Beginning;  
Thence, along said line parallel to the South line of Section 36, South 89°45'52" East 718.85 feet;  
Thence, leaving said parallel line, South 89°35'48" East 417.44 feet;  
Thence South 88°10'53" East 316.61 feet;  
Thence North 49°27'44" East 107.85 feet;  
Thence North 45°27'43" West 330.33 feet;  
Thence North 82°49'28" West 18.54 feet;  
Thence North 53°11'47" West 872.71 feet;  
Thence South 74°57'13" West 528.72 feet;



Thence South 0°08'38" West 30.73 feet;  
Thence South 72°41'33" West 113.63 feet;  
Thence South 3°29'01" East 610.32 feet to the True Point of Beginning.

**Parcel 4: (669-590-066)**

That portion of the South half of the Southeast quarter of Section 36, Township 3 South, Range 4 East, San Bernardino Meridian, in the City of Palm Springs, County of Riverside, State of California, according to the official plat thereof, described as follows:

Beginning at the Southwest corner of said South half of the Southeast quarter;

Thence South 89°52'00" East, along the South line of said South half of the Southeast quarter, a distance of 240.00 feet;  
Thence North 70°00'00" West, 105.00 feet;  
Thence South 75°12'28" West, 59.03 feet;  
Thence North 31°00'00" West, a distance of 163.00 feet, to a point on the West line of said South half of the Southeast quarter;  
Thence South 0°06'30" West, along said West line, a distance of 160.00 feet to the Point of Beginning.

**EXHIBIT B**  
**ORDINANCE NO. 1931 FOLLOWS THIS PAGE**

## EXHIBIT C PUBLIC PARK

The Developer is obligated to provide a park, accessible to the public, and maintained by the Homeowners' Association with responsibility over the Project. The specific Conditions of Approvals relative to the public park are listed below:

*PLN 20. Park. A park shall be provided in accordance with the approved site plan, and shall be properly maintained by the HOA and accessible to the general public. The development agreement shall set forth the minimum maintenance obligations, the recreational amenities and improvements provided by the applicant, and the construction/completion schedule for the park.*

*PLN 24. Public Benefit. In accordance with adopted City Council policy, the following items shall be considered as public benefits:*

*e. Provision of a park, maintained by the HOA, and accessible to the general public;*

The public park has two areas "West" and "East" separated by the public "Spine Road".

The West area will include the following recreational amenities and improvements:

- Two (2) tennis courts;
- Shade grove of trees;
- Bicycle rack;
- 10 parking spaces;
- Meandering trail and landscaping extending to Verona Road.

The East area will include the following recreational amenities and improvements:

- Turf play area with tree shade, two play structures, 3' wrought iron fencing, shade canopies, poured in place rubber surfacing, drinking fountain, bench seating, trash cans, and associated amenities;
- A restroom building providing two unisex ADA accessible restrooms;
- Bicycle parking;
- Eight parking spaces;
- A separate fenced dog park for large dogs with turf, shade structure, bench seating, trash cans, drinking fountain, dog wash/sprinkler, and associated amenities;
- A practice golf range with simulated turf;
- A separate fenced dog park for small dogs with turf, shade structure, bench seating, trash cans, drinking fountain, dog wash/sprinkler, and associated amenities;
- A large open play area with turf and shade trees;
- A decomposed granite pedestrian walking/hiking trail;
- A demonstration garden.

The conceptual plan for the public park is shown on the next page. The full scope and requirements for the public park will be further identified in the Final Development Plans for Planned Development District 366 (PDD-366) approved by the City and shall be constructed as part of the first phase of development.



**The conceptual plan for the public park is on file with the  
Planning Department, City of Palm Springs**

**Serena Park  
Tract No. 36691**

**EXHIBIT D  
PERFORMANCE SCHEDULE**

<b>DATE</b>	<b>ACTIVITY</b>	<b>NOTE</b>
July 19, 2017	DA First Hearing	
Sept 2017	DA Second Hearing	
November 2018	Final Execution DA Effective Date	
March 2019	Financing Phase 1	
April 2019	Start Engineering	
March 2022	Improvement Plan Approval/ Record Phase 1 Map	
March 2022	Record Phase 2 Map	
March 2022	Infrastructure Construction Phase I	Park will be built during this phase
April 2023	Infrastructure Construction Phase 2 -	
December 2022	Close Phase 1 First House	
February 2024	Infrastructure Construction Phase 3	
February 2024	Close Phase 2 First House	
January 2024	Record Phase 3 Map	
January 2024	Record Phase 4 Map	
March 2025	Close Phase 3 First House	
February 2024	Infrastructure Construction Phase 4	
March 2025	Close First House Phase 4	

# **ATTACHMENT #8**

**2019-0086225**

03/14/2019 11:20 AM Fee: \$ 0.00

Page 1 of 38

Recorded in Official Records  
County of Riverside  
Peter Aldana  
Assessor-County Clerk-Recorder



680

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

SPACE ABOVE FOR RECORDER'S USE ONLY

Pursuant to Government Code Section 6103, recording fees shall not apply

**DEVELOPMENT AGREEMENT BY AND BETWEEN**

**CITY OF PALM SPRINGS**

**AND**

**PS COUNTRY CLUB, LLC,  
A CALIFORNIA LIMITED LIABILITY COMPANY**

**FOR**

**SERENA PARK PROJECT  
CASE NO. 5.1327, PDD-366, TTM36691**

Title of Document

**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 PS Country Club, LLC, a California Limited Liability Company ("Developer"), pursuant to California Government Code § 65864 *et seq.*

### RECITALS

A. Development Agreement Statute. To strengthen the public planning process, encourage private participation in comprehensive planning, 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. 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 Ord. 1829 § 3, 2013; Ord. 1294, 1988 [PSMC § 94.08.00], that set forth 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 subject property.
- e. The execution of this Agreement furthers the public health, safety and general welfare of the community.
- f. This Agreement will remove a nuisance situation and potential liability due to the blight at no cost to City.
- g. This Agreement will protect residents and the City from the issues that typically accompany blighted areas.
- h. This Agreement will allow development of a blighted area with appropriate housing and open space that is compatible with the surrounding neighborhoods.
- i. This Agreement will reduce potential trespasses and nuisances affecting adjacent neighborhoods.
- j. This Agreement will reduce air pollution by reason of a significant reduction in wind borne dust and sand to adjacent neighborhoods.



- k. This Agreement will increase parkland in an underserved area of the City.
- l. This Agreement will allow legal commitments by Developer over and above those allowed by state law and the Palm Springs Municipal Code requirements.

C. Description of the Project and Project Site. Developer represents and warrants that it has a legal interest in certain real property as legally described in Exhibit A attached hereto (the "Project Site"). The residential project on the Project Site, along with all related public and private improvements and obligations, is the "Project."

