

Rec'd 5-27-04

DOC # 2004-0342453

05/07/2004 08:00A Fee:NC

Page 1 of 63

Recorded in Official Records

County of Riverside

Gary L. Orso

Assessor, County Clerk & Recorder

C. Kates

C: CA's Office  
JL

①

**RECORDING REQUESTED BY:  
INDIAN WELLS REDEVELOPMENT AGENCY**

**WHEN RECORDED MAIL TO:  
DEPUTY AGENCY SECRETARY  
INDIAN WELLS REDEVELOPMENT AGENCY  
44-950 ELDORADO DRIVE  
INDIAN WELLS, CA 92210**



M	S	U	PAGE	SIZE	DA	PCOR	NCCOR	SMF	MISC.
	1		43						
					1			✓	M
A	R	L			COPY	LONG	REFUND	NCHG	EXAM

EXEMPT FROM FILING FEES PURSUANT TO GOVERNMENT CODE § 27383

C  
RU

# DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

**INDIAN WELLS REDEVELOPMENT AGENCY**

and

**JERSON INVESTMENTS, LLC**

# DISPOSITION AND DEVELOPMENT AGREEMENT

**THIS DISPOSITION AND DEVELOPMENT AGREEMENT** ("Agreement") is entered into by and between the **INDIAN WELLS REDEVELOPMENT AGENCY**, a public body, corporate and politic (the "Agency"), and **JERSON INVESTMENTS, LLC**, an Illinois limited liability company (the "Developer").

## RECITALS

The following recitals are a substantive part of this Agreement:

A. The Agency is the fee simple owner of that certain real property consisting of Assessor's Parcel No. ("APN") 633-310-013 and a portion of APN 633-150-11 in the City of Indian Wells (the "Agency Parcels"), which are illustrated in **Attachment No. 1** and are legally described in **Attachment No. 2**, both of which are attached hereto and incorporated herein. The City of Indian Wells ("City") is the fee simple owner of that certain real property consisting of APN 633-310-04, AAPN 633-310-05, APN 633-310-06, APN 633-310-11, APN 633-310-16, APN 633-310-17 and APN 633-410-12 in the City of Indian Wells (the "City Parcels"), which are illustrated in Attachment No. 1 and are legally described in **Attachment No. 3**. The Agency desires and intends to acquire the City Parcels and, if and when, if at all, the Agency acquires the City Parcels, then the City Parcels and the Agency Parcels collectively shall be referred to as the "Site," which is legally described in **Attachment No. 4**.

B. If and when, if at all, the Agency acquires from the City the City Parcels, and conditioned on such acquisition by the Agency, then the Agency desires to sell and convey the Site to the Developer and the Developer desires to purchase and develop the Site on the terms and conditions set forth herein. Upon conveyance of the Site to the Developer, the Agency and the Developer desire that the Developer be responsible for the operation, maintenance, repair and replacement of sidewalks, lighting, irrigation and landscaping improvements now or hereafter installed with respect to the development of the Site; provided, however, that ultimately upon the sale by the Developer of all lots or parcels comprising the Site and with respect to the sale of each lot or parcel, the successors and assignees of the Developer shall be responsible for the foregoing, and further provided that the Developer and the Agency desire and intend that the Developer will take all actions necessary upon request by the City, to cooperate with the City in establishing a Landscape and Lighting Act of 1972 assessment district to provide for the operation, maintenance, repair and replacement of the foregoing and/or to provide for such operation, maintenance, repair and replacement in the Declaration.

C. This Agreement and the Attachments attached hereto further provide for the disposition to and development of the Site by the Developer, as a mixed use type planned development (as defined in California Civil Code Section 1351k) in accordance with plans to be prepared by the Developer and submitted to the Agency and the City for all required approvals during the Escrow, as set forth in this Agreement ("Developer Improvements"). The Agency and the Developer desire and intend that the conveyance of the Site to the Developer and the obligations of the Parties under this Agreement are conditioned upon the Agency's acquisition of the City Parcels. The Agency and the Developer further desire and intend that the Agency shall complete its acquisition of the City Parcels within ninety (90) days of the Effective Date of

2004-0342453  
05/07/2004 08:00A  
2 of 63



Agreement (as hereafter defined).

NOW, THEREFORE, the Agency and the Developer hereby agree as follows:

**100. DEFINITIONS**

**"Actual Knowledge"** is defined in Sections 206.2 and 208.1 hereof.

**"Agency"** means the Indian Wells Redevelopment Agency, a public body, corporate and politic, established pursuant to the Community Redevelopment Law of the State of California, California Health and Safety Code Sections 33000, et seq.

**"Agency Parcels"** means APN 633-310-013 and a portion of 633-150-11 in the City of Indian Wells.

**"Agency's Conditions Precedent"** means the conditions precedent to the Closing for the benefit of the Agency, as set forth in Section 205.1 hereof.

**"Agreement"** means this Disposition and Development Agreement between the Agency and the Developer.

**"Assignment and Assumption Agreement"** is defined in Section 312 hereof.

**"Association"** is defined in Section 403.

**"City"** means the City of Indian Wells, a California municipal corporation and chartered city.

**"City Parcels"** means APN 633-310-04, APN 633-310-05, APN 633-310-06, APN 633-310-11, APN 633-310-16, APN 633-310-17 and APN 633-410-12 in the City of Indian Wells.

**"Closing"** means the close of Escrow for the conveyance of the Site from the Agency to the Developer, as set forth in Section 200 hereof.

**"Closing Date"** means the date of the Closing, as set forth in Section 202.4 hereof.

**"Condition of Title"** is defined in Section 203 hereof.

**"Conditional Sales Agreement"** is defined in Section 312.

**"County"** means the County of Riverside, California.

**"Declaration"** is defined in Section 403.

**"Default"** means the failure of a Party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

**"Deposit"** is defined in Section 201.1 hereof.

**"Developer"** means Jerson Investments, LLC, an Illinois limited liability company.

2004-0342453  
05/07/2004 08:06A  
3 of 63



**"Developer Improvements"** means the new improvements to be constructed by the Developer pursuant to Section 301 herein.

**"Developer's Conditions Precedent"** means the conditions precedent to the Closing to the benefit of the Developer, as set forth in Section 205.2.

**"Due Diligence Period"** is defined in Section 208.2 hereof.

**"Effective Date of Agreement"** means the date upon which this Agreement is executed by the Agency.

**"Environmental Consultant"** means the environmental consultant to be employed by the Developer pursuant to Section 208.2 hereof.

**"Environmental Laws"** means any and all federal, State or local laws, statutes, ordinances or regulations pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials, including, without limitation, (i) Sections 25115, 25117, 25122.7 or 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) Article 9 or Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (vi) Section 311 of the Clean Water Act (33 U.S.C. §1317), (vii) Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903), (viii) Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*, or (ix) any State or federal lien or "superlien" law, any environmental cleanup statute or regulation, or any permit, approval, authorization, license, variance or permission required by any governmental authority having jurisdiction.

**"Escrow"** is defined in Section 202 hereof.

**"Escrow Agent"** is defined in Section 202 hereof.

**"Exceptions"** is defined in Section 203 hereof.

**"Exclusive Negotiation Fee"** is defined in Section 201.1 hereof.

**"Governmental Requirements"** means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Agency, the Developer or the Site.

**"Grant Deed"** means the grant deed for the conveyance of the Site from the Agency to the Developer, in the form of **Attachment No. 6** hereto which is incorporated herein.

**"Hazardous Materials"** means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous

2004-0342453  
05/07/2004 08:00A  
4 of 63



waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated byphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903) or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*

**"Land Use Approvals"** is defined in Section 303 hereof.

**"Notice"** shall mean a notice in the form prescribed by Section 601 hereof.

**"Opening of Escrow"** is defined in Section 202 hereof.

**"Outside Date"** shall mean the last date the Closing shall occur, as set forth in Section 202.4 hereof.

**"Owner"** shall mean the Developer and any and all successors in interest who own any parcel within the Site.

**"Party"** shall mean either the "Agency" or the "Developer," depending on the context in which the term is used.

**"Parties"** shall mean both the Agency and the Developer.

**"Purchase Price"** means the price to be paid by the Developer to the Agency in consideration for the conveyance of fee title to the Site.

**"Redevelopment Plan"** means the Redevelopment Plan for the Consolidated Whitewater Redevelopment Project Area, adopted on July 8, 1982, as amended on August 5, 1987.

**"Remaining Purchase Price"** means the Purchase Price, less the Deposit.

**"Report"** means the preliminary title report, as described in Section 203 hereof.

**"Site"** means the City Parcels and the Agency Parcels collectively.

**"Site Legal Description"** means the legal description of the Site which is attached hereto as **Attachment No. 4** and incorporated herein.

**"Site Map"** means the map of the Site which is attached hereto as **Attachment No. 1**



and incorporated herein.

**"State"** means State of California.

**"Studies"** is defined in Section 207 hereof.

**"Successor Owner"** or **"Successor Owners"** shall mean any and all successors in interest to the Developer who acquire fee title or a ground lease to or of any lot or parcel within the Site.

**"Title Company"** is defined in Section 203 hereof.

**"Title Policy"** is defined in Section 204 hereof.

## 200. CONVEYANCE OF THE SITE

**201. Purchase and Sale of Site.** Subject to all of the terms and conditions of this Agreement, Agency shall sell the Site to the Developer, and the Developer shall purchase the Site from the Agency, for the all-inclusive cash purchase price of Five Million Five Hundred Seventy-Six Thousand Seven Hundred Thirty-Five **Dollars (\$5,576,735)** (the **"Purchase Price"**).

The Grant Deed shall be substantially in the form attached to this Agreement as **Attachment No. 6**

The Parties further acknowledge and agree that the Agency's sale of the Site to the Developer, and the Developer's purchase of the Site from the Agency, are conditioned upon the Agency acquiring fee title to the City Parcels from the City. For this purpose, the Agency shall cause the City to complete conveyance of the City Parcels to the Agency within ninety (90) days after the Effective Date of Agreement.

**201.1 Good Faith Deposit.** The Developer shall concurrently with the Opening of Escrow deliver to the Agency (and not into Escrow) a good faith deposit (the "Deposit") in the amount of One Hundred Thousand Dollars (\$100,000), in the form of either cash or certified check. The Agency shall be under no obligation to pay or earn interest on the Deposit, but if interest shall accrue or be payable thereon, such interest shall become a part of the Deposit and shall be disposed of as the rest of the Deposit according to the terms and conditions of this Agreement.

The Developer shall by not later than the Effective Date of Agreement, pay directly to the Agency (and not into Escrow) the sum of Fifteen Thousand Dollars (\$15,000), as a non-refundable exclusive negotiation fee, for the purpose of satisfying, in part, the Agency's legal fees and costs incurred by and on behalf of the Agency in connection with the preparation, negotiation and implementation of this Agreement. ("Exclusive Negotiation Fee"). The Exclusive Negotiation Fee shall become the sole and exclusive property of the Agency, whether or not the Closing occurs and whether or not this Agreement is terminated for any reason or for no reason. The Exclusive Negotiation Fee shall not be applied to the Purchase Price.

Upon the termination of this Agreement by the Developer pursuant to Section 503 of this Agreement, the Deposit shall be returned to the Developer. Upon the termination of this Agreement by the Agency pursuant to Section 504 of this Agreement, due to the Developer's



Default, the entire Deposit shall be retained by the Agency as its sole and exclusive property. Upon the termination of this Agreement by the Agency pursuant to Section 504, but not due to the Developer's Default, the Deposit shall be returned to the Developer. Upon the Closing, the Deposit shall be tendered by the Agency into the Escrow and shall be applied to and be part of the Purchase Price for the Site.

**202. Escrow.** Within five (5) business days after the Effective Date of Agreement, the Parties shall open an escrow for the conveyance of the Site ("Escrow") with Palm Desert Escrow Company or another escrow company mutually satisfactory to both Parties (the "Escrow Agent"). For purposes of this Agreement, the Escrow shall be deemed open (the "Opening of Escrow") on the date the Escrow Agent shall have received a fully executed original or originally executed counterparts of this Agreement.

**202.1 Costs of Escrow.** The Developer shall pay the premium for the Title Policy as set forth in Section 204 hereof. The Developer shall also pay for the documentary transfer taxes, if any, due with respect to the conveyance of the Site, and the Developer shall pay all other usual fees, charges, and costs which arise from the Escrow, including without limitation any Escrow cancellation charges in the event this Agreement is terminated by either Party prior to Closing.

**202.2 Escrow Instructions.** This Agreement constitutes the joint escrow instructions of the Developer and the Agency, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The Parties agree to perform all acts reasonably necessary to close the Escrow expeditiously in accordance with the terms hereof. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow trust account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account. However, if the Escrow does not close within two (2) business days from the deposit of the Remaining Purchase Price (the Purchase Price less the Deposit), the funds shall be deposited into an interest bearing account with such interest accruing to the benefit of the Developer.

If in the opinion of either Party, it is necessary or convenient to accomplish the Closing of this transaction in accordance with the provisions, intents and purposes hereof, either Party may require that the Parties sign supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The Parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place when both the Agency's Conditions Precedent as set forth in Section 205.1 and the Developer's Conditions Precedent as set forth in Section 205.2 have been satisfied. The Escrow Agent is instructed to release the Agency's escrow closing statement and the Developer's escrow closing statement to the respective applicable Party.

