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September 12, 2022

VIA FIRST CLASS AND ELECTRONIC MAIL

Jeffrey S. Ballinger, City Attorney
City of Palm Springs
Post Office Box 2743
Palm Springs, CA 92263

Re: City of Palm Springs' Offer to Purchase College of the Desert's 119.4 Acres of Real Property, located at the Northwest Corner of Indian Canyon Dr. and Tramview Rd.

Dear Mr. Ballinger:

This letter is in response to your letter dated July 27, 2022 on behalf of the City of Palm Springs (the "City's Letter") discussing the College of the Desert's above referenced property which you refer to as the North End Site, (hereinafter the "Property"). COD appreciates the City's efforts to address this situation and propose any "outside of the box" solutions and sincerely hopes the City's Letter is a pre-cursor to further meaningful discussions in furtherance of our common goals.

As noted to the City and its legal counsel previously, the COD Board of Trustees and Administration, alike, remain committed to open and transparent discussions regarding this Property, the planned permanent Palm Springs campus facility ("Palm Springs Development Project," which the City's Letter also addresses in connection with the Property), and all of COD's work and efforts. COD has diligently worked on its projects, and has specifically provided robust discussion and details about the Palm Springs Development Project through open session discussions and facilities project updates, including (but not at all limited to), the following notable events: 1) the 85-minute March 18, 2022 COD Board meeting presentation and discussion; 2) the 85-minute April 7, 2022 City of Palm Springs City Council Meeting COD presentation, discussion and Q&A session; and 3) the 90-minute, August 4, 2022 COD Community Forum presentation, discussion and Q&A session. COD continues to employ many methods of coordinating and communicating with stakeholders and interested parties, such as the City of Palm Springs, and will continue to maximize this communication and keep its constituents informed.

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In keeping with the themes of finding solutions and ensuring interested parties remain informed, COD provides the following response to the City's Letter, as well as COD's own proposal.

First, it is necessary to clarify a few integral points missing from the City's Letter. In January of 2016, representatives from COD met with representatives from the City (including then: Mayor Pro Tem Chris Mills, City Manager David Ready, Assistant City Manager/City Engineer Marcus Fuller, Director of Community and Economic Development Department Lauri Aylaian, and City Attorney Doug Holland) to discuss the Property. I was directly involved in discussions between COD and the City regarding the Property, as well as the detailed discussions and planning which followed (collectively, the "discussions").

During these discussions, COD and the City agreed that the Property was not suitable for COD's planned Palm Springs Campus site, and COD noted it planned to sell the Property. The City did not object to COD's plan to sell the Property or claim COD was somehow obligated to build a campus on the Property. In fact, the City agreed that it did not have a right to reclaim the Property if COD did not use it for a campus, and the City conceded that it was not entitled to any payment received as a result of the Property sale. The City and COD also specifically concluded and agreed that the deed which originally transferred the Property from the City to COD ("Deed") did not include any restriction that would prevent COD from selling the Property for another use. Specifically, the Property's Deed does not include any language stating that the Property would revert to the City if COD ultimately did not use the Property for a College site, or otherwise require the Property to be used only for a College site. The City, including the City's attorney, agreed with these facts. Finally, these discussions included detailed planning for the City to acquire the Property from COD in the range of \$5.7 to \$5.8 million, and that the City's intent was to sell the Property to one or more developers for residential development (including but not limited to, the current escrow holder and proposed Buyer, Watermarke (discussed below). Therefore, any suggestion that COD pursued a sale of the Property without "consultation or agreement from the City" as suggested in the City's Letter, is not even remotely accurate.

The City's suggestion that the Property Deed limits the Property's development to the specific COD campus conflicts with general public policy, as it suggests that the Property must stay unused unless and until COD develops a campus on the Property. As noted above and during COD's discussions with the City, COD determined that it could not use the Property for a campus, in which case (according at least to the claims in the City's Letter), the Property would remain abandoned forever. Surely the City does not wish for the Property to remain an unused site, simply owned by COD. In fact, the City's Letter suggests that COD cannot use the Property for anything else except a specific College site and with the specific scope and nature set forth in the City's Letter.