D. Conversion of Open Space – Parks/Recreation Land. The Developer acknowledges the Project Site is currently designated as "Open Space – Parks/Recreation" in the City's adopted General Plan and is zoned as "Open Space" and is therefore subject to the City's Land Use Policy LU2.2 for the conversion of open space to developable areas. The Parties acknowledge the Developer shall cooperate with the City to secure the replacement of converted open space areas on the Project Site through the use of density transfer of property designated for residential development within the City.

E. Entitlements. Concurrent with the approval of this Agreement, City approved the following land use entitlements for the Project Site, which entitlements are also the subject of this Agreement:

- a. General Plan Amendment: From "Open Space – Parks/Recreation" (OS-P/R) to Very Low Density Residential (VLDR) for the residential portions of the project.
- b. Planned Development District in lieu of Change of Zone: From "Open Space" (0, 0-5) to Planned Development District (PDD).
- c. Tentative Tract Map: To subdivide the property into residential lots, privately owned common areas and a public park.
- d. Major Architectural Approval: Conceptual architectural and landscape plans will be part of the preliminary PDD.
- e. Transfer of Density Agreement: To cooperate in the transfer of residential density from the other areas in the City including the Chino Cone Specific Plan to the Project Site consistent with the provisions of the City's General Plan and the Chino Cone Specific Plan at the ratio of 1.2 units for each unit removed from the Chino Cone.

The above Entitlements have been approved subject to various conditions and requirements with which Developer will be required to comply in order to develop 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 additional infrastructure improvements requested by the City to assure development of the Project Site in accordance with the terms of this Agreement.

G. Vesting of Rights. 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 any applicable 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;
- e. Will not adversely affect the orderly development of property or the preservation of property values.

I. City Council Actions. City Council, after public hearings and extensive environmental analysis, approved the following entitlements:

- a. By Resolution No. 24083, dated September 7, 2016, amended City’s General Plan Land Use Designation for the subject property from “Open Space – Parks/Recreation” (OS-P/R) to Very Low Density Residential (LDR) for the residential portions of the project.
- b. By Ordinance No. 1898, effective October 21, 2016, conditionally adopted the Planned Development District in lieu of Change of Zone, changing the zoning from “Open Space” (0, 0-5) to the Planned Development District (PDD-366).
- c. By Resolution No. 24085, dated September 7, 2016, conditionally approving Tentative Tract Map 36691, to subdivide the property into residential lots, privately owned common areas, and a public park.
- d. By Resolution No. 24083, dated September 7, 2016, conditionally approving Major Architectural Approval: Conceptual architectural and landscape plans.

J. Ordinance. On July 26, 2017, Council adopted Ordinance No. 1931 approving this Agreement and authorizing the City Manager to execute the Agreement and its

concomitant Transfer of Density Agreement. The Ordinance was effective on August 25, 2017; a copy of the Ordinance is attached hereto as Exhibit B.

## **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**

- “Agreement” shall mean this Development Agreement by and between Developer and City, dated November 1, 2018.
- “Applicable Law” shall have that meaning set forth in Section 7.03 of this Agreement.
- “Changes in the Law” shall have that meaning set forth in Section 7.08 of this Agreement.
- “City” is the City of Palm Springs, a California Charter City and municipal corporation.
- “Conditions of Approval” shall have that meaning set forth in Section 4.04 of this Agreement.
- “Default” shall have that meaning set forth in Section 11.01 of this Agreement.
- “Default Notice” shall have that meaning set forth in Section 11.01 of this Agreement.
- “Deficiencies” shall have that meaning set forth in Section 10.02 of this Agreement. “Development Agreement Statute” shall have that meaning set forth in Recital A of this Agreement.
- “Developer” is PS Country Club, LLC, a California Limited Liability Company.
- “EIR” shall mean the Final Environmental Impact Report certified by City Council on September 7, 2016.
- “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 11.05 of this Agreement.

- “Force Majeure” shall have that meaning set forth in Section 11.05 of this Agreement.
- “Judgment” shall have that meaning set forth in Section 10.02 of this Agreement.
- “Project” is defined above.
- “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.
- “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, October 17, 2018 (the “Effective Date”).

Section 3.02. Term. The term of this Agreement (the “Term”) shall commence upon the Effective Date and continue for a period of twenty (20) years, 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 it will comply with this Agreement and with all Project Approvals. 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 Developer may discharge all of its obligation under the Agreement by agreeing to have all the property returned to an Open Space designation.

Section 4.02. Fees Paid by Developer. As a material consideration for the long term assurances and vested rights provided by this Agreement, Developer shall pay fees,

exactions, and charges to City as set forth in the Project Approvals not to exceed the amounts specified in City Council adopted ordinances and resolutions as of the Effective Date ("City Fees"), per dwelling unit, structure, or improvement, for all fees and charges imposed by the City and payable no earlier than City's issuance of a building permit. The amount of the City Fees will be adjusted on the fifth, tenth, and fifteenth annual anniversary of the Effective Date to reflect and equal the City's fees then in effect on each such anniversary. The term "City Fees" as used in this Section 4.02 for the purpose of limiting the ability of the City to increase certain fees, exactions, and charges does not include fees or charges required or otherwise assessed by any public agency other than the City or a fee or charge levied by the City to fund an enterprise account, including without limitation the City's Sewer Fund or Engineering plan check fees. The City Fees shall be adjusted to include credits against any and all park fees, including but not limited to, Quimby Fees pursuant to California Government Code §66477, included in the City Fees, for the costs of both land and improvements provided by the Developer to build the public park.

Section 4.03. Public benefits provided by Developer.

- a. All conditions of approval of the Project adopted and accepted by the Developer.
- b. Reservation of lands for public use, owned and maintained by Developer or any successor HOA, in accordance with Exhibit C attached hereto.
- c. Construction of a portion of an alternate for the CV Link Trail from Verona Road and Whitewater Club Drive to Sunrise Way across development.
- d. Indemnification over and above the indemnification allowed under the Map Act.
- e. Payment of Development Agreement Fee over and above the fees referred to in paragraph 4.02, above, to be used by the City for acquisition of open space for the purposes of Developer's compliance with the City's General Plan Land Use Policy 2.2 in generating land use density for the subject property. The Development Agreement Fee shall be Three Million Dollars (\$3,000,000.00) paid to City no later than November 1, 2021. The Development Agreement Fee shall be paid such that as construction of the Project occurs, and either (i) developed lots are sold to third-party builders, or (ii) building permits are issued for construction of residential dwelling units, the Developer shall pay to City a *pro-rata* portion of the principle at the time vacant lots are sold to third-party merchant builders or building permits are issued for construction of residential dwelling units. Each payment to the City shall take place within ten (10) business days of any sale of developed lots to a third-party builder, or concurrent with City issuance of a building permit. The *pro-rata* portion of the Development Agreement Fee shall be calculated as the total Development Agreement Fee divided by the total number of residential dwelling units ( $\$3,000,000 / 386$ ), for a per lot fee of \$7,772.02. By the third anniversary date of the Effective Date, the entire unpaid principle on the Development Agreement Fee shall immediately become due and payable to the City. Failure to pay the entire Development Agreement Fee by November 1, 2021, shall constitute a default pursuant to Section 11.01 of this Agreement, whereupon, in addition to such other remedies otherwise available to the City, the City may, in its sole discretion, withhold



issuance of building permits or other ministerial approvals related to the Project Site, until such default is adequately cured to the City's satisfaction.