**202.3 Authority of Escrow Agent.** The Escrow Agent is authorized to and shall:

a. Pay and charge the Developer for any premium of the Title Policy, endorsements, additional coverage and any other costs associated with the Title Policy as set forth in Section 204 of this Agreement.

b. Pay and charge the Developer for any escrow fees, charges, and costs

2004-0342453  
05/07/2004 08:00A  
7 of 63



payable under Section 202.1 of this Agreement.

c. Disburse funds and deliver and record the Grant Deed when both the Developer's Conditions Precedent and the Agency's Conditions Precedent have been fulfilled or waived by the Developer and the Agency, as applicable.

d. Do such other actions as necessary, including obtaining the Title Policy, to fulfill its obligations under this Agreement.

e. Direct the Agency and the Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of FIRPTA and any similar State act and regulation promulgated thereunder. The Agency agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as may be required by the Escrow Agent on the form to be supplied by the Escrow Agent.

f. Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

**202.4 Closing.** This transaction shall close ("Closing") within thirty (30) days following the last to occur of (i) the expiration of the Due Diligence Period, as defined in Section 208.2, and (ii) the satisfaction of all of the Agency's Conditions Precedent and the Developer's Conditions Precedent to Closing as set forth in Section 205 hereof; provided, however in no event shall the Closing occur later than December 31, 2005 (the "Outside Date"). The Closing shall occur at a location within Riverside County at a time and place reasonably agreed on by the Parties. The "Closing" shall mean the time and day the Grant Deed is filed for recording with the Riverside County Recorder. The "Closing Date" shall mean the day on which the Closing occurs.

The Outside Date is subject to extension as provided in the Schedule of Performance (Attachment No. 8), and by force majeure, as described in Section 602 hereof. Separate and apart from any extension of the Outside Date due to force majeure, the Parties may (but shall not be obligated to) extend the Outside Date by mutual written agreement. As a condition to its entry into any such agreement extending the Outside Date, the Agency reserves the right to renegotiate the Purchase Price, Escrow terms, and any other terms and conditions of this Agreement.

**202.5 Termination.** If the Escrow is not in condition to close by the Outside Date, (subject to any extension of the Outside Date due to force majeure) then either Party which has fully performed under this Agreement may, in writing, demand the return of money, documents or property and, as provided below, terminate this Agreement. If either Party makes a written demand for return of money, documents or property, this Agreement shall not terminate until five (5) business days after the Escrow Agent shall have delivered copies of such demand to the other Party at the other Party's address as shown in Section 601 of this Agreement. If any objections are raised within said five (5) day period, the Escrow Agent is authorized to hold all money, documents and property until instructed by a court of competent jurisdiction or by mutual written instructions of the Parties. If termination is not due to any Default pursuant to Sections 503 or 504, termination of this Agreement shall be without prejudice, cost, expense or liability to either Party and each Party shall be entitled to a return of all funds, documents and property

2004-0342453  
05/07/2004 08:00A  
8 of 63



deposited by that Party into the Escrow. If the Developer terminates this Agreement or fails to close the Escrow for any reason (except for the Default of the Agency pursuant to Section 503) then the Developer shall, at no cost to the Agency, deliver to the Agency all maps, surveys, tests, plans, reports and/or studies created by or at the request of the Developer, and the same shall become the property of the Agency. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible.

**202.6 Closing Procedure.** The Escrow Agent shall close the Escrow for the Site as follows:

- a. Record the Grant Deed with instructions for the Recorder of Riverside County, California, to deliver the Grant Deed to the Developer;
- b. Instruct the Title Company to deliver the Title Policy to the Developer;
- c. File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;
- d. Deliver the FIRPTA Certificate, if any, to the Developer;
- e. Pay to the Agency the Purchase Price; and
- f. Forward to both the Developer and the Agency, a separate accounting of all funds received and disbursed for each Party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

**203. Review of Title.** The Agency has caused Stewart Title Company of California (the "Title Company"), to prepare and the Agency has delivered to the Developer, a standard preliminary title report (the "Report") with respect to the title to the Site, together with legible copies of the documents underlying the exceptions ("Exceptions") set forth in the Report. The Developer shall have the right to reasonably approve or disapprove the Exceptions; provided, however, that the Developer herein approves the following Exceptions:

- a. The Redevelopment Plan;
- b. Matters affecting the condition of title created by or with the consent of the Developer;
- c. All matters which would be shown by an accurate survey of the Site or by a physical inspection of the Site;
- d. All applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) affecting the development, use, occupancy or enjoyment of the Site.

The Developer shall have sixty (60) days from the date of its receipt of the Report or the Effective Date of Agreement, whichever occurs later, to give written notice to the Agency and the Escrow Agent of the Developer's approval or disapproval of any of such Exceptions. The Developer's failure to give written disapproval of the Report within such time limit shall be deemed approval of the Report. If the Developer notifies the Agency of its disapproval of any



Exception in the Report, the Agency shall have the right, but not the obligation, to remove any and all disapproved Exceptions within sixty (60) days after receiving written notice of the Developer's disapproval or provide assurances satisfactory to the Developer that such Exception(s) will be removed on or before the Closing. If the Agency cannot or does not elect to remove any of the disapproved Exceptions within that period, the Developer shall have ten (10) business days to either give the Agency written notice that the Developer elects to proceed with the purchase of the Site subject to the disapproved Exceptions or to give the Agency written notice that the Developer elects to terminate this Agreement. The Exceptions to title approved by the Developer as provided herein shall hereinafter be referred to as the "Condition of Title." The Developer shall have the right to approve or disapprove any Exceptions reported by the Title Company after the Developer has approved the Condition of Title for the Site if such exceptions were not created by the Developer and of which the Developer had no notice prior to its approval of the Condition of Title. The Agency shall not voluntarily create any new exceptions to title following the Effective Date of Agreement.

**204. Title Insurance.** Concurrently with the Closing, there shall be issued to the Developer a CLTA owner's policy of title insurance (the "Title Policy"), together with such endorsements as are reasonably requested by the Developer, issued by Stewart Title Company, insuring that the title to the Site is vested in the Developer in the condition required by Section 203 of this Agreement. The Stewart Title Company shall provide the Agency with a copy of the Title Policy. The Title Policy shall be for the amount of the Purchase Price. The Developer shall pay the premium for the Title Policy including, without limitation, the cost of an ALTA policy, if requested by the Developer, a higher policy amount and any endorsements requested by the Developer.

**205. Conditions of Closing.** The Closing is conditioned upon the satisfaction of the following terms and conditions within the times designated below:

**205.1 Agency's Conditions of Closing.** The Agency's obligation to proceed with the Closing for the sale of the Site is subject to the fulfillment, or waiver by the Agency, of each and all of the conditions precedent (a) through (g), inclusive, described below ("Agency's Conditions Precedent"), which are solely for the benefit of the Agency, and which shall be fulfilled or waived by the time periods provided for herein:

a. No Default. At the time of Closing, the Developer is not in Default of any of its obligations under the terms of this Agreement and all representations and warranties of the Developer contained herein shall be true and correct in all material respects.

b. Execution of Documents. The Developer shall have executed the Grant Deed and executed any other documents required hereunder and delivered such documents into the Escrow. The Grant Deed shall be drafted to comply with the substantive terms of this Agreement.

c. Payment of Closing Costs. Prior to the Close of Escrow, the Developer has paid all costs of Closing into the Escrow in accordance with Section 202 hereof.

d. Consistency Finding. The Planning Commission of the City shall have made a consistency finding in accordance with Government Code Section 65402.

e. The Developer shall have posted the Performance and Payment Bonds required by Section 309.

2004-0342453  
05/07/2004 08:00A  
10 of 63

f. The Agency shall have acquired fee title to the City Parcels from the City.

g. There shall be no litigation or other challenge pending or of which the Agency has notice, either existing or threatened against the Agency or the City, or any of their officials, officers, employees or agents, which the Agency determines, in its sole and absolute discretion, may affect this Agreement or the ability of the Agency or the City to fulfill their obligations or functions under or as described in this Agreement; provided, however, that the parties understand and agree that any such litigation shall be deemed to constitute force majeure.

h. The Agency shall have approved in writing of a coordinated plan of development of the Site.

**205.2 Developer's Conditions of Closing.** The Developer's obligation to proceed with the Closing for purchase of the Site is subject to the fulfillment, or waiver by the Developer, of each and all of the conditions precedent (a) through (g), inclusive, described below ("Developer's Conditions Precedent"), which are solely for the benefit of the Developer, and which shall be fulfilled or waived by the time periods provided for herein:

a. No Default. At the time of Closing, the Agency is not in Default of any of its obligations under the terms of this Agreement and all representations and warranties of the Agency contained herein shall be true and correct in all material respects.

b. Execution of Documents. The Agency shall have executed the Grant Deed and any other documents required hereunder, and delivered such documents into the Escrow. The Grant Deed shall be drafted to comply with the substantive terms of this Agreement and shall be substantially in the form set forth in Attachment No. 6.

c. Review and Approval of Title. The Developer shall have reviewed and approved the Condition of Title of the Site, as provided in Section 203 hereof.

d. Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, be committed to issue the Title Policy for the Site upon the Close of Escrow, in accordance with Section 204 hereof.

e. Due Diligence. The Developer shall have approved or be deemed to have approved the environmental condition of the Site, shall have approved or be deemed to have approved that the Site is suitable for the Developer's intended use, and shall not have elected to cancel the Escrow and terminate this Agreement pursuant to Section 208.2 hereof.

f. Land Use Approvals. The Developer shall have received all land use approvals and permits contemplated by or required pursuant to Section 303 hereof, with the exception of architectural approval and issuance of building permits for private improvements to be completed on each lot or parcel comprising the Site.

g. The Agency shall have removed or released any deeds of trust or other non-statutory monetary liens upon the Site.

## **206. Representations and Warranties.**

**206.1 Agency Representations.** "Actual knowledge," as used herein and



elsewhere in this Agreement with respect to the Agency, shall not impose a duty of investigation, and shall be limited to the actual knowledge of the Executive Director of the Agency. The Agency represents and warrants to the Developer, to the best of the Agency's actual knowledge, as of the Effective Date of Agreement (except insofar as the Agency may not have acquired fee title to the City Parcels as of the Effective Date of Agreement) and as of the Closing Date as follows:

a. Authority. The Agency owns (as of the Closing Date) the Site subject to the Exceptions, has full right, power and lawful authority to grant, sell and convey (as of the Closing Date) the Site as provided herein and the execution, performance and delivery of this Agreement by the Agency has been fully authorized by all requisite actions on the part of the Agency. In addition, the individual(s) executing this Agreement on behalf of the Agency has the full power and authority to take such action on behalf of the Agency.

b. FIRPTA. The Agency is not a "foreign person" within the parameters of FIRPTA or any similar State statute, or is exempt from the provisions of FIRPTA or any similar State statute, or that the Agency has complied and will comply with all the requirements under FIRPTA or any similar State statute.

c. No Conflict. The Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Agency is a party or by which it is bound and there are no pending lawsuits or other actions or proceedings which would prevent, impair or delay the timely performance of the Agency's obligations under this Agreement.

d. The Agency's entry into this Agreement and/or the performance of its obligations under this Agreement does not constitute a violation of any State or federal statute or judicial decision to which the Agency is subject.

Until the Closing, the Agency shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.1 not to be true as of Closing, immediately give written notice of such fact or condition to the Developer. Such exception(s) to a representation and warranty shall not be deemed a breach by the Agency hereunder, but shall constitute an exception which the Developer shall have a right to approve or disapprove if such exception would have an effect on the value, use, development and/or operation of the Site. If the Developer elects to close the Escrow following disclosure of such information, the Agency's representations and warranties contained herein shall be deemed to have been made as of the Closing, and to include such exception(s). If, following the disclosure of such information, the Developer elects to not close the Escrow, then this Agreement and the Escrow shall automatically terminate, and neither Party shall have any further rights, obligations or liabilities hereunder, except as provided in Sections 201.1 and 202.5 above. The representations and warranties set forth in this Section 206.1 shall survive the Closing.

**206.2 Developer's Representations.** "Actual knowledge," as used herein and elsewhere in this Agreement with respect to Developer, shall not impose a duty of investigation, and shall be limited to the actual knowledge of Gerald Fogelson, the Developer's Managing Member. The Developer represents and warrants to the Agency, to the best of the Developer's actual knowledge, as of the Effective Date of Agreement and as of the Closing Date as follows:

a. Authority. The Developer is a duly organized limited liability company incorporated within and in good standing under the laws of the State of Illinois. The copies of the

2004-0342453  
05/07/2004 08:08A  
12 of 63



documents evidencing the organization of the Developer which have been delivered to the Agency are true and complete copies of the originals, as amended to the Effective Date of Agreement. The Developer has full right, power and lawful authority to purchase and accept the conveyance of the Site and undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by the Developer have been fully authorized by all requisite actions on the part of the Developer. In addition, the individual(s) executing this Agreement on behalf of the Developer has the full power and authority to take such action on behalf of the Developer.

b. No Conflict. The Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Developer is a party or by which it is bound and there are no pending lawsuits or other actions or proceedings which would prevent, impair or delay the timely performance of the Developer's obligations under this Agreement.

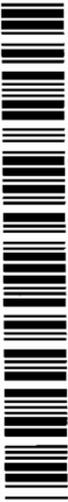
c. The Developer's entry into this Agreement and/or the performance of its obligations under this Agreement does not constitute a violation of any state or federal statute or judicial decision to which the Developer is subject.

d. No Developer Bankruptcy. The Developer is not the subject of a voluntary or involuntary bankruptcy proceeding.