Please understand that COD does not intend on getting into a prolonged fight with the City over the specifics of the Property Deed or prior discussions. Instead, COD remains committed to finding a solution to satisfy all parties and the community. We merely provide this brief and

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truncated summary of the prior discussions to demonstrate to the City that COD and the City, very clearly and amicably, agreed on the basic facts regarding the Property in the past. COD absolutely worked, planned, and followed a sale process for the Property with the City fully informed and in agreement. Again, to suggest otherwise is not even remotely accurate.

If the City's position regarding the Property Deed has in fact changed, then there would be a clear existing controversy, the likes of which would be appropriate for the court to determine the parties' respective rights and obligations by way of declaratory relief action. Such an action would settle any doubts or interpretations of the specific rights and requirements established by the Property Deed. Therefore, if the City believes this is necessary, COD is willing to file such an action so we can move past the Property Deed issue.

Notwithstanding the Property Deed, COD appreciates the City's effort to resolve this matter by offering to purchase the Property. However, as you know, COD is currently under contract with Watermarke at Palm Springs, LLC ("Watermarke") for the sale of the Property for \$5.7 million. COD's current position is that it will not, of course, enter into an agreement with the City without COD or Watermarke first terminating the existing escrow and agreement, based on the terms of the existing agreement. COD recognizes that the City's offer for the Property matches Watermarke's price, and therefore surmises that this may be part of a City plan to sell the Property directly to Watermarke. While such an arrangement appears theoretically viable, COD will not enter into an agreement with the City at this present time without Watermarke's involvement and cooperation.

Based on this rationale, after receipt of the City's Letter, I contacted Watermarke's counsel who confirmed that Watermarke would be willing to attend a meeting between Watermarke, City and COD representatives in order to discuss the Property. Therefore, COD extends the same offer to the City — that COD hold a meeting of all three parties to entertain an agreement whereby the City purchases the Property from COD, the City sells the Property to Watermarke, and all three parties release and waive all claims related to the Property and any agreements related to the Property. Such an agreement would allow the City to be in an ownership position regarding the Property, and Watermarke and the City can continue to discuss entitlements to the Property — just as it has and must, and none of which includes COD. As you may know, there have been some suggestions from the City that COD should somehow decide or guide what entitlements are to be sought and approved for the Property; however, COD has no control over such entitlement approvals, and COD absolutely and appropriately leaves such approvals to Watermarke to seek and to the City to review, debate, and decide.

Finally, as previously confirmed by COD on several occasions, COD has committed to using all \$5.7 million of the sale proceeds it receives for the Property (whether it ultimately comes from the City, Watermarke, or otherwise) for the Palm Springs Development Project at COD's current site, as it is being planned and developed. However, as COD has repeatedly confirmed in the public sessions noted above and various community and stakeholder meetings, the final scope, timeline and ultimate cost of the Palm Springs Development Project is still being established by

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COD. To be clear, as discussed in open session meetings, COD faces economic challenges, has learned much about the total cost of ownership for proposed facilities, and must remain cognizant of such costs and responsible to ensure costs are in keeping with COD's current and anticipated student enrollment.

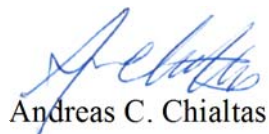
COD reiterates its commitment to completing the planning, design, and construction of the Palm Springs Development Project, and COD will continue open and transparent discussions related to this Project. COD also welcomes the City's cooperation collaboration, advice and partnership regarding the Palm Springs Development Project, and perhaps together and through the recently approved Citizen's Advisory Group of the Palm Springs Development Project, the parties can brainstorm all possibilities in order to maximize scope, efficiencies, and timing of the Project.

COD appreciates the City's offer related to the Property, and believes there may be a path to an agreement whereby all parties, and the community, benefit. Should the City wish to meet with representatives from COD and Watermarke as offered above, we believe such a meeting could be beneficial. Separately from these Property discussions, COD also offers to continue our discussions related to the Palm Springs Development Project by way of the COD/City two-by-two meetings, or perhaps other format(s).

If the City is interested in our proposed meeting with COD and Watermarke, please let me know and I will coordinate calendars. In the meantime, should you have any further questions, please do not hesitate to contact me directly.

Very truly yours,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Andreas C. Chialtas

cc: Mayor and City Councilmembers of the City of Palm Springs
Teresa Gallavan, Interim City Manager of the City of Palm Springs
Carlos Campos, Best, Best & Krieger
Board President and Board of Trustees, College of the Desert
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