- f. Conversion of a portion of Golden Sands Drive from a private to a public street to match the current and projected use patterns and more fairly apportion the burden of maintenance and liability from the Four Seasons HOA.
- g. Developer will build and maintain a public park in the approximate location shown on Exhibit C. Prior to City acceptance of the Park improvements or final acceptance of any subdivision improvements for the Project, Developer shall assign all of its rights and obligations to the Homeowners' Association with responsibility over the Project to maintain the Park and to preserve public access to the Park in perpetuity. Construction of the public park shall occur as part of Phase 1.
- h. Developer will provide 67 acres of open space within the development over and above City requirements and the Public Park.
- i. Fixed development standards and enforceable commitments to the adjacent HOA's:
  - 1) The maximum height of any buildings in the development shall be no higher than 19 feet;
  - 2) Planting of landscape trees adjacent to existing homes shall be of species and spacing that minimize blocking of existing views;
  - 3) New walls adjacent to any phase of the Whitewater Condominiums shall be built per the landscape exhibits in the Planned Development Permit prior to the commencement of grading on any areas adjacent to that phase;
  - 4) Property lines adjacent to Phases 1, 2, 3 and 5 of the Whitewater Condominiums shall be changed with lot line adjustments in accordance with the tentative map exhibits or as requested by the HOA of the adjoining phase prior to the recordation of any final map;
  - 5) The connection of Francis Drive to the Property shall be for emergency access, only. A Knox-Box type gated entry control for police and fire services shall be provided;
  - 6) Four pedestrian gates shall be provided connecting the Whitewater Condominiums to the Property, one in Phase 1, one in Phase 3 and one on either side of Whitewater Club Drive near the entrance gates to the Whitewater Condominiums;
  - 7) A Knox-Box style gated entry for police and fire services shall be installed at the end of each of the cul de sacs adjacent to the entry road at Whitewater Club Drive;
  - 8) Landscaping and Irrigation incorporating existing mature trees shall be provided in an eight foot wide landscape area on both sides of Whitewater Club Drive within the Property;

- 9) A six foot high slumpstone wall shall be built eight feet behind the existing paved road on both sides of Whitewater Club Drive, except where pedestrian and emergency access gates are provided.
- j. Securities submitted in conjunction with a Subdivision Improvement Agreement required with the City's approval of any final map shall include a contingency to assure that if the Developer fails to timely complete public improvements as provided under any subdivision agreement or allows any portion of the property to remain in a disturbed condition or in violation of any ordinance of the City regarding property maintenance for more than thirty (30) days after the expiration or termination of any permit applicable to the affected property, the City may find the Developer to be in default in which case the default provisions of this Agreement, including notice provisions shall apply. In addition to whatever other remedies the City may have, the City may demand the Developer restore such property to a natural and safe condition and remove any fencing along or adjacent to such property. The City may use self-help upon refusal or non-compliance by Developer. This obligation may be secured through such other security as the Developer and City Manager may agree.

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 and Project Site 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**

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.** Developer shall have a vested right to build out the Project through the Term on the Project Site in accordance with the terms and conditions of the Project Approvals.

**Section 7.02. Permitted Uses Vested by This Agreement.** The permitted residential use of the Project Site, the density and intensity of use of the Project Site, 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, are set forth in the Project Approvals.

**Section 7.03. Applicable Law.** 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, heights, fees, exactions, and taxes in force and effect on the Effective Date of this Agreement.

**Section 7.04. Uniform Codes.** City may apply to the Project Site, 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 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 (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. Without limiting the generality of the foregoing, such City Law may be allowed to address a significant public health or safety issue. Without limiting the generality of the foregoing, 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:**

- a. Change any land use designation or permitted use of the Project Site 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, unless such limitation is necessary to address significant health and safety issues;
- 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 the 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 fees, 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 Property that will reduce, limit or encumber Developer's rights hereunder, or
- k. Unreasonably limit the timing, processing or procuring of applications and approvals.

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 11.08, 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 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. City shall not support, adopt or enact any City Law, or take any other action which would violate the express provisions or spirit and intent of this Agreement or the Project Approvals.
- 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 Mitigation. The parties understand that the EIR was intended to be used in connection with all of the Project Approvals needed for the Project.

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 11.05 (Force Majeure and Excusable Delays; Extension of Time of Performance). Not in limitation of the foregoing, 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.

- a. **Project Timing.** The parties acknowledge that Developer cannot predict the timing, rate, order or actual timing with certainty. The timing, order and rate of development shall be in Developer's sole discretion, except as otherwise provided in the Project Approvals.
  
- b. In light of the foregoing, the parties agree that Developer shall be able to develop in accordance with Developer's own time schedule as such schedule may exist from time to time. In particular, and not in limitation of any of the foregoing, since the California Supreme Court held in *Pardee Construction Co. v. the City of Camarillo*, 37 Cal.3d 465 (1984), that the failure of the parties therein to consider and expressly 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' desire to avoid that result by acknowledging that Developer shall have the right to develop the Project at such rate and at such times as Developer deems appropriate within the exercise of its subjective business judgment, provided that such schedule is consistent with this Agreement.
  
- c. The Developer shall use its best efforts to meet the Agreed Proposed Schedule attached hereto as Exhibit "D".

Section 7.10. Annual Review. City shall, at least every twelve (12) months during the term of this Agreement, review the extent of good faith substantial compliance by Developer and Landowner 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 a ten-year (or less) completion schedule. Reasonable Progress shall take into account market conditions, commercial realities, the sensitivities of adjacent residents and prudent construction practices. Reasonable Progress is expressly subject to City's obligation of Prompt Review specified in Section 7.11, below. City may charge fees as necessary to cover the costs of conducting the annual review. Such periodic review shall be limited in scope to compliance with the terms of this Agreement pursuant to California Government Code Section 65865.1. Said review shall be diligently completed. 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 and Landowner with the terms of the Agreement

shall conclusively determine said issue up to and including the date of said review. City shall deposit in the mail or fax to Developer and/or Landowner a copy of all staff reports and, to the extent practical, related exhibits concerning contract performance at least seven (7) calendar days prior to such periodic review. Developer or Landowner 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

Section 7.11 Prompt Review by the City. City and Developer shall cooperate and use commercially 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 residential and other developments to be located within 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. Exempting Fees Imposed by Outside Agencies. Except as specified in 7.08, above, City agrees to exclude Developer from any and all collection agreements regarding fees, including, but not limited to, development impact fees which other public agencies or responsible agencies request City to impose at City's discretion on the Project or the Project Site after the Effective Date through the Term of this Agreement, provided, however, that Developer will not be exempted from fees included in the Project Approvals.