Until the Closing, the Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.2 not to be true as of Closing, immediately give written notice of such fact or condition to the Agency. Such exception(s) to a representation and warranty shall not be deemed a breach by the Developer hereunder, but shall constitute an exception which the Agency shall have a right to approve or disapprove if such exception would have an effect on the value, use, development and/or operation of the Site or the redevelopment purposes for which the Agency has entered into this Agreement. If the Agency elects to close the Escrow following disclosure of such information, the Developer's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, the Agency elects to not close the Escrow, then this Agreement and the Escrow shall automatically terminate, and neither Party shall have any further rights, obligations or liabilities hereunder, except as provided in Sections 201.1 and 202.5 above. The representations and warranties set forth in this Section 206.2 shall survive the Closing.

**207. Studies and Reports.** After the Opening of Escrow, representatives of the Developer shall have the reasonable right of access to all portions of the Site during normal business hours, following at least three (3) days advance Notice in writing to the Agency, for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement (the "Studies"), to conduct its due diligence review of the Site to determine the Site's environmental condition and its suitability for the Developer's intended use, pursuant to Section 208 below. Any preliminary work undertaken on the Site by the Developer prior to the Closing shall be done at the expense solely of the Developer. Copies of data, surveys and tests obtained or made by the Developer pursuant to this Section shall be provided to the Agency within fifteen (15) days after receipt by the Developer. Any preliminary work shall be undertaken only after securing any necessary permits from the appropriate governmental agencies. Following the completion of any and all access to, tests, work or surveys on the Site, the Developer shall cause the Site to be restored to the condition that preexisted such access, tests, work or surveys.

2004-03-24-53  
05/07/2004 08:06A  
13 of 63



The Developer shall protect, indemnify, defend (with counsel reasonably acceptable to the Agency) and hold the Site, and the City and the Agency and their officials, officers, employees, agents and attorneys, free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, costs and expenses, including, without limitation, reasonable attorney's fees and court costs and expenses (all of the foregoing, collectively "Liabilities"), related to or resulting from the Developer's access, work, surveys, inspection and testing of the Site, including, without limitation, repairing any and all damages to any portion of the Site, arising out of or related (directly or indirectly) to the Developer's conducting such access, inspections, surveys, tests, and studies, except to the extent that the Liabilities are attributable to the negligence or willful misconduct of the City and the Agency and their officials, officers, employees, agents, and attorneys. The Developer's protection, indemnification and defense obligations set forth herein shall survive the Close of Escrow, shall not be merged with the Grant Deed and shall survive any termination of this Agreement and the Escrow prior to the Close of Escrow.

**208. Due Diligence Review; Environmental Condition and Suitability of Site for Developer's Use.**

**208.1 Environmental Disclosure.** The Agency hereby represents and warrants to the Developer that it has no actual knowledge, and has not received any notice or communication from any government entity having jurisdiction over the Site informing it of the presence of surface or subsurface zone Hazardous Materials in, on, or under the Site, or any portion thereof. "Actual knowledge," as used herein and elsewhere in this Agreement with regard to the Agency, shall not impose a duty of investigation and shall be limited to the actual knowledge of Greg Johnson, Executive Director of the Agency

**208.2 Due Diligence Investigation of Site.** The Developer shall have the right, solely at its cost and expense, to engage an environmental consultant (the "Environmental Consultant") and such other agents, consultants and employees as it may retain to make such due diligence investigations as the Developer deems necessary, including any "Phase 1" and/or "Phase 2" investigations of the Site, and the Agency shall promptly be provided a copy of all reports and test results provided by the Environmental Consultant and the Developer's other agents and employees.

From the Opening of Escrow until December 31, 2004, (the "Due Diligence Period") the Developer shall have the right to evaluate the environmental condition of the Site. By no later than the expiration of the Due Diligence Period, the Developer shall reasonably approve or disapprove of the environmental condition of the Site. The Developer's failure to give written notice of disapproval of the environmental condition of the Site shall be deemed the Developer's approval of the environmental condition of the Site. The Developer's approval or deemed approval of the environmental condition of the Site shall be a Developer's Condition Precedent to the Closing, as set forth in Section 205 hereof. If the Developer reasonably disapproves the environmental condition of the Site during the Due Diligence Period, then the Developer may terminate this Agreement by written Notice to the Agency.

During the Due Diligence Period, the Developer shall also have the right to evaluate, at its sole cost and expense, whether the Site is suitable for the Developer's intended use. By no later than the expiration of the Due Diligence Period, the Developer shall reasonably determine and, within the Due Diligence Period, give the Agency written Notice of whether it is dissatisfied with any aspects of the Site and/or its condition or suitability for the Developer's

2004-0342453  
05/07/2004 08:00A  
14 of 63



intended use. The Developer's failure to give written notice of disapproval of the suitability of the Site shall be deemed to constitute the Developer's approval of the Site. The Developer's approval or deemed approval of the suitability of the Site shall be a Developer's Condition Precedent to the Closing, as set forth in Section 205 hereof. If the Developer reasonably finds during the Due Diligence Period that the Site is not suitable for the Developer's intended use, then the Developer may terminate this Agreement by written Notice to the Agency.

**208.3 Review of Documents and Materials.** During the Due Diligence Period, the Agency agrees to make available to the Developer documents and materials, if any, pertaining to the environmental condition of the Site (collectively, "Documents and Materials"), provided (i) such Documents and Materials have been prepared by or for the benefit of the Agency and are in the Agency's possession and control or are reasonably available to the Agency, and (ii) the Agency does not represent, warrant or certify the accuracy, adequacy or completeness of the Documents and Materials. The failure of the Developer to disapprove in writing any of the Documents and Materials on or before the expiration of the Due Diligence Period shall be deemed to constitute the Developer's approval of all Documents and Materials. The Developer shall keep all information contained in the Documents and Materials confidential, as provided below.

The Developer acknowledges that:

- (i) The Documents and Materials are being furnished to it solely for review by the Developer, its agents, employees and consultants in connection with this Agreement and the Developer's possible purchase of the Site;
- (ii) The Developer is using the Documents and Materials and relying on any information or conclusions contained in the Documents and Materials at the Developer's own risk, and the Agency and the City shall have no liability for any inaccuracies, omissions, errors or other matters which appear in the Documents and Materials; and
- (iii) The Developer will use the Documents and Materials solely in connection with the Developer's examination of the Site and for no other purpose whatsoever.

**208.4 No Further Warranties as to Site.** Except as otherwise provided herein, the physical condition, possession or title of the Site is and shall be delivered from the Agency to the Developer in an "as-is" condition, with no warranty expressed or implied by the Agency, including without limitation, regarding the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Site for the development purposes intended hereunder.

### **300. DEVELOPMENT OF THE SITE**

**301. Development of the Site.** The Developer shall construct or complete the following Developer Improvements, at the Developer's sole cost and expense, in accordance with this Agreement, and pursuant to final plans, drawings and documents submitted by the Developer and approved by the City.

a. All public and other improvements lawfully required of the Developer pursuant to land use and permit approvals granted by the City.



b. Clearing, grading and preparing the Site for development of private improvements on each parcel or lot within the Site, and completion of access ways and parking throughout the Site.

In addition, but not deemed to be part of the Developer Improvements, the Developer shall be responsible for causing each and all Successor Owners to undertake and complete private improvements on each lot or parcel within the Site, including without limitation buildings and other structures and landscaping on each lot or parcel within the Site, comprising a mixed use type planned development on the Site, in accordance with plans and permits that are subject to approval by the City and generally in accordance with the Scope of Development in Attachment No. 7. It is contemplated that such private improvements will be commenced and completed in accordance with the provisions of the Schedule of Performance (Attachment No. 8) and Section 312 of this Agreement.

Subject to Section 301a above, the Developer and the Agency understand and agree that there may be additions to, deletions from or changes to the scope of the Developer Improvements set forth herein during the City's permit process; and that to the extent there are any such additions, deletions or changes, the Developer Improvements shall be deemed automatically to be revised consistent with all such additions, deletions and changes.

**302. Schedule of Performance; Submission of Proposed Land Use Site Plan to Agency; Submission of Land Use Application to City; Request for Issuance of Building Permits for Developer Improvements; Completion of Developer Improvements; Sale of Lots and Parcels within Site; Completion of Private Improvements on Lots and Parcels; Schedule of Performance.** Within the time set forth in the Schedule of Performance (Attachment 8), the Developer shall submit to the Agency for its written approval a final plan ("Site Plan") showing the proposed uses and layout configurations within the Site. The Site Plan shall be deemed approved by the Agency if the Agency fails to send notice to the Developer of rejection of the Site Plan within thirty (30) days thereafter. If the Agency disapproves the Site Plan, the Agency shall specify the reasons therefor and within thirty (30) days after receipt of such notice, the Developer shall submit a revised Site Plan to the Agency, addressing the reasons for the Agency disapproval in a form and substance satisfactory to the Agency, in its sole and absolute discretion. The Parties anticipate that the Specific Plan for the Site will set forth more specific details regarding the development of the Site.

The Developer shall submit to the City in accordance with the Schedule of Performance (Attachment No. 8) applications for any and all land use approvals necessary to enable Escrow to Close, and such applications shall be in a form and substance deemed complete by the City in its sole and absolute discretion.

Subsequent to receipt of the Land Use Approvals, the Developer shall expeditiously submit to the City and within the time set forth in the Schedule of Performance (Attachment No. 8), an application, in compliance with all applicable City requirements, for issuance of all permits to construct the Developer Improvements.

Subsequent to receipt of such permits, the Developer will, subject to force majeure provisions as set forth in Section 602 hereof, expeditiously commence the Developer Improvements and complete same within twenty-four (24) months after permits have been issued.

2004-0342453  
05/07/2004 08:09A  
16 of 63



The Developer will cause all legal lots and parcels within the Site to be sold to third party purchasers within the time set forth in the Schedule of Performance (Attachment No. 8).

Private improvements on individual lots and parcels will be commenced and completed in the manner provided in Section 312 hereof and within the time set forth in the Schedule of Performance (Attachment No. 8).

The Developer shall cause the completion of the foregoing obligations within the times set forth in the Schedule of Performance (Attachment No. 8).

**303. Land Use and California Environmental Quality Act Approvals.** As required herein and as a Developer (but not an Agency) Condition Precedent to the Closing, the Developer shall, at its own cost and expense, secure or cause to be secured all of the following land use approvals for the proposed development as may be deemed necessary by the City in its sole and absolute discretion ("Land Use Approvals"), and pay all costs, charges and fees associated therewith:

- a. General Plan Amendment.
- b. Specific Plan Adoption (which may, at the Developer's request, include zoning ordinance text and mapping applicable to the Site).
- c. Zoning Amendments or Variances.
- d. Conditional Use Permits and Temporary Use Permit for a temporary sales office, if any.
- e. Subdivision Approval.
- f. All environmental impact reports, studies, findings, documents, and such other items required to be prepared, approved and certified pursuant to the California Environmental Quality Act ("CEQA") as determined by the City in its sole and absolute discretion. Notwithstanding any provision of this Agreement to the contrary, the City shall have the right to retain CEQA consultants as it deems necessary for the analysis of environmental impacts that may result from the Developer Improvements and all proposed Land Use Approvals and for the preparation of those reports, studies, findings and documents required to be approved and certified by the City pursuant to CEQA. All such costs with respect to City's retention of CEQA consultants shall be paid by the Developer by making deposits of funds with the City for this purpose, promptly following demand therefor by the City, and all in accordance with the City's standard procedures and requirements concerning compliance with CEQA for improvements similar to Developer Improvements and for Land Use Approvals. The Developer shall have the right to approve the CEQA consultants, their estimated cost budgets, and the timing of their performance, which approval shall not unreasonably be withheld.

The Developer and the Agency understand that this Agreement generally sets forth the land use approvals which may ultimately be required in order to permit the development of the Site. By entering into this Agreement, the Developer and the Agency understand and agree that the City and the Agency have not and will not commit themselves to the approval of any or all of the land use approvals or any component parts thereof or any other land use decisions concerning the Site unless and until the City and the Agency have complied with the requirements of CEQA. Furthermore, the Developer and the Agency understand and agree that

2004-0342453  
05/07/2004 08:00A  
17 of 63



prior to the Agency and/or the City making a decision regarding any land use approval concerning the Site, certain studies under CEQA may need to be completed, along with public hearings which are duly noticed and held, in order to certify or adopt an appropriate document under CEQA and/or to approve any land use application, after the Agency and/or the City carefully consider the evidence and analysis presented along with any testimony received at an applicable public hearing.

THE DEVELOPER EXPRESSLY ACKNOWLEDGES THAT NEITHER THE EXECUTION OF THIS AGREEMENT NOR THE GRANTING OF CONTRACT ADMINISTRATION OR ANY OTHER APPROVAL (OTHER THAN ULTIMATELY ISSUED LAND USE APPROVALS) CONSTITUTES THE GRANTING OF OR AN IMPLIED COMMITMENT TO GRANT ANY LAND USE APPROVALS. THE DEVELOPER UNDERSTANDS THAT THE LAND USE APPROVALS ARE LEGISLATIVE ACTS BY THE CITY AND THAT THE CITY HAS THE DISCRETION TO DENY APPROVALS WHERE APPLICABLE LAWS, ORDINANCES, REGULATIONS OR STANDARDS VEST SUCH DISCRETION WITH THE CITY. NOTWITHSTANDING ANY COVENANT OR OBLIGATION, WHETHER EXPRESS OR IMPLIED, OF THE AGENCY OR THE CITY AND/OR THEIR OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS TO EXERCISE GOOD FAITH IN DEALING WITH THE DEVELOPER AND THE MATTERS SET FORTH IN THIS AGREEMENT, THE DEVELOPER UNDERSTANDS AND AGREES THAT THE APPROVAL OF THE SITE PLAN BY THE AGENCY SHALL BE IN ITS SOLE AND ABSOLUTE DISCRETION, AND THAT THE CITY'S REVIEW AND APPROVAL, CONDITIONAL APPROVAL OR DISAPPROVAL OF LAND USE APPLICATIONS SHALL REMAIN IN THE CITY'S DISCRETION AS PERMITTED BY LAW.