## **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 the Project Approvals 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 City staff and shall exclude, without limitation, City Attorney time and overhead costs and other 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 notice given pursuant to the preceding sentence ("Default Notice") shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure satisfactorily 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.

**Section 11.02. Enumerated City Rights and Remedies for Developer Default.** City and Developer agree that notwithstanding any provision of this Agreement, in the event of any Default by Developer, the City, in addition and cumulative to all rights and remedies provided in this Agreement, shall have two (2) enumerated rights and remedies, each in an exercise of City's absolute discretion, enumerated in this Section 11.02. First, City may initiate and approve the Project Site's reversion to acreage in conformance with California Government Code, Title 7, Division 2, Chapter 6, Reversions and Exclusions (Sections 66499.11 through 66499.29) and Municipal Code, Title 9, Chapter 9.66 Reversions (Sections 9.66.010 through 9.66.110), unless City waives said Municipal Code provisions. Second, the City may take unilateral action to summarily abate any condition representing a nuisance at the Project Site or any portion thereof. City abatement pursuant to this Section 11.02 shall conform to to the "summary abatement" process reflected in Municipal Code Section 11.72.245, as that provision may be amended from time to time. The scope and nature of any City abatement hereunder shall be restoration of the Project Site, and any part thereof, to a natural and safe condition as determined, in an exercise of absolute discretion, by the City. The costs of the City's abatement shall be recoverable by the City pursuant to Municipal Code Chapter 11.72.

**Section 11.03. 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.

**Section 11.04. Default by City or Developer.** In the event that City or Developer defaults under the terms of this Agreement, the City or Developer shall have all rights and remedies provided herein or under law.

**Section 11.05. 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, restrictions imposed or mandated by other governmental entities (including new or supplemental environmental regulations), 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 11.05. 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 11.06. 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 11.07. 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 11.08. 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 11.08 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 11.09. 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 11.10. 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, the Project Site, 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 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 and employees.

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 11.10 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, and only 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



(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:

David H. Ready, Esq., Ph.D.  
City Manager  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Fax: (760) 322-8362  
David.Ready@palmsprings-ca.gov

With Copies to:

Edward Z. Kotkin  
City Attorney  
3200 E. Tahquitz Canyon Way  
Palm Springs, CA 92262  
Fax: (760) 323-8299  
Edward.Kotkin@palmspringsca.gov

If to Developer, to:

Eric Taylor  
Somis Investments  
300 E. Esplanade, Suite 1785  
Oxnard, CA 93036  
Tel: 805-633-1037  
Fax: 805-633-4523  
etaylor@somisinvestments.com

With Copies to:

Mark C. Allen, III  
The Claremont Land Group Attorneys  
5861 Pine Avenue, Suite A-1  
Chino Hills, CA 91709-6540  
Tel: (909) 398-4404;  
Fax: (909) 398-1883  
(909) 333-5254 - Direct  
Mark@mcallen3.com

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 21 pages and four exhibits which constitute in full, the final and exclusive understanding and agreement of the parties and supersedes all negotiations or previous

agreements of the parties with respect to all or any part of the subject matter hereof.

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. No later than ten (10) days after City enters into this Agreement, the City Clerk shall record an executed copy of this Agreement in the Official Records of the County of Riverside.

Section 13.11. No Third Party Beneficiaries. 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 and Developer, 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.

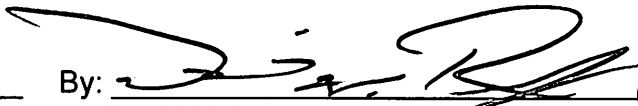


Section 13.13. Discretion of City. City's execution of this Agreement in no way limits the discretion of City in the permit or approval process in connection with any site plan approvals, subsequent entitlements, land use decisions, construction or improvements which are within City's jurisdiction, except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

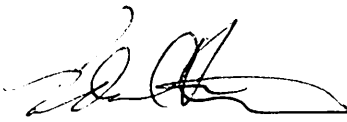
*[Faint, illegible signatures]*  
[SIGNATURES ON NEXT PAGE]

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 17<sup>th</sup> day of October, 2018, and Developer has caused this Agreement to be executed by its authorized representative.

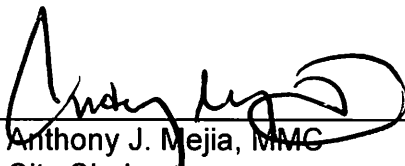
**"CITY"**  
**City of Palm Springs**

Date: 3/7/19 By:   
MF David H. Ready, PhD, Esq.   
City Manager 

**APPROVED AS TO FORM:**

By:   
Edward Z. Kotkin  
City Attorney

**ATTEST**

By:   
Anthony J. Mejia, MMC  
City Clerk


**APPROVED BY CITY COUNCIL:**

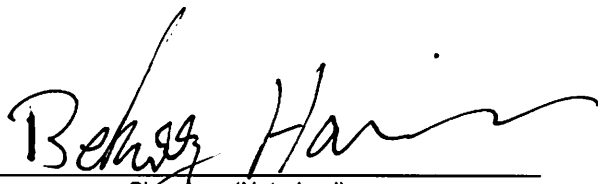
7/19/17 Item 2.C.  
Date: 7/26/17 Ord. 1931 Item I.E. Agreement No. A7251

Amend. APPROVED BY CITY COUNCIL  
Item 2.A. 10/17/18 A7251

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.

**"DEVELOPER"**  
**Palm Springs Country Club, LLC,**  
**a California limited liability company**

By:   
Signature (Notarized)  
P. Eric Taylor / Managing Member  
Printed Name/Title

By:   
Signature (Notarized)  
BEHROOZ HAVERIM  
Printed Name/Title

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**



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

State of California )  
County of Ventura )

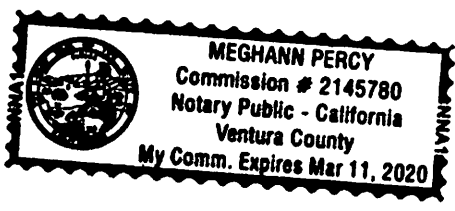
On February 25 2019 before me, Meghann Percy, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Behrooz Haverim and  
Name(s) of Signer(s)  
R. Eric Taylor

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

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

WITNESS my hand and official seal.



Signature [Signature]  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

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

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_  
Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

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

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_



ACKNOWLEDGMENT OF INSTRUMENT  
(Cal. Civil Code Section 1181)

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

State of California            )  
County of Riverside        )        ss.  
City of Palm Springs        )

On March 7, 2019, before me, ANTHONY J. MEJIA, CITY CLERK, CITY OF PALM SPRINGS, CALIFORNIA, personally appeared DAVID H. READY, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his official and authorized capacity, and that by his signature on the instrument the person or entity upon behalf of which the person acted, executed the agreement.

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

Witness my hand and the official seal of the City of Palm Springs, California, this 7<sup>th</sup> day of March, 2019.

Signature:   
ANTHONY J. MEJIA, MMC  
CITY CLERK, CITY OF PALM SPRINGS



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Title or Type of Document  
Development Agreement By and Between City of Palm Springs and PS Country Club, LLC,  
A California Limited Liability Company, for Serena Park Project, Case No. 5.1327, PDD-366,  
TTM36691

**EXHIBIT A  
REAL PROPERTY DESCRIPTION**

All that certain real property conveyed from Palm Springs Country Club Investors, LLC, a California limited liability company and Jeffrey G. Gomberg, a single man, to PS Country Club, LLC, a California limited liability company, by Grant Deed recorded March 6, 2013, as Document No. 2013-0111566, as further described herein:

All that certain real property situated In the County of Riverside, State of California, described as follows:

**Parcel 1: (501-190-002, and a portion of 501-190-011)**

The Northeast quarter of Section 1, Township 4 South, Range 4 East, San Bernardino Meridian, in the City of Palm Springs, County of Riverside, State of California, according to the official plat thereof.

Except any portion lying within the following subdivisions:

A. Desert Park Estates No. 10, as per map recorded in Book 33 Page 20 of Maps, in the office of the County Recorder of said County.

B. Ranch Country Club Estates No. 1, as per map recorded In Book 36, Page 64 of Maps, in the office of the County Recorder of said County.

C. Tract No. 4362, as per Map recorded in Book 70, Pages 89 and 90 of Maps, in the office of the County Recorder of said County.

D. Tract No. 4362-1, as per Map recorded in Book 81, Pages 29 and 30 of Maps, in the office of the County Recorder of said County.

E. Tract 9317, as per Map recorded in Book 91, Pages 44 and 45 of Maps, in the office of the County Recorder of said County.

F. Tract 14029, as per Map recorded In Book 112, Pages 61and 62 of Maps, in the office of the County Recorder of said County.

**Parcel 2: (a portion of 501-190-011)**

Lot 1 of Ranch Country Estates No.1, in the City of Palm Springs, County of Riverside, State of California, as per map recorded in Book 36, Page 64, of Maps, in the office of the County Recorder of said County.

**Parcel 3: (669-480-027)**

Parcel 1 of that Lot Line Adjustment No. 02-12 recorded February 26, 2004 as Instrument No.2004-134481 of Official Records, described as follows:

A parcel of land, situated in the City of Palm Springs, County of Riverside, State of California, lying over a portion of the Southwest Quarter of Section 36, Township 3 South, Range 4 East, San Bernardino Base and Meridian, being more particularly described as follows:

Beginning at the South Quarter corner of said Section 36;  
Thence, along the North-South centerline of said Section 36, North 0°12'43" East 420.46 feet;  
Thence, leaving said North-South centerline North 89°59'13" West 88.65 feet;  
Thence North 38°24'39" West 476.26 feet;  
Thence North 47°46'07" West 450.07 feet;  
Thence North 61°23'04" West 329.68 feet;  
Thence North 28°04'13" West 200.02 feet;  
Thence South 80°57'45" West 440.06 feet;  
Thence South 75°05'43" West 318.05 feet;  
Thence South 58°00'55" West 386.18 feet;  
Thence South 5°14'30" East 769.65 feet to the Intersection of a line parallel to, and 554.00 feet Easterly, when measured at right angles, to the West line of said Section 36, with a line parallel to, and 300.00 feet Northerly, when measured at right angles, to the South line of said Section 36;  
Thence, along said line parallel to the West line of said Section 36, South 00°15'30" West 300.00 feet, to the South line of said Section 36;  
Thence, along said South line of Section 36, South 89°45'52" East 2100.33 feet to the point of beginning.

Excepting therefrom that portion of said parcel of land being more particularly described as follows:

Commencing at the Southwest corner of said Section 36;  
Thence, along the South line of said Section 36, South 89°45'52" East 814.00 feet;  
Thence, leaving said South line, parallel to the West line of said Section 36, North 0°15'30" East 300.00 feet to a line parallel to, and 300.00 feet Northerly of, said South line of Section 36 and the True Point of Beginning;  
Thence, along said line parallel to the South line of Section 36, South 89°45'52" East 718.85 feet;  
Thence, leaving said parallel line, South 89°35'48" East 417.44 feet;  
Thence South 88°10'53" East 316.61 feet;  
Thence North 49°27'44" East 107.85 feet;  
Thence North 45°27'43" West 330.33 feet;  
Thence North 82°49'28" West 18.54 feet;  
Thence North 53°11'47" West 872.71 feet;  
Thence South 74°57'13" West 528.72 feet;

Thence South 0°08'38" West 30.73 feet;  
Thence South 72°41'33" West 113.63 feet;  
Thence South 3°29'01" East 610.32 feet to the True Point of Beginning.

**Parcel 4: (669-590-066)**

That portion of the South half of the Southeast quarter of Section 36, Township 3 South, Range 4 East, San Bernardino Meridian, in the City of Palm Springs, County of Riverside, State of California, according to the official plat thereof, described as follows:

Beginning at the Southwest corner of said South half of the Southeast quarter;

Thence South 89°52'00" East, along the South line of said South half of the Southeast quarter, a distance of 240.00 feet;  
Thence North 70°00'00" West, 105.00 feet;  
Thence South 75°12'28" West, 59.03 feet;  
Thence North 31°00'00" West, a distance of 163.00 feet, to a point on the West line of said South half of the Southeast quarter;  
Thence South 0°06'30" West, along said West line, a distance of 160.00 feet to the Point of Beginning.



**EXHIBIT B**  
**ORDINANCE NO. 1931 FOLLOWS THIS PAGE**

ORDINANCE NO. 1931

AN ORDINANCE OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING A DEVELOPMENT AGREEMENT WITH PS COUNTRY CLUB LLC, RELATED TO CONVERSION OF THE PALM SPRINGS COUNTRY CLUB GOLF COURSE INTO A RESIDENTIAL SUBDIVISION OF UP TO 386 RESIDENTIAL UNITS IDENTIFIED AS THE SERENA PARK PROJECT, LOCATED NORTH OF VERONA ROAD, EAST OF SUNRISE WAY AND SOUTHWEST OF THE WHITEWATER RIVER WASH (CASE NOS. 5.1327, PDD-366, ZC, GPA, DA, MAJ AND TTM 36691).