**304. Cost of Construction.** All of the cost of planning, designing, developing and constructing all of the Developer Improvements, demolition of any existing improvements, site preparation and grading shall be borne solely by the Developer.

**305. Construction Schedule.** After the conveyance of title to the Site to the Developer as provided herein, the Developer shall promptly begin and thereafter diligently prosecute to completion the construction of the Developer Improvements on the Site as provided in the Developer plans, which shall be subject to approval by the City. The Developer shall complete all construction within a time frame specified or as reasonably established by the City when granting the Developer permits or other approvals to commence construction of the Developer Improvements, or such reasonable extension of said dates as may be granted by the City or the Agency as provided in Section 602 of this Agreement. Once construction has commenced, it shall be diligently pursued to completion, and shall not be abandoned for more than thirty (30) consecutive days, except when due to causes beyond the control of and without the fault of the Party responsible for performing the work.

During the period of construction, but not more frequently than once a month, the Developer shall submit to the Agency and City a written progress report of the construction when requested by the Agency or City. The report shall be in such form and detail as may reasonably be required by the City and the Agency, and shall include a reasonable number of construction photographs taken since the last report submitted by the Developer.

By the applicable dates set forth in the Schedule of Performance (Attachment 8), the Developer shall complete the conveyance of all lots or parcels within the Site to Successor Owners, and the Successor Owners shall complete the development of all private improvements on all lots or parcels within the Site.

2004-0342453  
05/07/2004 08:00A  
18 of 63



### 306. Indemnity.

**306.1 Developer's Indemnity.** The Developer shall defend, indemnify, assume all responsibility for, and hold the City and the Agency, and their representatives, volunteers, officials, officers, employees and agents, harmless from, all claims, demands, damages, defense costs (including attorneys' fees and costs) and liability of any kind or nature relating to the subject matter of this Agreement and/or the implementation hereof and for any damages to property and/or injuries to persons, including without limitation accidental death, which may be caused by any acts or omissions of the Developer under this Agreement, whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer shall not be liable for property damage or bodily injury to the extent caused by the negligence of the City or the Agency or their agents, employees, officers, officials, volunteers or representatives. Notwithstanding the foregoing, the Parties understand and agree that the Developer's indemnity set forth in this Section 306.1 shall not extend to or include indemnification for any actions or omissions of the Agency prior to the Effective Date of Agreement.

**306.2 Agency's Indemnity.** The Agency shall defend, indemnify, assume all responsibility for, and hold the Developer, and its representatives, volunteers, officials, officers, employees and agents, harmless from, all claims, demands, damages, defense costs (including without limitation attorneys' fees and costs) and liability of any kind or nature relating to the subject matter of this Agreement and/or the implementation hereof and for any damages to property and/or injuries to persons, including without limitation accidental death, which may be caused by any acts or omissions of the Agency under this Agreement, whether such activities or performance thereof be by the Agency or by anyone directly or indirectly employed or contracted with by the Agency and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Agency shall not be liable for property damage or bodily injury to the extent caused by the negligence of the Developer or its agents, employees, officers, officials, volunteers or representatives.

**307. Compliance With Laws.** The Developer shall carry out the design and construction of the Developer Improvements in conformity with all applicable laws and governmental requirements, including all applicable State labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City of Indian Wells Municipal Code and all applicable disabled and handicapped access requirements, including, without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

### 308. [Reserved]

**309. Performance and Payment Bond.** The Developer, at the time of obtaining permits for each of the Developer Improvements, shall furnish to the Agency a faithful Performance Bond, or, if requested by the Developer, other security approved by the Agency in its sole and absolute discretion such as cash or a letter of credit in an amount equal to one hundred percent (100%) of the Developer's best estimate, as approved by the Agency in its sole and absolute discretion, of the cost to complete that portion of the Developer Improvements, and a Payment Bond, or, if requested by the Developer, other security approved by the Agency in its sole and absolute discretion such as cash or a letter of credit in the same amount to guarantee faithful payment of all contractors, subcontractors and other laborers and materialmen



constructing that portion of the Developer Improvements.. Said Performance Bond, Payment Bond or other security shall be obtained from a surety company, or other issuer and be in a form and substance, satisfactory to the Agency in the Agency's sole and absolute discretion. The Parties understand and agree that each Successor Owner shall additionally be required to furnish to the Agency similar security, in accordance with all standards and requirements in this Section 309 otherwise applicable to the Developer Improvements, with respect to all private improvements on each lot or parcel within the Site conveyed to Successor Owners.

**310. Right of Access.** For the purpose of assuring compliance with this Agreement, at any time prior to the Developer's completion of the Developer Improvements, representatives of the City and the Agency shall have reasonable right of access to the Site without charge, during normal business hours and after not less than twenty-four (24) hours prior written Notice. The Agency will use good faith efforts to minimize any interference that the City's and the Agency's entry may have upon the Developer's operations. The Agency will comply with all reasonable requests of the Developer to meet or ensure safety requirements and concerns.

**311. Insurance.** Prior to the commencement of any construction or other work on the Developer Improvements, the Developer shall furnish or cause to be furnished to the City and the Agency duplicate originals and appropriate endorsements to the Developer's commercial general liability and automobile insurance policies in the amounts set forth below, naming the City and the Agency, and their officials, officers, employees and agents, as additional insureds:

- (a) \$1,000,000 for any one person; and
- (b) \$2,000,000 for any one occurrence; and
- (c) \$1,000,000 for any property damage.

The policies shall be "occurrence," not "claims made," policies and shall be primary and non-contributing to any insurance that the City and/or the Agency may elect to obtain. Such policies shall contain a full waiver of subrogation clause. The policies shall be issued, and maintained during the term of construction of the Developer Improvements, by a carrier licensed to do business in California, with a Best's rating of A:VIII or better. Said policies shall provide that they shall not be canceled or reduced in types of coverage or amount of coverage without at least thirty (30) days' prior written notice to the Agency and that such reduction or cancellation shall become effective until at least twenty (20) days after receipt by the Agency of the written notice thereof. The policy amounts set forth above shall not limit or define the extent of the Developer's indemnity liability pursuant to Section 306.1 or any other provision of this Agreement, or arising as a matter of law or at equity.

The Developer shall also furnish or cause to be furnished to the Agency evidence satisfactory to the City and the Agency that any contractor with whom it has contracted for the performance of work on the Developer Improvements carries workers' compensation insurance as required by law.

The Developer shall also maintain, or cause its contractors to maintain, all-risk course of construction insurance, insuring the Developer, the City and the Agency against all risk (including earthquake or flood) of loss or damage to the Site or Developer Improvements. The obligations set forth in this Section shall remain in effect until a Certificate of Occupancy has been issued for the Developer Improvements.

**312. Developer's Obligations to Prepare Parcels for Development; Sale to Successor Owners.** The Agency and the Developer understand and agree that the Developer



shall be responsible for undertaking and completing all obligations of the Developer under this Agreement. Notwithstanding any term or provision herein to the contrary, the Agency and the Developer understand and agree that the Developer shall be permitted to sell individual lots or parcels within the Site after (a) preparing each lot or parcel within the Site for ultimate development of private improvements thereon by clearing and grading each such lot or parcel and by completing all public improvements and meeting all conditions imposed by the City upon all land use approvals and permits issued by the City with respect to the Site and (b) complying with the following:

(I) **Developer Identifies Proposed Successor Owner.** If the Developer identifies a person or entity as a target candidate to construct, own and/or operate private improvements upon a lot or parcel within the Site (proposed Successor Owner), the Developer may endeavor to reach accord as to terms and conditions for the purchase of such lot or parcel by such proposed Successor Owner.

(II) **Developer Enters Conditional Sales Agreement with Proposed Successor Owner.** If the Developer reaches accord as to such purchase, the Developer may enter into an agreement ("Conditional Sales Agreement") to sell the lot or parcel to the proposed Successor Owner. The Conditional Sales Agreement will provide, among other things, that upon receipt from the Agency of preliminary approval as provided in Subsection III below, the Developer, the Agency and the proposed Successor Owner will enter into an Assumption Agreement as provided in Subsection IV below.

(III) **Preliminary Approval by Agency.** If the Developer enters into a Conditional Sales Agreement with the proposed Successor Owner, the Developer will so notify the Agency and the Agency will then expeditiously schedule a meeting with the Developer and the proposed Successor Owner to discuss the qualifications of the proposed Successor Owner and his proposed use of the lot or parcel in question, both of which shall be subject to preliminary approval of the Agency which may not be unreasonably withheld. The Agency shall have the right to request and receive from the Developer and/or the Successor Owner all information about the identity and qualifications of the proposed Successor Owner and such information shall be provided to the Agency in a form and substance reasonably approved by the Agency. Subsequent to the meeting (provided the Agency has received all reasonably requested relevant information), the Agency will expeditiously notify the Developer in writing as to whether the Agency will grant preliminary approval.

(IV) **Assumption Agreement.** As a condition to granting preliminary approval, the Agency may require that the Developer and the proposed Successor Owner execute and deliver to the Agency an Assumption Agreement, in form and substance subject to approval and execution by the Agency which may not be unreasonably withheld, in accordance with the following:

(A) The Assumption Agreement will provide that subsequent to receipt of preliminary approval from the Agency, the proposed Successor Owner will expeditiously prepare and submit to the City an application, in compliance with all applicable City requirements, for architectural and landscape approval of the private improvements proposed to be constructed on the subject lot or parcel.

(B) The Assumption Agreement will provide that subsequent to receipt of architectural and landscape approval from the City, the proposed Successor Owner will expeditiously prepare and submit to the City an application, in compliance with all applicable

2004-0342453  
05/07/2004 08:00A  
21 of 63

City requirements, for issuance of building permits to construct the proposed private improvements.

(C) The Assumption Agreement will provide that prior to receipt of building permits, the proposed Successor Owner will (i) provide to the Developer and the Agency for approval, which may not be unreasonably withheld, a reasonable time schedule within which the proposed private improvements will be commenced and completed; provided, however that they must be completed by the time set forth in the Schedule of Performance (Attachment No. 8), and (ii) covenant and agree to commence and complete said proposed private improvements within said time schedule.

(D) The Assumption Agreement will provide that, subject to force majeure provisions set forth in Section 602 hereof, if the Successor Owner fails to commence or complete the proposed private improvements in accordance with the time schedule set forth above, the Developer shall have primary responsibility to enforce the Assumption Agreement and will expeditiously initiate actions reasonably necessary or expedient to enforce and collect upon bonds and cause proceeds therefrom to be used to construct the proposed private improvements, and to construct such private improvements, as provided in Subsection (V) below, and, if the Developer fails to do so the Agency may do so and hold Developer responsible for any costs, over and above the posted security paid to the Agency, incurred by the Agency by reason of such failure by the Developer and/or the Successor Owner to complete the private improvements within the time set forth in the Schedule of Performance (Attachment No. 8).

(E) The Assumption Agreement will provide that to become effective it must be consented to in writing and executed by the Agency, and, once so effective, it may not be materially amended or terminated without prior written consent from the Agency.

(F) The Assumption Agreement will provide that anything contained therein to the contrary notwithstanding, the proposed Successor Owner shall continue to have the right, during any due diligence period specified in the Conditional Sales Agreement (which due diligence period shall be identified in the Assumption Agreement) to elect to not go forward with the purchase of the subject lot or parcel, and terminate the Conditional Sales Agreement and the Assumption Agreement and have no further obligation under either such document; provided, however, that the determination by the Successor Owner not to proceed with the purchase of the subject lot or parcel shall not extend any time limit set forth in the Schedule of Performance (Attachment No. 8).

(G) The Assumption Agreement will provide that all time schedules and commencement and completion dates set forth therein will be subject to force majeure provisions similar to those set forth in Section 602 hereof.

(H) The Assumption Agreement will contain such other terms and provisions as may be reasonably necessary, expedient or convenient to effectuate its intents and purposes as provided or contemplated herein.

**(V) Conveyance of Title to Successor Owner and Posting of Completion Bonds.** At such time as the Agency has granted preliminary approval and the Assumption Agreement has been fully executed by the Developer, the Successor Owner and the Agency and delivered, the Developer may convey title to the subject lot or parcel to the proposed Successor Owner (who will then become the Successor Owner). By execution of this



Agreement, the Developer covenants and agrees that at such time as the Developer enters into an Assumption Agreement with respect to a lot or parcel as provided above, the Developer will, concurrently therewith and in any event prior to the issuance of building permits for private improvements proposed for the subject lot or parcel, require that the Successor Owner provide security in the form of performance, payment and/or completion bonds, which name both the Developer and the Agency as beneficiaries, and which are in amounts equal to 100% of the estimated cost of completing the proposed private improvements, as such costs are determined by the Successor Owner and approved by both the Developer and the Agency in the sole and absolute discretion of each, in order to guarantee completion of such private improvements within the time schedule referenced in the Assumption Agreement. Any and all such bonds or other security shall be in a form and substance and from an issuer as approved by the Agency in its sole and absolute discretion, taking into consideration among other factors the location and rating of the issuer. The Developer further agrees, subject to force majeure provisions as set forth in Section 602 hereof, that if the Successor Owner fails to commence or complete the proposed private improvements in accordance with the time schedule set forth in the Assumption Agreement and the Schedule of Performance (Attachment No. 8), the Developer will expeditiously initiate all actions reasonably necessary or expedient to enforce and collect upon the bonds and cause proceeds therefrom to be used to construct the private improvements guaranteed by the bonds and cause the construction of the private improvements, and, if the Developer fails to do so the Agency may do so and hold the Developer responsible for any costs, over and above the posted security paid to the Agency, incurred by the Agency by reason of such failure by the Developer and/or the Successor Owner to construct the private improvements within the time set forth in the Schedule of Performance (Attachment No. 8).

**313. Certificates of Completion.** Upon completion of all public and private improvements pertaining to an individual lot or parcel and within thirty (30) calendar days following the request therefor by the Owner of such lot or parcel, the Agency shall record against that lot or parcel in the Riverside County Recorder's Office a certificate of completion evidencing the Agency's agreement that with respect to that lot or parcel, the Owner of such lot or parcel has fulfilled its obligations to complete the Developer Improvements thereon and, as applicable, private improvements thereon.

#### **400. COVENANTS AND RESTRICTIONS**

**401. Time Share Prohibited.** All forms of time share use or sales on the Site are prohibited, and a covenant to this effect in a form and substance approved by the City shall be recorded against the Site in the Riverside County Recorder's Office. Nothing herein shall be construed to prohibit condominium hotel ownership.

**402. No Discrimination.** The Developer, for itself and its successors and assigns, agrees that the Owner will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, religion, creed, national origin, or ancestry, and that the Developer will comply with all applicable local, state and federal fair employment laws and regulations.

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site, or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy,



tenure or enjoyment of the Site, nor shall the Developer itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessee or vendees of the Site. The foregoing covenant shall be recorded against the Site in the Riverside County Recorder's Office and run with the land and shall remain in effect in perpetuity.

**403. Repair and Maintenance of Landscaping.** The Developer agrees for itself, its successors, its assigns and every successor in interest to the Site, that it shall be responsible for the installation, operation, maintenance, repair and replacement of those certain landscaping improvements required by City as part of Land Use Approvas, including without limitation, those certain grass, shrubs, trees and other landscaping materials, sidewalks and paved surfaces, walls, artificial lighting, irrigation and drainage systems, and such other landscaping improvements now or hereafter installed within the Site. The Developer shall remove all trash and debris placed upon the Site and otherwise keep in good condition and repair the landscaping, reasonable wear and tear excepted, at the Developer's sole cost and expense. The Parties agree that the Developer may prepare and record against the Site in the Riverside County Recorder's Office the Declaration (as hereinafter defined), pursuant to which an Association of lot or parcel owners within the Site shall be required to undertake and complete the foregoing obligations, in lieu of the Developer.

In the event that the Developer fails to operate and maintain the landscaping as described herein, the City, in addition to the Agency pursuing any other rights and remedies of the Agency provided herein, shall have the right to enter upon the Site to repair and maintain the landscaping and may charge the Developer for the City's costs of repair and maintenance. Developer shall, within thirty (30) days following its receipt of written notice thereof, pay for those costs incurred by the City under this paragraph. In the event that the Developer does not pay the City for its costs within the time frame above, said costs shall become a lien upon the Site for such nonpayment and the City shall have, in addition to any other rights and remedies provided herein, the right and remedy of foreclosure against said lien for nonpayment in accordance with California law. The foregoing covenant shall run with the land and shall remain in effect for the term of the Declaration or until terminated by the City, whichever occurs later.

Notwithstanding any term or provision herein to the contrary, the Agency and the Developer agree that the City and/or the Agency may form an assessment district and the Developer shall fully cooperate with the City and/or the Agency to accomplish this purpose, pursuant to the Landscape and Lighting Act of 1972 (the "Act") for purposes of meeting the foregoing obligations of the Developer and its successors and assigns and every successor in interest to the Site. If the City and/or the Agency impose this requirement, then the assessment district shall be formed prior to any disposition by the Developer to a Successor Owner of all or any portion of the Site, such that the formation of such an assessment district is completed to the satisfaction of the City and/or the Agency. In addition, the City and/or the Agency may require the Developer to prepare and record against the Site in the Riverside County Recorder's Office, in a form and substance which are approved by the City and/or the Agency, a declaration of covenants, conditions and restrictions ("Declaration") which requires, among other matters, that an association of all property owners ("Association") who are each an Owner of all or any portion of the Site shall be obligated to install, operate, maintain, repair and replace all of the above described landscaping improvements within the Site, at the cost and expense solely of such Association. The Declaration shall provide, among other matters, that said Association shall impose payment obligations for the foregoing obligations upon each and all of the Owners and shall maintain the above described landscaping improvements to a standard deemed

2004-0342453  
05/07/2004 08:00A  
24 of 63



acceptable by the City and/or the Agency, in their sole and absolute discretion. The Declaration shall further provide that the City has the right to demand that each and every Owner and any such Association shall meet their obligations under this Section 403 and the Declaration, with right of enforcement to be held by the City for its exercise in its sole and absolute discretion; and the Declaration shall further provide that the Declaration cannot be amended or modified with respect to the obligations of each Owner and the Association under this Section 403 and the Declaration with regard to landscaping improvements without the prior written consent of the City.

## 500. DEFAULTS AND REMEDIES

**501. Default Remedies.** Failure by either Party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A Party claiming a Default shall give written notice of Default to the other Party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other Party, and the other Party shall not be in Default if such Party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

**502. Institution of Legal Actions.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either Party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement.

**503. Termination by the Developer Prior to Closing.** Subject to Force Majeure, in the event that the Developer is not in Default under this Agreement and:

- a. The Agency does not tender title to the Site pursuant to the Grant Deed in the manner and condition and by the date provided in this Agreement; or
- b. One or more of the Developer's Conditions Precedent to the Closing are not fulfilled on or before the Outside Date and such failure is not caused by the Developer,

then this Agreement may, at the option of the Developer, be terminated by written Notice thereof to the Agency. From the date of the written Notice of termination of this Agreement by the Developer to the Agency and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the Parties except the return of the Deposit as provided in Section 201.1.

**503.5 Termination by Developer Subsequent to Closing.** Subject to Force Majeure, in the event that the Developer is not in Default under this Agreement subsequent to Closing and the Agency is in Default, or in the event of any Default of the Agency prior to the Closing which is not cured within the time set forth in Section 501 hereof, and any such failure is not cured within the applicable time period after written demand by the Developer, the Developer shall have those rights and remedies against the Agency available at law and equity.



**504. Termination by the Agency Prior to Closing.** Subject to Force Majeure, in the event that the Agency is not in Default under this Agreement and prior to the Close of Escrow:

a. One or more of the Agency's Conditions Precedent to the Closing are not fulfilled on or before the Outside Date and such failure (other than the denial of Land Use or Design Development Drawings Approvals) is not caused by the Agency; or

b. The Developer is otherwise in Default of this Agreement and fails to cure such Default within the time set forth in Section 501 hereof; or

c. The Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Site in violation of the provisions of Section 603 of this Agreement,

then this Agreement and any rights of the Developer with respect to or arising out of the Agreement or the Site, shall, at the option of the Agency, be terminated by the Agency by written Notice thereof to the Developer. From the date of the written Notice of termination of this Agreement by the Agency to the Developer and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the Parties. In the event of termination pursuant to this Section 504, due to the Default of the Developer, the Deposit set forth in Section 201.1 of this Agreement shall be retained by the Agency as liquidated damages without any deduction, offset, or recoupment whatsoever. The Agency and the Developer agree that it would be impractical or extremely difficult to fix actual damages in case of the Developer's Default prior to the conveyance of title to the Site, that the amount of said Deposit is a reasonable estimate of the damages which the Agency will suffer, and neither the Developer (or the assignee or transferee) nor the Agency shall have any further rights against or liability to the other under this Agreement. The right of termination pursuant to this Section 504 and the retention of the Deposit as liquidated damages, shall be the Agency's sole and exclusive remedy against the Developer in the event of the Developer's Default or failure as provided in said subparagraphs prior to conveyance of title to the Site.

**505. Termination by Agency Subsequent to Closing.** Subject to Force Majeure, in the event that the Agency is not in Default under this Agreement subsequent to Closing and the Developer is in Default, the Agency shall have those rights and remedies against the Developer available at law and equity.

**506. Acceptance of Service of Process.** In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director of the Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon the President or other chief operating officer of the Developer or in such other manner as may be provided by law.

**507. Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

**508. Inaction Not a Waiver of Default.** Any failures or delays by either Party in

2004-0342453  
05/07/2004 08:00A  
26 of 63



asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

**509. Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

## 600. GENERAL PROVISIONS

**601. Notices, Demands and Communications Between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed delivered when received, if personally delivered, upon receipt of a facsimile, upon the fifth (5th) day from the postmarked date if sent via certified or registered mail, or one (1) business day after delivery thereof to a nationally recognized overnight delivery service which provides a receipt of service, addressed to the parties as follows:

To the Agency: Indian Wells Redevelopment Agency  
44-950 Eldorado Drive  
Indian Wells, CA 92210  
Attention: Executive Director

To the Developer: Jerson Investments, LLC  
1211 S. Michigan Avenue  
Chicago, Illinois 60605  
ATTN: Gerald Fogelson

or such other address as shall be specified by like Notice.

**601.1. Demand for Assurance.** Each Party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either Party, the other Party may in writing demand adequate assurance of due performance and until they receive such assurance may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding ten (10) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved Party's right to demand adequate assurance of future performance.

**602. Enforced Delay; Extension of Times of Performance.** In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended (except for the Outside Date), where delays or Defaults are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, acts or omissions of the other Party, acts or failures to act of the City, the Agency or any other public or governmental



agency or entity (other than the acts or failures to act of the Agency which shall not excuse performance by the Agency), or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform, provided, however, that the financial inability of either Party to perform its respective obligations hereunder shall not be considered a cause beyond either Party's control. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Improvements shall not constitute grounds of enforced delay pursuant to this Section 602.

Separate and apart from force majeure, times of performance under this Agreement may also be extended in writing by the mutual agreement of the Agency and the Developer. As a condition to its entry into any agreement extending the Outside Date, the Agency reserves the right to renegotiate the Purchase Price, Escrow terms, and any other terms and conditions of this Agreement.

### **603. Transfers of Interest in Site or Agreement.**

**603.1 Prohibition.** The qualifications and identity of the Developer are of particular concern to the Agency. The Developer represents and warrants that Gerald Fogelson owns a controlling and majority interest in the Developer or has management authority on behalf of the Developer. The Agency particularly deems the identity and qualifications of Gerald Fogelson to be unique and of utmost importance and the primary reason for the Agency to choose the Developer as the party with whom to enter into an Agreement for the development of the Site. It is because of those qualifications and identity that the Agency has entered into this Agreement with the Developer and the Parties understand and agree that the Agency would not have entered into this Agreement but for the covenants by the Developer that Gerald Fogelson, as controlling and majority owner of the Developer or as one who has management authority on behalf of the Developer, will have supervision and authority for the undertaking and completion of the Developer's obligations under this Agreement.

For the period commencing upon the date of this Agreement and until the completion of the Developer Improvements, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, or lease of the whole or any part of the Site or the Improvements thereon without prior written approval of the Agency (which shall not be unreasonably withheld), except as expressly set forth herein. Any proposed total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the improvements thereon will entitle the Agency to pursue those rights and remedies provided for in Section 505 hereof. The Agency shall have the right to approve (which shall not be unreasonably withheld) the qualifications and reputation of any lender that provides construction or permanent financing or refinancing for the Developer Improvements.

Notwithstanding any provision to the contrary in this Section 603.1, the Developer shall be permitted to convey to Successor Owners each lot or parcel within the Site for purposes of completion of the private improvements thereon if the Successor Owner and the Agency have first executed an Assumption Agreement in accordance with Section 312 of this Agreement.

2004-0342453  
05/07/2004 08:00A  
28 of 53



Notwithstanding any term or provision in this Agreement to the contrary, in the event that Gerald Fogelson predeceases the completion of the Developer Improvements, the Developer shall continue to fulfill all of its obligations under this Agreement.

**603.2 Permitted Transfers.** Notwithstanding any other provision of this Agreement to the contrary, Agency approval of an assignment of this Agreement or conveyance of the Site or Developer Improvements, or any part thereof, shall not be required in connection with any of the following:

a. Any transfers to an entity or entities in which the Developer retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest or retains management and control of the transferee entity or entities.

b. The conveyance or dedication of any portion of the Site to the Agency, the City or other appropriate governmental entity, or the granting of easements or permits to facilitate construction of the Developer Improvements (as defined herein).

c. Any requested assignment for financing purposes, including the grant of a deed of trust to secure the funds necessary for land acquisition, construction financing of the Developer Improvements.

In the event of an assignment by the Developer under subparagraphs (a) through (c), inclusive, above not requiring the Agency's prior approval, the Developer nevertheless agrees that at least thirty (30) days prior to such assignment it shall give written Notice to the Agency of such assignment and satisfactory evidence that the assignee has assumed jointly with the Developer the obligations of this Agreement.