*City Attorney's Summary*

*This Ordinance approves a Development Agreement for a term of 20 years vesting the discretionary entitlements associated with the Serena Park Project, identified by Case No.'s 5.1327, PD-366, ZC, DA, MAJ, and TTM 36691. Pursuant to the terms of the Development Agreement, payment to the City of an in-lieu fee for acquisition of open space is required to ensure compliance with General Plan Land Use Policy 2.2 in exchange for transfer of density onto the underlying property.*

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS ORDAINS:

A. Palm Springs Country Club, LLC, a California limited liability company, ("Applicant" or "Developer") filed an application pursuant to Palm Springs Zoning Code Section 94.07.00 (*Zone Map Change / Change of Zone*) and Section 94.03.00 (*Planned Development District*) seeking approval of a Planned Development District in lieu of a Change of Zone (Case 5.1327 PD-366) to construct 386 residential dwellings, private streets and open space, including a public park, on 126-acres of previously disturbed land (defunct golf course) generally located north of Verona Road, east of Sunrise Way, and southwest of the Whitewater River channel (APN 501-190-002, 501-190-011, 669-480-027) ("Project").

B. The Applicant submitted related Project applications, including a General Plan Amendment (Case 5.1327 PD-366/GPA) to change the land use designation from "Open Space – Parks/Recreation" to "Very Low Density Residential;" a Tentative Tract Map application (Case TTM 36691) to subdivide the subject property into 386 residential lots and common area parcels for public and private streets and open space pursuant to Title 9 of the Palm Springs Municipal Code; a Major Architectural application to review proposed architecture pursuant to Section 94.04.00 of the Zoning Code; and a Development Agreement (Case 5.1327 DA) to establish conditions, terms and obligations for the development of the Project.

C. In accordance with Section 15063 of the California Environmental Quality Act (CEQA) Guidelines, the City of Palm Springs as the Lead Agency conducted an Initial Study and determined that the Project raised potentially significant concerns. An Environmental Impact Report (EIR) was prepared to assure adequate review and analysis of potentially significant impacts associated with the Project.

D. A notice of a public hearing of the Planning Commission of the City of Palm Springs, California to consider the above-mentioned applications was given in accordance with applicable law, and on April 13, 2016, the Planning Commission carefully reviewed and considered all of the evidence presented in connection with the hearing on the Project, including but not limited to the staff report, and all written and oral testimony presented, and voted 5-1 to recommend approval to the City Council of the Project.

E. On April 27, 2016, the Planning Commission carefully reviewed and considered all of the evidence presented in connection with the proposed Development Agreement, and voted 6-0 to recommend approval to the City Council.

F. A notice of public hearing of the City Council of the City of Palm Springs, California to consider the above-mentioned applications was given in accordance with applicable law and on September 7, 2016, the City Council held a public hearing in accordance with applicable law, and carefully reviewed and considered all of the evidence presented in connection with the hearing on the Project, including but not limited to the staff report, and all written and oral testimony presented. The City Council reviewed and certified the Final EIR for the Project by adopting its Resolution No. 24082, identified as (Case No. 5.1327, PD-366, and TTM 36691), and voted 5-0 to conditionally approve the Project.

G. As part of the conditional approval of the Project, the City Council included Administrative Condition (ADM 13) which states: *"Approval of these land use entitlement applications is contingent upon the approval of a development agreement. The development agreement shall address the conversion of open space for development purposes, through in-kind replacement of open space, payment of in-lieu fees for the acquisition of open space, or replacement of open space through a density transfer, pursuant to Policy LU2.2 of the City of Palm Springs General Plan."*

H. To strengthen the public planning process, encourage private participation in comprehensive planning, 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. This Development Agreement has been processed, considered, and approved in accordance with the procedures and requirements as set forth in the Development Agreement Statute., and

I. Pursuant to Government Code section 65865(c), the City of Palm Springs previously adopted Ord. 1829 § 3, 2013; Ord. 1294, 1988 [PSMC § 94.08.00], that set forth rules and regulations establishing procedures and requirements for consideration of development agreements. This Development Agreement has been processed, considered, and approved in accordance with the procedures and requirements as set forth in the City's Ordinances and Municipal Codes.

J. Notice of a public hearing of the City Council of the City of Palm Springs, California, to consider the Development Agreement was given in accordance with applicable law for the meeting of July 19, 2017. The City Council held a public hearing in accordance with applicable law, considered the Staff Report and all evidence and testimony presented.

K. The City Council finds that no further environmental documentation beyond the documentation prepared in conjunction with the EIR for the Project is required because: (i) there are no substantial changes in the project that will require major revisions to the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; (ii) there are no substantial changes with respect to the circumstances under which the project is being undertaken which will require major revisions of the EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; and (iii) there is no new information of substantial importance which was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was certified showing that: (a) the project will have one or more significant effects not discussed in the EIR; (b) significant effects previously examined will be substantially more severe than shown in the EIR; (c) mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the project, but those mitigation measures or alternatives have not been adopted; or (d) mitigation measures or alternatives considerably different from those analyzed in the EIR would substantially reduce one or more significant effects on the environment, but the mitigation measures or alternatives have not been adopted. (Public Resources Code section 21166; CEQA Guidelines section 15162.)

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

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

SECTION 2. The Final EIR for the Project is the controlling environmental document for the Council's consideration of the Development Agreement.

SECTION 3. The Development Agreement complies with the provisions of the Palm Springs Municipal Code PSMC § 94.08.00, as follows:



- a. 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 is consistent with the City of Palm Springs General Plan in that the Development Agreement directly reflects the land uses approved through General Plan Amendment Case No. 5.1327, Planned Development District-366, and Tentative Tract Map 36691 by the City Council, and these land uses are either permitted or conditionally permitted in the General Plan Land Use Element.

- b. 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.

Tentative Tract Map 36691 is consistent with the General Plan Land Use Element, because the General Plan designation for the site is Very Low Density Residential (up to 4 du/ac). Tentative Tract Map 36691 was approved with a maximum of 386 residential units with a maximum density of 3.1 dwelling units per acre (du/ac) and is thus consistent with the General Plan in terms of density.

- c. The Development Agreement is in conformity with public convenience, general welfare and good land use practice.

The Development Agreement is in conformance with established City goals, objectives, and regulations outlined in the City's General Plan and the City's Zoning Ordinance.

- d. The Development Agreement will not be detrimental to the health, safety and general welfare.

The Development Agreement is not detrimental to the health, safety, and welfare of the community in that all established zoning and development standards continue to be applicable.

- e. The Development Agreement will not adversely affect the orderly development of property or the preservation of property values.

The Development Agreement reflects the approved conditions of approval of the Project which serve to insure the preservation of property values in the vicinity.

SECTION 4. The Development Agreement is hereby approved in exchange for the following mutual benefits:

- a. The Development Agreement will assure adequate public facilities at the time of development.
- b. The Development Agreement will assure development in accordance with City's land use policies and goals
- c. The Development Agreement will provide for orderly growth consistent with the

City's General Plan, and other public policies.

- d. The Development 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 subject property.
- e. The execution of this Agreement furthers the public health, safety and general welfare of the community.
- f. The Development Agreement will remove a nuisance situation and potential liability due to the blight at no cost to City.
- g. The Development Agreement will protect residents and the City from the issues that typically accompany blighted areas.
- h. The Development Agreement will allow development of a blighted area with appropriate housing and open space that is compatible with the surrounding neighborhoods.
- i. The Development Agreement will reduce potential trespasses and nuisances affecting adjacent neighborhoods.
- j. The Development Agreement will reduce air pollution by reason of a significant reduction in wind borne dust and sand to adjacent neighborhoods.
- k. The Development Agreement will increase parkland in an underserved area of the City.
- l. The Development Agreement will allow legal commitments by Developer over and above those allowed by state law and the Palm Springs Municipal Code requirements.

**SECTION 5. Approval of the Serena Park Project Development Agreement.** The City Council hereby approves the Serena Park Project Development Agreement, the text of which is set forth in the document entitled "Development Agreement by and between City of Palm Springs and PS Country Club, LLC, a California limited liability company, for Serena Park Project, Case No. 5.1327, PDD-366, TTM36691," and authorizes execution thereof by the City Manager. The provisions of this section shall apply to all property described on Exhibit "A".

**SECTION 6.** The Palm Springs Zoning Code § 94.08 is hereby amended by adding Section 94.08.09 to read as follows:

"Section 94.08.09 Serena Park Project Development Agreement

A. Serena Park Project Development Agreement

1. Purpose. The purpose of this section is to establish a development agreement to guide the orderly development and improvement of that portion of the city previously developed as the Palm Springs Country Club golf course, which is located north of Verona Road, east of Sunrise Way, and southwest of the Whitewater River Wash, in Section 36, Township 3 South, Range 4 East, and in Section 1, Township 4 South,

Range 4 East, San Bernardino Base and Meridian, in the City of Palm Springs as legally described on Exhibit "A" of the Development Agreement, attached to the Ordinance codified in this section and incorporated herein by reference. The property is designated Very Low Density Residential (VLDR) land use designation in the general plan, as applicable. Hereafter, the property shall also be designated "Development Agreement No. 5" or "DA5" which shall be an overlay designation incorporating the restrictions of the "Serena Park Project Development Agreement". The Serena Park Project Development Agreement replaces within said property the usual development standards otherwise applicable to the property. The Serena Park Project Development Agreement provides for ultimate development of a residential project consisting of 92 attached single-family units on minimum 5,000 square foot lots, 214 detached single-family units on minimum 5,000 square foot lots, and 60 detached single family units on minimum 8,000 square foot lots, and is consistent with the general plan objectives, policies, and programs of the City.

2. Adoption of Serena Park Project Development Agreement. There is adopted the Serena Park Project Development Agreement, the text of which is set forth in the document entitled "Development Agreement by and between City of Palm Springs and PS Country Club, LLC, a California limited liability company, for Serena Park Project, Case No. 5.1327, PDD-366, TTM36691," included with the ordinance which codified this section, which agreement is incorporated in this section by reference. The provisions of this section shall apply to all property described on Exhibit "A" attached to the Development Agreement and incorporated herein by reference.

3. Property Development and Other Standards. All property which is subject to the Serena Park Project Development Agreement shall be maintained in accordance with all policies, requirements, regulations, and provisions set forth in the Serena Park Project Development Agreement. The developer's performance of its obligations under the Serena Park Project Development Agreement shall be subject to annual review as provided therein.

SECTION 7. The Official Zoning Map of the City of Palm Springs is hereby amended by reclassifying from PD-366 to being subject to the Serena Park Project Development Agreement "Development Agreement No. 5" or "DA5," all of that real property described in Exhibit "A".

SECTION 8. EFFECTIVE DATE. This Ordinance shall be in full force and effect thirty (30) days after passage.

SECTION 9. PUBLICATION. The City Clerk is hereby ordered and directed to certify to the passage of this Ordinance, and to cause the same or a summary thereof or a display advertisement, duly prepared according to law, to be published in accordance with law.

PASSED, APPROVED, AND ADOPTED BY THE PALM SPRINGS CITY COUNCIL THIS 26<sup>TH</sup> DAY OF JULY, 2017.



ROBERT MOON, MAYOR

ATTEST:

 8.5.17  
KATHLEEN D. HART, MMC  
INTERIM CITY CLERK

CERTIFICATION

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

I, KATHLEEN D. HART, Interim City Clerk of the City of Palm Springs, do hereby certify that Ordinance No. 1931 is a full, true, and correct copy, and was introduced at a regular meeting of the Palm Springs City Council held on July 19, 2017, and adopted at an adjourned regular and special meeting held on July 26, 2017, by the following vote:

- AYES: Councilmembers Kors, Mills, Roberts, and Mayor Moon
- NOES: None
- ABSENT: None
- ABSTAIN: None
- RECUSED: Mayor Pro Tem Foat noting conflict of interest

  
KATHLEEN D. HART, MMC  
INTERIM CITY CLERK

## EXHIBIT C PUBLIC PARK

The Developer is obligated to provide a park, accessible to the public, and maintained by the Homeowners' Association with responsibility over the Project. The specific Conditions of Approvals relative to the public park are listed below:

*PLN 20. Park. A park shall be provided in accordance with the approved site plan, and shall be properly maintained by the HOA and accessible to the general public. The development agreement shall set forth the minimum maintenance obligations, the recreational amenities and improvements provided by the applicant, and the construction/completion schedule for the park.*

*PLN 24. Public Benefit. In accordance with adopted City Council policy, the following items shall be considered as public benefits:*

*e. Provision of a park, maintained by the HOA, and accessible to the general public;*

The public park has two areas "West" and "East" separated by the public "Spine Road".

The West area will include the following recreational amenities and improvements:

- Two (2) tennis courts;
- Shade grove of trees;
- Bicycle rack;
- 10 parking spaces;
- Meandering trail and landscaping extending to Verona Road.

The East area will include the following recreational amenities and improvements:

- Turf play area with tree shade, two play structures, 3' wrought iron fencing, shade canopies, poured in place rubber surfacing, drinking fountain, bench seating, trash cans, and associated amenities;
- A restroom building providing two unisex ADA accessible restrooms;
- Bicycle parking;
- Eight parking spaces;
- A separate fenced dog park for large dogs with turf, shade structure, bench seating, trash cans, drinking fountain, dog wash/sprinkler, and associated amenities;
- A practice golf range with simulated turf;
- A separate fenced dog park for small dogs with turf, shade structure, bench seating, trash cans, drinking fountain, dog wash/sprinkler, and associated amenities;
- A large open play area with turf and shade trees;
- A decomposed granite pedestrian walking/hiking trail;
- A demonstration garden.