**603.3 Agency Consideration of Requested Transfer.** The Agency agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 603, provided the Developer delivers written Notice to the Agency requesting such approval. Such Notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 603 and as reasonably determined by the Agency. The Agency shall evaluate each proposed transferee or assignee on the basis of its development and/or qualifications and experience in the operation of facilities similar to the proposed development of the Site, and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, during the period for which this Section 603 applies, which the Agency determines does not possess equal or better qualifications than the Developer. An assignment and assumption agreement in form satisfactory to the Agency's legal counsel shall also be required for all proposed assignments. Within thirty (30) days after the receipt of the Developer's written Notice requesting Agency approval of an assignment or transfer pursuant to this Section 603, the Agency shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the Agency reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to the Agency such further information as may be reasonably requested.

**603.4 Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon the Developer and its permitted successors and assigns.

2004-0342453  
05/07/2004 08:00A  
29 of 63



Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided, but shall not include purchasers of individual lots or parcels who have executed Assumption Agreements approved and executed by the Agency.

**604. Non-Liability of Officials and Employees of the City, the Agency and the Developer.** No member, official, officer or employee of the Agency shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the City or the Agency of any obligation under or function described in this Agreement, or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

**605. Relationship Between Agency and Developer.** It is hereby acknowledged that the relationship between the Agency and the Developer is not that of a partnership or joint venture and that the Agency and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Developer Improvements. The Developer agrees to indemnify, hold harmless and defend the Agency and its officials, officers, employees and agents from any claim made against the Agency or its officials, officers, employees and agents, arising from a claimed relationship of partnership or joint venture between the Agency and the Developer with respect to the development, operation, maintenance or management of the Site.

**606. Agency Approvals and Actions.** Whenever a reference is made herein to an action or approval to be undertaken by the Agency, the Executive Director of the Agency or his or her designee is authorized to act on behalf of the Agency unless specifically provided otherwise in this Agreement or the context should require otherwise.

**607. Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in two (2) originals, each of which is deemed to be an original.

**608. Integration and Incorporation of Recitals.** This Agreement contains the entire understanding between the Parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each Party is entering this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such Party deems material. This Agreement includes pages 1 through 32 and Attachment Nos. 1 through 8 which constitute the entire understanding and agreement of the Parties, notwithstanding any previous negotiations or agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof. The Recitals hereinabove set forth are a material part of this Agreement, are deemed by the Parties to be true and correct and are incorporated into and made a part of this Agreement.

**609. Real Estate Brokerage Commission.** The Agency and the Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with the Developer's acquisition of the Site from the Agency. Each Party agrees to defend and hold harmless the other Party from any claim to any such commission or fee from any broker, agent or finder with respect to this Agreement which is

2004-0342453  
05/07/2004 08:00A  
30 of 63



payable by such Party.

**610. Attorneys' Fees Applicable Law and Forum.** In the event either Party brings an action or proceeding arising out of the other's performance under this Agreement or to establish the right or remedy of either Party, the prevailing Party shall be entitled to recover reasonable attorney fees and costs as part of such action or proceeding. This Agreement shall be construed and interpreted according to California law, and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the Superior Court of County of Riverside, Indio Branch.

**611. Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

**612. Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both Parties.

**613. No Waiver.** A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

**614. Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

**615. Severability.** If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

**616. Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**617. Legal Advice.** Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or

2004-0342453  
05/07/2004 08:06A  
31 of 63



attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

**618. Time of Essence.** Time is expressly made of the essence with respect to the performance by the Parties of each and every obligation and condition of this Agreement.

**619. Cooperation.** Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

**620. Conflicts of Interest.** No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which they are directly or indirectly interested.

**621. Time for Acceptance of Agreement by Agency.** This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency on or before thirty (30) days after signing and delivery of this Agreement by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

**622. Effective Date of Agreement.** The Effective Date of Agreement shall be the date when it shall have been executed by the Agency as set forth herein below..

**623. Corporate Authority.** The person(s) executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver the Agreement on behalf of said Party, (iii) by so executing the Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into the Agreement does not violate any provision of any other agreement to which said Party is bound.

**624. Prevailing Wages.** The Developer acknowledges that California Labor Code Section 1720, et seq. requires developers of certain publicly funded development projects to pay not less than the prevailing rate of per diem wages. If Section 1720, et seq. is applicable to the Developer Improvements or development of the Site, the Developer shall comply, at its cost and expense, with the provisions of California Labor Code Section 1720, et seq.

The Developer shall defend, indemnify and hold the City and the Agency, and their officers, officials, employees, agents, servants and contractors harmless from and against any and all costs, expenses, liabilities, fines, penalties, judgments, and amounts paid in settlement, including, without implied limitation, reasonable attorneys' fees and expert witness costs, suffered by the City and/or the Agency and/or their officers, officials, employees, agents, servants and contractors, as a result of the Developer's, or its officials', officers', employees', agents', contractors' and servants', actual or alleged breach of the obligations set forth in this Section 624.

**625. City as Third Party Beneficiary.** The Developer and the Agency agree that although the City is not a party to this Agreement, the City shall be deemed to be a third party

2004-0342453  
05/07/2004 08:00A  
32 of 63



beneficiary of each and every covenant and obligation of the Developer and any Owner hereunder, including without limitation the obligations of the Developer to obtain City permits and approvals for the Land Use Approvals and the obligations of the Developer and each Owner under Section 403 of this Agreement.

**626. Good Faith and Fair Dealing.** The Developer and the Agency agree that in undertaking their obligations and in seeking and granting approvals under this Agreement, the Parties shall comply with standards of good faith and fair dealing and reasonably cooperate in order to achieve the purposes of this Agreement; provided, however, that nothing herein shall be deemed to require the Agency and/or the City to approve any particular land use, project, land use application, permit or other request of the Developer to the extent that the City and the Agency are afforded by law the right and opportunity to grant discretionary approval, conditional approval or disapproval of such matter.

IN WITNESS WHEREOF, the Agency and the Developer have signed this Agreement on the respective dates set forth below.

INDIAN WELLS REDEVELOPMENT AGENCY

Dated: May 6, 2004

By: Mary Roche  
Mary Roche, Chairperson

ATTEST:

Linda Turbee  
Secretary

APPROVED AS TO FORM:

Stephen P. Denton  
Agency Counsel

DEVELOPER:

Jerson Investments, LLC, an  
Illinois limited liability company

Dated: 4/30, 2004

By: [Signature]  
Title: Manager

2004-0342453  
05/07/2004 08:00A  
33 of 63



STATE OF CALIFORNIA        )  
  ) ss  
COUNTY OF RIVERSIDE     )

On April 30, 2004, before me, Jennifer Hicks, personally appeared **Gerald Fogelson**,  personally known to me - or  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 authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Jennifer Hicks  
SIGNATURE OF NOTARY



THE CITY OF  
INDIAN WELLS  
CALIFORNIA

State of California  
County of Riverside  
City of Indian Wells

On May 6, 2004 before me, Linda Furbee, Management Services Director/City Clerk, personally appeared Mary T. Roche, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacities, and that by her signatures on the instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Linda Furbee



2004-0342453  
05/07/2004 08:09A  
35 of 63



## ATTACHMENTS

- No. 1 Site Map, including delineations of City Parcels and Agency Parcels
- No. 2 Legal Description of Agency Parcels
- No. 3 Legal Description of City Parcels
- No. 4 Legal Description of Site
- No. 5 Reserved
- No. 6 Grant Deed
- No. 7 Scope of Development
- No. 8 Schedule of Performance

Attachments



ATTACHMENT NO. 1

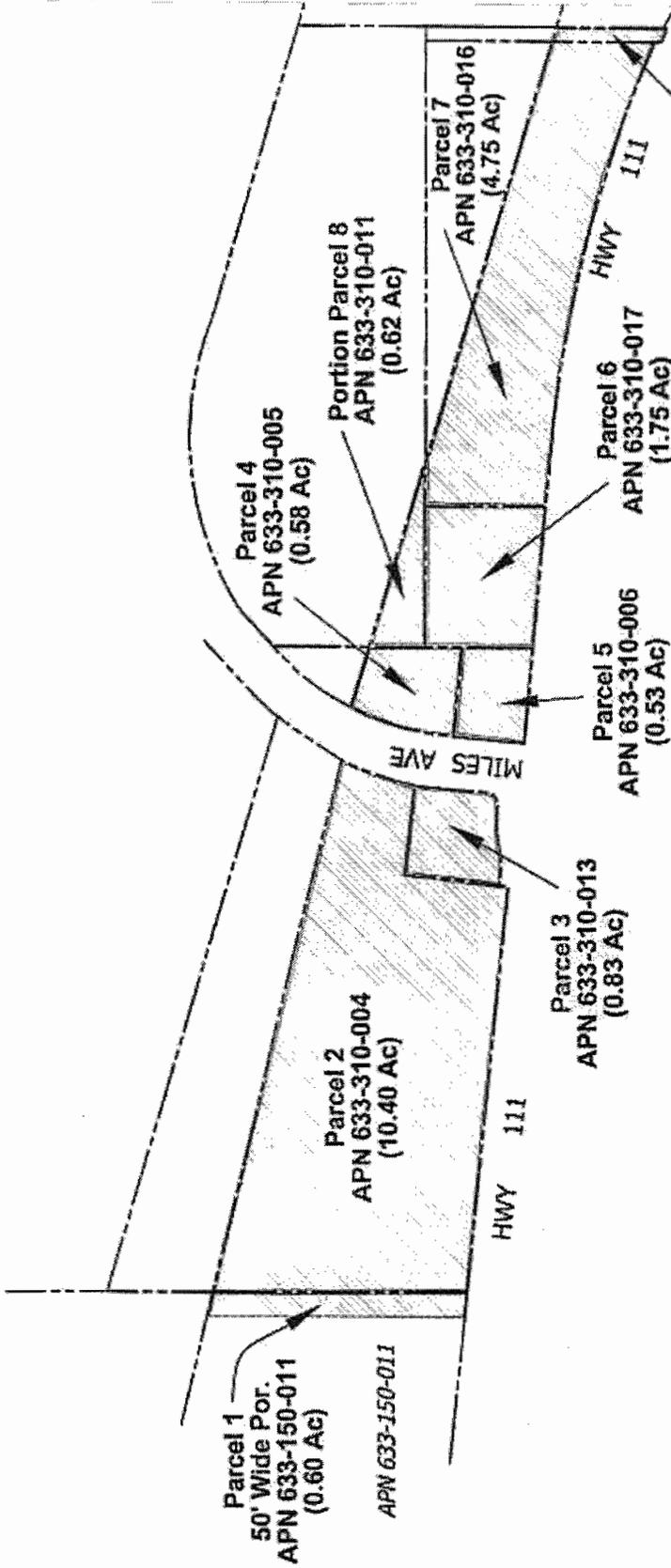
Site Map, including delineations of City Parcels and Agency Parcels

Attachment 1





# Attachment No. 1



- City Parcels**
- 633-310-004 (Pcl. 2)
  - 633-310-005 (Pcl. 4)
  - 633-310-006 (Pcl. 5)
  - 633-310-016 (Pcl. 7)
- Agency Parcels**
- 633-150-011 (Pcl. 1, portion of 633-150-011)
  - 633-310-013 (Pcl. 3)
  - 633-310-017 (Pcl. 6)
  - 633-310-011 (Pcl. 8, includes 633-410-012)
  - 633-410-012 (Pcl. 8, includes 633-310-011)



Scale: None

THE CITY OF  
**INDIAN WELLS**  
 CALIFORNIA

**RESORT DEVELOPMENT**

2004-0342453  
05/07/2004 08:00A  
39 of 63



ATTACHMENT NO. 2  
Legal Description of Agency Parcels  
[To Be Inserted]

Attachment No. 2

Legal Description

Parcel 1 (AMB 633-150-011 Portion) - Redevelopment Agency

The Easterly 50 feet of that certain land in the City of Indian Wells, County of Riverside, State of California, described as follows:

THAT PORTION OF THE NORTHEAST QUARTER OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, WHICH LIES NORTHERLY OF THE RIGHT OF WAY OF THE HIGHWAY ACQUIRED BY THE STATE OF CALIFORNIA BY DECREE OF CONDEMNATION RECORDED JULY 12, 1937 IN BOOK 332, PAGE 302 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, THE NORTHERLY LINE OF SAID HIGHWAY BEING DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER ON THE NORTHEAST QUARTER OF SAID SECTION; THENCE NORTH  $86^{\circ}20'$  EAST, 344.47 FEET; THENCE NORTH  $89^{\circ}39'45''$  EAST, 1143.91 FEET; THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 5050 FEET AND THROUGH AN ANGLE OF 6 DEGREES  $17'$ , A DISTANCE OF 563.81 FEET; THENCE SOUTH  $84^{\circ}03'15''$  EAST, 621.69 FEET TO THE EAST LINE OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SAID SECTION;

EXCEPTING THEREFROM THAT PORTION OF SAID NORTHEAST QUARTER OF SAID SECTION 23 CONVEYED TO INDIAN WELLS PROPERTIES, A CO-PARTNERSHIP, BY DEED RECORDED MAY 22, 1956 AS INSTRUMENT NO. 35999 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID NORTHEAST QUARTER OF SAID SECTION 23, LYING NORTHERLY OF THE MOST SOUTHERLY LINE OF THAT CERTAIN PARCEL OF LAND DESCRIBED IN A GRANT OF EASEMENT TO COACHELLA VALLEY COUNTY WATER DISTRICT, RECORDED MAY 19, 1965 AS INSTRUMENT NO. 57945 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPTING THEREFROM THAT PORTION OF THE NORTHEAST QUARTER AND OF THE EAST HALF OF THE SOUTHEAST QUARTER OF SECTION 23, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, LYING NORTHERLY OF THE RIGHT OF WAY ACQUIRED BY THE STATE OF CALIFORNIA BY DECREE OF CONDEMNATION RECORDED JULY 12, 1937 IN BOOK 332 PAGE 302 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, REFERRED TO THEREIN AND WESTERLY OF THE SOUTHERLY PROLONGATION OF THE MOST EASTERLY LINE OF THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, CONVEYED TO INDIAN WELLS PROPERTIES, A CO-PARTNERSHIP, BY DEED RECORDED MAY 22, 1956 AS INSTRUMENT NO. 35999 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.