The conceptual plan for the public park is shown on the next page. The full scope and requirements for the public park will be further identified in the Final Development Plans for Planned Development District 366 (PDD-366) approved by the City and shall be constructed as part of the first phase of development.



The conceptual plan for the public park is on file in the  
Planning Department, City of Palm Springs

Serena Park  
Tract No. 36691

**EXHIBIT D  
PERFORMANCE SCHEDULE**

<b>DATE</b>	<b>ACTIVITY</b>	<b>NOTE</b>
July 19, 2017	DA First Hearing	
Sept 2017	DA Second Hearing	
November 2018	Final Execution DA Effective Date	
March 2019	Financing Phase 1	
April 2019	Start Engineering	
October 2019	Improvement Plan Approval/ Record Phase 1 Map	
April 2020	Record Phase 2 Map	
June 2020	Infrastructure Construction Phase I	Park will be built during this phase
September 2020	Infrastructure Construction Phase 2 -	
March 2021	Close Phase 1 First House	
April 2021	Infrastructure Construction Phase 3	
August 2021	Close Phase 2 First House	
October 2021	Record Phase 3 Map	
December 2021	Record Phase 4 Map	
January 2022	Close Phase 3 First House	
April 2022	Infrastructure Construction Phase 4	
January 2023	Close First House Phase 4	

# **ATTACHMENT #9**

## Report Regarding Maintenance for Serena Park

October 27, 2021

### **Background**

Serena Park has experienced issues since the 2007 abandonment of the old golf course regrading vandalism, adjacent graffiti, littering, unwanted trespass by off road vehicles, dumping and general unsightliness. In addition, many of the Tamarisk trees onsite have developed root systems that invade adjacent residential properties seeking water and then cause breakage of concrete and fences.

On October 1, 2021, at the Palm Springs City Council hearing regarding the status of the Serena Park Development Agreement, the City Council requested the developer to provide a maintenance schedule for the project going forward.

Currently, Serena Park is also in escrow to Williams Homes, as the future homebuilder for the project. Upon commencement of homebuilding construction, maintenance practices at the property will change as daily construction activity will impede trespass, dumping and vandalism and the property will be transitioned from its current state to a residential development. Homebuilding is expected to commence in mid-2022.

### **Current Maintenance Plans**

Tamarisk Removals - The current ownership, PS Country Club LLC, started a more ambitious tamarisk tree removal project in September, 2021. Approximately 1,500 lineal feet of tamarisks are being removed, including their roots, from the area adjacent to Four Seasons. This will significantly disturb the soil under these trees and blow sand mitigation using polymer coatings are being applied. PS Country Club is coordinating these efforts with Four Seasons and the Four Seasons HOA.

In late spring, 2022, Williams Homes will begin several thousand more feet of Tamarisk removals in the southeast portion of the property as a first step in the grading of the phase 1 homebuilding operation at Serena Park.

The combined efforts of PS Country Club LLC and Williams Homes will set up standards and procedures for removing the remainder of the tamarisks on Serena Park as the development progresses.

Security – Previous security measures have been reliant on communication between the ownership and adjacent neighbors. PS Country Club LLC has maintained dialog and cooperation with the Palm Springs Police Department. Unfortunately, vandalism, breaking down fences, graffiti and trash dumping have not appreciably changed.

The commencement of construction activities on site will include a daily ownership presence which should lessen trespass. In the interim between now and the start of construction in six to eight months, the current ownership is committed to adding security patrols on the property several times per week. This is not expected to be as effective as the daily ongoing presence of construction activities, but it will alert the ownership to dumping, graffiti and fence breakage.

Graffiti – The large majority of the graffiti is on property owned and controlled by the mobile home park and is not the responsibility of Serena Park. The ownership of Serena Park is glad to maintain communication with the City’s code enforcement personnel, as has been done, in the past, so appropriate actions can be made to mitigate graffiti next to the property.



## **Conditions imposed by City Council on December 9, 2021**

1. Daily patrols by a property representative shall be required.
2. Surveillance cameras shall be installed in strategic locations to minimize trespassing.
3. Developer shall post "No Trespassing" signs at commonly known fence breaks.
4. A temporary fence may be required along the northeasterly border of the property to prevent off-road vehicle trespassing from the open desert/wash areas, if it is determined by staff that, after three months of implementing other security measures and recommendations, said vehicles continue to traverse the project site.
5. A monthly meeting with code enforcement staff to review on-site trash and debris removal, shall be required until on-site construction starts.
6. Developer shall apply sealant to disturbed areas of project that reduce dust and blowing sand.

# **ATTACHMENT #10**

-----Original Message-----

From: Sandy and Dan Kiser <kiser3@hotmail.com>

Sent: Tuesday, May 14, 2024 10:01 AM

To: Planning <Planning@palmspringsca.gov>

Subject: Serena Park Project

Dear Palm Springs Planning Commission

We are opposed to the Serena Park Project and request that no further concessions be made to the developer. We have lived in the Palm Springs County Club Phase 1 since 2008. At first, we were told that the PSCC golf course would be rebuilt following probate from the prior owner. Since then, development at varying densities have been proposed. Over the years the area has slowly reverted to open land with native vegetation returning. We would like to see the area remain undeveloped. If development goes ahead we would like to see the current approved plan stay in place. Thank you for your consideration.

Respectfully

Dan & Sandy Kiser

(858) 922-0592

Sent from my iPhone

## Re: Public hearing

Ryan Marquart <madcrafter@gmail.com>

Tue 5/14/2024 11:37 PM

To: David Newell <David.Newell@palmsspringsca.gov>

**NOTICE:** This message originated outside of The City of Palm Springs -- **DO NOT CLICK** on links or open **attachments** unless you are sure the content is safe.

Mr. David Newell,

I inadvertently sent my email before it was finished! So I will finish it here quickly...

I just wanted to urge you and others not to let this project languish, or sit unfinished for decades, as so many projects in PS have. If PS Country Club LLC wants more time, say NO. The property has had many issues with security and vandalism and illegal activity, so it's time to just build something already.

Thank you and very kind regards,

Ryan Marquart  
[madcrafter@gmail.com](mailto:madcrafter@gmail.com)  
626-319-08656

On Tue, May 14, 2024 at 11:12 PM Ryan Marquart <[madcrafter@gmail.com](mailto:madcrafter@gmail.com)> wrote:

Mr. David Newell,

I am writing to request a copy of the proposed application and related documents submitted by PS Country Club, LLC for the Serena Park Project.

I received a notice of public hearing, and while it did contain some vaguely relevant information, it said only that PS Country Club LLC and Serena Park Project want to amend "certain terms" of the agreement. They also wish to "modify the phasing schedule, timeframe for a fee payment, and "other items."

If PSCC and Serena Park seek to delay the project even further, I do hope that someone in the city government will say NO, and demand that the project get underway.

I live in what will be an adjacent lot, and although I am aware of the setbacks caused by Covid, this project seems j