Attachment No. 2

Legal Description

Parcel 3 (AMB 633-310-013) - Redevelopment Agency

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER AND THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY THE UNITED STATES GOVERNMENT SURVEY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 24; THENCE SOUTHERLY ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 24, SOUTH 0 DEGREES 2' EAST, 72.55 FEET, MORE OR LESS, TO THE NORTH RIGHT OF WAY LINE OF STATE HIGHWAY 111, AS NOW LOCATED; THENCE EASTERLY ALONG SAID RIGHT OF WAY LINE, SOUTH 64 DEGREES 3'15" EAST, 1074.82 FEET, TO THE WESTERLY RIGHT OF WAY LINE OF MILES AVENUE, FOR THE POINT OF BEGINNING; THENCE NORTHERLY ALONG SAID RIGHT OF WAY LINE, NORTH 8 DEGREES 56'45" EAST, 210 FEET; THENCE ALONG A TANGENT CURVE CONCAVE TO THE SOUTHEAST, DESCRIBED AS HAVING A CENTRAL ANGLE OF 0 DEGREES 52'54", A RADIUS OF 650 FEET, AND AN ARC DISTANCE OF 10 FEET; THENCE NORTH 84 DEGREES 3'15" WEST, 200.08 FEET; THENCE SOUTH 5 DEGREES 56'45" WEST, 220 FEET TO SAID NORTH RIGHT OF WAY LINE OF STATE HIGHWAY 111; THENCE EASTERLY ALONG SAID RIGHT OF WAY LINE SOUTH 84 DEGREES 3'15" EAST, 200 FEET TO THE POINT OF BEGINNING;

EXCEPT THAT PORTION THEREOF CONVEYED TO THE COUNTY OF RIVERSIDE, BY DEED RECORDED JULY 12, 1966 AS INSTRUMENT NO. 71356 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.



Attachment No. 2

Legal Description

Parcel 6 (AMB 633-310-017) - Redevelopment Agency

A PORTION OF THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE EASTERLY ALONG THE NORTH LINE OF SAID WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, N 89°57'54" EAST 332.50 FEET TO THE NORTHEAST CORNER OF SAID WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24;

THENCE SOUTHERLY ALONG THE EAST LINE OF SAID WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, SOUTH 00°03'40" EAST 247.56 FEET TO THE NORTHERLY LINE OF THAT PARCEL OF LAND CONVEYED TO THE STATE OF CALIFORNIA

BY DEED RECORDED FEBRUARY 14, 1936 IN BOOK 265 PAGE 501 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

THENCE WESTERLY ALONG SAID NORTHERLY LINE OF THAT PARCEL OF LAND CONVEYED TO THE STATE OF CALIFORNIA, BY DEED RECORDED FEBRUARY 14, 1936 IN BOOK 265 PAGE 501 OF OFFICIAL RECORDS, NORTH 84°01'18" WEST 334.50 FEET TO A POINT ON THE WESTERLY LINE OF SAID WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24;

THENCE NORTHERLY ALONG SAID WESTERLY LINE OF THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, NORTH 00°03'03" WEST 212.52 FEET TO THE TRUE POINT OF BEGINNING.



Attachment No. 2

Legal Description

Parcel 8 (AMB 633-310-011 and 633-410-012) - Redevelopment Agency

THAT PORTION OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING PARCEL 3 OF THE LAND CONVEYED TO THE INDIAN WELLS REDEVELOPMENT AGENCY BY DOCUMENT RECORDED APRIL 9, 1984 AS INSTRUMENT NO. 71837 OF OFFICIAL RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER QUARTER SECTION CORNER OF SAID SECTION 24; THENCE SOUTH  $0^{\circ}04'45''$  EAST, ALONG THE WEST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 502.30 FEET, MORE OR LESS, TO A POINT ON THE NORTH LINE OF STATE HIGHWAY 111, SAID POINT BEING ON A CURVE CONCAVE TO THE SOUTHWEST, HAVING A RADIUS OF 2550 FEET FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH  $25^{\circ}35'29''$  WEST; THENCE SOUTHEASTERLY ALONG SAID CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF  $0^{\circ}22'28''$ , AN ARC DISTANCE OF 16.66 FEET TO A POINT THEREON, SAID POINT BEING A LINE PARALLEL WITH AND DISTANT 15 FEET EASTERLY FROM, MEASURED AT RIGHT ANGLES, TO SAID WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 24, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH  $25^{\circ}57'57''$  WEST; THENCE NORTH  $0^{\circ}04'45''$  WEST, PARALLEL WITH SAID WEST LINE OF THE SOUTHEAST QUARTER AND PARALLEL WITH THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION, 770.03 FEET, TO AN INTERSECTION WITH THE SOUTHERLY LINE OF FORTY-FIFTH AVENUE (NOW MILES AVENUE), AS CONVEYED TO THE COUNTY OF RIVERSIDE BY DEED RECORDED IN BOOK 2152 PAGE 287 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; THENCE NORTH  $74^{\circ}07'00''$  WEST, ALONG SAID SOUTHERLY LINE, 813.22 FEET TO THE BEGINNING OF A CURVE CONCAVE TO THE SOUTHEAST HAVING A RADIUS OF 550.40 FEET (RECORDED AS 550.00 FEET), FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH  $15^{\circ}53'00''$  WEST; THENCE WESTERLY, ALONG SAID CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF  $63^{\circ}39'26''$ , AN ARC DISTANCE OF 611.51 FEET, TO AN INTERSECTION WITH THE WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24, FROM WHICH THE CENTER OF SAID CURVE BEARS SOUTH  $47^{\circ}26'26''$  EAST; THENCE SOUTH  $0^{\circ}09'00''$  EAST, ALONG SAID WEST LINE OF THE SOUTHEAST QUARTER OF THE NORTHWEST QUARTER, 326.45 FEET, TO THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER OF THE NORTHWEST QUARTER; THENCE NORTH  $89^{\circ}52'30''$  EAST, ALONG THE SOUTH LINE OF SAID NORTHWEST QUARTER, 1324.88 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COACHELLA VALLEY COUNTY WATER DISTRICT BY DEED RECORDED MAY 4, 1964 AS INSTRUMENT NO. 54840 OF OFFICIAL RECORDS.



ATTACHMENT NO. 3  
Legal Description of City Parcels  
[To Be Inserted]



Attachment No. 3

Legal Description

Parcel 2 (AMB 633-310-004) - City of Indian Wells

THAT PORTION OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER, AND THAT PORTION OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, SAID POINT BEING ON THE TRUE POINT OF BEGINNING; THENCE SOUTHERLY ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 24, SOUTH 0 DEGREES 2' EAST, A DISTANCE OF 72.55 FEET TO THE NORTH RIGHT OF WAY LINE OF STATE HIGHWAY 111; THENCE EASTERLY ALONG SAID RIGHT OF WAY LINE SOUTH 84 DEGREES 3'15" EAST, A DISTANCE OF 1074.82 FEET TO THE WESTERLY RIGHT OF WAY OF MILES AVENUE; THENCE NORTHERLY ALONG SAID RIGHT OF WAY LINE NORTH 5 DEGREES 56'45" EAST, A DISTANCE OF 210 FEET; THENCE ALONG A TANGENT CURVE CONCAVE TO THE SOUTHEAST DESCRIBED AS HAVING A CENTRAL ANGLE OF 27 DEGREES 56'38", A RADIUS OF 650 FEET, AND AN ARC DISTANCE OF 317.01 FEET, TO A POINT ON SAID CURVE HAVING A RADIAL BEARING OF NORTH 56 DEGREES 6'37" WEST; THENCE NORTH 73 DEGREES 49' WEST, A DISTANCE OF 1247.58 FEET, TO A POINT ON THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 24; THENCE SOUTH 0 DEGREES 2' EAST, A DISTANCE OF 667.70 FEET TO THE TRUE POINT OF BEGINNING; EXCEPTING THEREFROM THE FOLLOWING:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 24; THENCE SOUTHERLY ALONG THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 24, SOUTH 0 DEGREES 2' EAST, 72.55 FEET, MORE OR LESS, TO THE NORTH RIGHT OF WAY LINE OF STATE HIGHWAY 111, AS NOW LOCATED; THENCE EASTERLY ALONG SAID RIGHT OF WAY LINE, SOUTH 84 DEGREES 3'15" EAST, 1074.82 FEET, TO THE WESTERLY RIGHT OF WAY LINE OF MILES AVENUE, FOR THE POINT OF BEGINNING; THENCE NORTHERLY ALONG SAID RIGHT OF WAY LINE, NORTH 5 DEGREES 56'45" EAST, 210 FEET; THENCE ALONG A TANGENT CURVE CONCAVE TO THE SOUTHEAST, DESCRIBED AS HAVING A CENTRAL ANGLE OF 0 DEGREES 52'54", A RADIUS OF 650 FEET, AND AN ARC DISTANCE OF 10 FEET; THENCE NORTH 84 DEGREES 3'15" WEST, 200.08 FEET; THENCE SOUTH 5 DEGREES 56'45" WEST, 220 FEET TO SAID NORTH RIGHT OF WAY LINE OF STATE HIGHWAY 111; THENCE EASTERLY ALONG SAID RIGHT OF WAY LINE SOUTH 84 DEGREES 3'15" EAST, 200 FEET TO THE POINT OF BEGINNING.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COACHELLA VALLEY COUNTY WATER DISTRICT BY DEED RECORDED NOVEMBER 14, 1963 AS INSTRUMENT NO. 120599 OF OFFICIAL RECORDS.



Attachment No. 3

Legal Description

Parcel 4 (AMB 633-310-005) - City of Indian Wells

THAT PORTION OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24; THENCE SOUTHERLY ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 24; SOUTH  $0^{\circ}0'45''$  EAST 212.74 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF STATE HIGHWAY 111; THENCE WESTERLY ON SAID NORTH RIGHT OF WAY LINE, NORTH  $84^{\circ}3'15''$  WEST 162.24 FEET, TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF MILES AVENUE EXTENSION COUNTY, ROAD; THENCE NORTHERLY ON SAID SOUTHEASTERLY RIGHT OF WAY LINE NORTH  $5^{\circ}56'45''$  EAST 210 FEET; THENCE NORTHEASTERLY ON A TANGENT CURVE DESCRIBED AS HAVING A CENTRAL ANGLE OF  $36^{\circ}14'18''$ , A RADIUS OF 550 FEET AND AN ARC LENGTH OF 347.82 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24; THENCE SOUTH  $0^{\circ}00'45''$  EAST, 326.90 FEET TO THE POINT OF BEGINNING;

EXCEPTING THEREFROM THE SOUTHERLY 150 FEET THEREOF.

ALSO EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COACHELLA VALLEY COUNTY WATER DISTRICT BY DEED RECORDED SEPTEMBER 5, 1963 AS INSTRUMENT NO. 93655 OF OFFICIAL RECORDS.



Attachment No. 3

Legal Description

Parcel 5 (AMB 633-310-006) – City of Indian Wells

THE SOUTHERLY 150 FEET OF THE FOLLOWING DESCRIBED PROPERTY;

THAT PORTION OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24; THENCE SOUTHERLY ON THE EAST LINE OF THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 24; SOUTH  $0^{\circ}0'45''$  EAST 212.74 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF STATE HIGHWAY 111;

THENCE WESTERLY ON SAID NORTH RIGHT OF WAY LINE; NORTH  $84^{\circ}03'15''$  WEST 162.24 FEET, TO THE SOUTHEASTERLY RIGHT OF WAY LINE OF MILES AVENUE EXTENSION COUNTY, ROAD; THENCE NORTHERLY ON SAID SOUTHEASTERLY RIGHT OF WAY LINE NORTH  $5^{\circ}56'45''$  EAST 210 FEET; THENCE NORTHEASTERLY ON A TANGENT CURVE DESCRIBED AS HAVING A CENTRAL ANGLE OF  $36^{\circ}14'18''$ , A RADIUS OF 550 FEET AND AN ARC LENGTH OF 347.82 FEET TO A POINT ON THE EAST LINE OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 24; THENCE SOUTH  $0^{\circ}00'45''$  EAST, 326.90 FEET TO THE POINT OF BEGINNING.



Attachment No. 3

Legal Description

Parcel 7 (AMB 633-310-016) - City of Indian Wells

ALL THAT PORTION OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN;

LYING NORTHERLY OF THAT PORTION THEREOF CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED FEBRUARY 14, 1936 IN BOOK 266 PAGE 403 AND BY DEED RECORDED FEBRUARY 14, 1936 IN BOOK 265 PAGE 501 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA; EXCEPTING THEREFROM THE WEST HALF OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN;

ALSO EXCEPTING THEREFROM THAT PORTION AS CONVEYED TO THE COACHELLA VALLEY COUNTY WATER DISTRICT BY DEED RECORDED MARCH 16, 1965 AS INSTRUMENT NO. 29975 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPTING THEREFROM THAT PORTION AS CONVEYED TO THE STATE OF CALIFORNIA BY DEED RECORDED JUNE 5, 1967 AS INSTRUMENT NO. 47922 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.



ATTACHMENT NO. 4

Legal Description of Site

[To Be Inserted prior to recordation of the DDA following receipt and approval by the parties]

Attachment 4



ATTACHMENT NO. 5

[RESERVED]

Attachment 5



ATTACHMENT NO. 6

Grant Deed

Attachment 6



ATTACHMENT NO. 6

RECORDING REQUESTED BY:  
Indian Wells Redevelopment Agency - No Fee  
Required: Government Code §6103

When Recorded Mail to:  
Executive Director  
Indian Wells Redevelopment Agency  
44-950 Eldorado Drive  
Indian Wells, CA 92210

---

GRANT DEED

For valuable consideration, receipt of which is hereby acknowledged,

The **INDIAN WELLS REDEVELOPMENT AGENCY**, a public body, corporate and politic (the "Agency"), hereby grants to **JERSON INVESTMENTS, LLC, an Illinois limited liability company** ("Owner"), the real property hereinafter referred to as the "Site", described in Exhibit "A" (Site legal description) attached hereto and incorporated herein, subject to the existing easements, restrictions and covenants of record.

1. The Owner, for itself and its successors and assigns, agrees that the Owner will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, religion, creed, national origin, or ancestry, and that the Owner will comply with all applicable local, state and federal fair employment laws and regulations.

The Owner covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site, or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Owner itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessee or vendees of the Site. The foregoing covenant shall run with the land and shall remain in effect in perpetuity.

2. The Owner agrees for itself, its successors, its assigns and every successor in interest to the Site, that it shall be responsible for the operation, maintenance, repair and replacement of landscaping improvements upon the Site, including without limitation, those certain grass, shrubs, trees and other landscaping materials, sidewalks and paved surfaces, artificial lighting, irrigation and drainage systems, and such other landscaping improvements now or hereafter installed on the Site. The Owner shall remove all trash and debris placed upon the Site and otherwise keep the Site in good condition and repair, reasonable wear and tear excepted, at the Owner's sole cost and expense.

In the event that the Owner fails to operate, maintain, repair and replace the foregoing improvements as described herein, the City of Indian Wells (the "City") and the Agency, and their successors and assigns, in addition to pursuing any other rights and remedies of the City and the Agency and their successors and assigns provided herein, shall have the right to enter



upon the Site to operate, maintain, repair and replace the foregoing landscaping improvements and may charge the Owner for the City's or the Agency's (and their successors and assigns) costs of operation, maintenance, repair and replacement. The Owner shall, within thirty (30) days following its receipt of written notice thereof, pay for those costs incurred by the City or the Agency under this paragraph. In the event that the Owner does not pay the City or the Agency and their successors and assigns, for their costs within the time frame above, said costs shall become a lien upon the Site for such nonpayment and the City or the Agency (and their successors and assigns) shall have, in addition to any other rights and remedies provided herein, the right and remedy of foreclosure against said lien for nonpayment in accordance with California law. The foregoing covenant shall run with the land.

3. All of the terms, covenants and conditions of this Grant Deed shall be binding upon the Owner and all successors and assigns of the Owner. Whenever the term "Owner" is used in this Grant Deed, such term shall include any other permitted successors and assigns as herein provided.

4. No violation or breach of the covenants, conditions, restrictions, provisions or limitations contained in this Grant Deed shall defeat or render invalid or in any way impair the lien or charge of any mortgage or deed of trust or security interest permitted in that certain Disposition and Development Agreement by and between the Agency and the Owner dated \_\_\_\_\_, 2004; provided, however, that any subsequent owner of the Site shall be bound by such remaining covenants, conditions, restrictions, limitations and provisions, whether such owner's title was acquired by foreclosure, deed in lieu of foreclosure, trustee's sale or otherwise.

5. All covenants contained in this Grant Deed shall be covenants running with the land.

6. All covenants without regard to technical classification or designation shall be binding for the benefit of the Agency, and such covenants shall run in favor of the Agency for the entire period during which such covenants shall be in force and effect, without regard to whether the Agency is or remains an owner of any land or interest therein to which such covenants relate. The Agency, in the event of any breach of any such covenants, shall have the right to exercise all the rights and remedies and to maintain any actions at law or suits in equity or other proper proceedings to enforce the curing of such breach.

7. Both the Agency (and its successors and assigns) and the Owner (and its successors and assigns in and to all or any part of the fee title to the Site) shall have the right with the mutual consent of the Agency to consent and agree to changes in, or to eliminate in whole or in part, any of the covenants, easements or restrictions contained in this Grant Deed without the consent of any tenant, lessee, easement holder, licensee, mortgagee, trustee, beneficiary under a deed of trust or any other person or entity having any interest less than a fee in the Site. However, the Owner and the Agency are obligated to give written notice to



and obtain the consent of any first mortgagee prior to consent or agreement between the parties concerning such changes to this Grant Deed.

AGENCY:

Dated: \_\_\_\_\_, 200\_

INDIAN WELLS REDEVELOPMENT AGENCY,  
a public body, corporate and politic

By: \_\_\_\_\_  
Mary Roche, Chairwoman

ATTEST:

\_\_\_\_\_  
Agency Secretary

APPROVED AS TO FORM:

\_\_\_\_\_  
John L. Cook  
Agency Counsel

OWNER:

Jerson Investments, LLC, an  
Illinois limited liability company

Dated: \_\_\_\_\_, 200\_

By: \_\_\_\_\_

Title: \_\_\_\_\_



State of California )  
 ) ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 200\_, before me,

\_\_\_\_\_ personally appeared

\_\_\_\_\_ (name(s) of signer(s))

- personally known to me -OR-
- 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 person(s) acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
(Signature of Notary)

**Capacity claimed by signer:**

(This section is OPTIONAL)

- Individual
- Corporate Officer(s):
- Partner(s):
  - General
  - Limited
- Attorney-in-fact
- Trustee(s)
- Guardian/Conservator
- Other:

**Signer is representing:**

\_\_\_\_\_  
(name of person(s) or entity(ies))

**Attention Notary:** Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

**THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:**

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



State of California )  
 ) ss.  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 200\_, before me, \_\_\_\_\_  
*(name, title of officer, e.g., Jane Doe, Public)*

personally appeared

\_\_\_\_\_  
*(name(s) of signer(s))*

- personally known to me -OR-
- 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 person(s) acted, executed the instrument.

Witness my hand and official seal.

\_\_\_\_\_  
*(Signature of Notary)*

Capacity claimed by signer:

*(This section is OPTIONAL.)*

- Individual
- Corporate Officer(s): \_\_\_\_\_
- Partner(s):
  - General
  - Limited
- Attorney-in-fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

**Signer is representing:** \_\_\_\_\_

**Attention Notary:** Although the information requested below is OPTIONAL, it could prevent fraudulent attachment of this certificate to an unauthorized document.

THIS CERTIFICATE  
MUST BE ATTACHED  
TO THE DOCUMENT  
DESCRIBED AT RIGHT:

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



EXHIBIT "A"  
TO GRANT DEED  
SITE LEGAL DESCRIPTION

[to be inserted]

Exhibit "A"



2004-0342453  
05/07/2004 08:08A  
58 of 63

ATTACHMENT NO. 7  
SCOPE OF DEVELOPMENT



ATTACHMENT NO. 7  
TO  
DISPOSITION AND DEVELOPMENT AGREEMENT

SCOPE OF DEVELOPMENT

The Developer and the Agency desire and intend that the project to be developed on the Site shall be a first class project. The uses within the project shall generally support tourism in the City. The Agency encourages such uses as a first class hotel(s), high quality dinner restaurant(s) that may also offer lunch and breakfast, retail stores, art galleries and other specialty retail and tourist oriented uses that would attract tourists and residents of the City.

Uses which the Agency does not encourage are (1) those generally found in strip commercial shopping centers, (2) the development of only office and residential uses, (3) supermarkets and (4) merely routine shopping destinations typically used by families on a regular and sometimes daily basis.

By way of additional description of anticipated development, the Developer and the Agency desire and intend that the development will be a "signature property" for the City, and one which may include an artistic focal point such as a sculpture or water feature descriptive of local history (e.g., a monument depicting the historic Indian Well). The development should be a unique place of interest for tourists and residents to visit and should be of benefit to the effort of local hotels to attract guests and groups. The development should blend in with a resort community such as the City.

In the event that a hotel is developed, the hotel should enjoy a "top tier" rating from nationally and/or internationally rating companies and organizations. In the event that restaurants are accommodated in the development, such restaurants should enjoy a reputation for quality food and service. There shall be no drive through or fast food restaurants. Residential and office development may be part of the project; however, the major portion of the project should be other uses.

The development will be a mixed use Planned Development (as defined in Civil Code §1351k). A Declaration (as defined in CC §1351h) will be submitted to the Agency for approval. Pursuant to §403 of the DDA, the Declaration will not be subject to amendment without City or Agency approval. The Declaration will provide that Common Areas and improvements will be owned and maintained by an Association (as defined in CC §1351a). The Declaration will also provide that each Successor Owner of a parcel will be required to keep areas and improvements within such parcel at a high level of maintenance and all costs incurred in connection therewith shall be at the obligation of the parcel owner. The Declaration will also provide that in appropriate locations or circumstances, as determined by the Declarant, the Association will maintain portions of private areas and improvements, and the owners thereof will be obligated to pay allocated pro-rata assessments to cover costs incurred in that regard by the Association. In general, the Declaration will be designed to ensure a continuous high level of overall project maintenance and repair.

2004-0342453  
05/07/2004 08:06A  
59 of 63



2004-0342453  
05/07/2004 08:00A  
50 of 63



ATTACHMENT NO. 8  
SCHEDULE OF PERFORMANCE

Attachment 8

## Exhibit \_\_\_\_\_

### Miles Avenue, East and West Parcels Preliminary Schedule of Performance

#### PHASE A – Items to be completed prior to DDA signature by all parties

1. Boundary Survey, (Developer)
2. Aerial Photography, (Developer)
3. Topographic Survey, (Developer)
4. Preliminary review of soils and environmental studies provided by the City, (but only those studies in the possession of the City. The Developer must pay for any other such studies)
5. Review existing zoning and applicable codes, (Developer and the City of Indian Wells)
6. Current Fees and Contributions Schedule, (by City of Indian Wells), provided to the Developer
7. Select Landscape Architect, (Developer)
8. Select Civil Engineer, (Developer)
9. Select DDA Attorney, (Developer)
10. Begin preliminary discussions with the Desert Museum and The Living Desert, (Developer)

#### PHASE B – Pre-Design Tasks after DDA signature, (90 days after the Date of Agreement)

1. Soils and Environmental update, (Developer)
2. Review Preliminary Title report, (Developer) and reconvey low and moderate housing covenants (Agency)
3. Utility Analysis, (Developer)
4. Review of bridge connection report and related issues, (Developer)
5. Select the Master Planning Architect, (Developer)
6. Select the Environmental Consultant, (City of Indian Wells, paid for by Developer)
7. Select the Hydrology/Wash Consultant, (Developer)
8. Select the Transactional Attorney, (Developer)
9. Select the Traffic Consultant, (City of Indian Wells, paid for by Developer)
10. Select the Noise and Air Quality Consultant, (City of Indian Wells, paid for by Developer)
11. Order Retail, Hotel, Senior and Residential Studies, and other necessary studies, (Developer)

#### PHASE C – Continuing Pre-Design Tasks and Commencement of Preliminary Design, (150 days after Date of Agreement)

1. Review Retail Study, (Developer)
2. Review Hotel Study, (Developer)
3. Review Senior Study, (Developer)
4. Review Residential Study, (Developer)
5. Review Schematic Master Plan alternatives, (Developer)
6. Review Massing Studies, (Developer)
7. Review Schematic Landscape Design, (Developer)
8. Define Site Planning program, (Developer)

Attachment 8



9. Select preferred Master Plan, (Developer)
10. Prepare Economic Models, (Developer)
11. Identify estimated preliminary costs for site improvement extraordinary items such as sewer force main, storm channel mitigation, bus stop dedication, etc., (Developer)
12. Initiate preliminary discussions with various users, (Developer)
13. Submission of Site Plan by Developer to Agency (Section 302); Informal review of plans and program with the City of Indian Wells, in a working session for input and advice including all CEQA related issues, (Developer and City of Indian Wells)

**PHASE D – Completion of Development Plan Submittal and Other Related Items, (240 days after Date of Agreement)**

1. Prepare preliminary Grading Plan, (Developer)
2. Prepare the Specific Plan for submission, (Developer)
4. Prepare the virtual reality presentation, (Developer)
5. Complete the Master Site Plan, (Developer)
6. Complete the Preliminary Landscape Plan, (Developer)
7. Complete the Massing Studies, (Developer)
8. Negotiate preliminary LOI's with users, (Developer)
9. Negotiate preliminary financing with lenders, (Developer)
10. Prepare preliminary Phasing Plan, (Developer)
11. Select name of Development, (Developer)
12. Formal submittal of the Master Plan and other related documents, and land use applications including, without limitation, the Specific Plan, to the City of Indian Wells, (Developer)

**PHASE E – City of Indian Wells Formal Review, (120 days (365 days if EIR is required) after formal submittal of all items described in Phase D, Item 12)**

1. Prepare the Traffic Study, (City's consultant at Developer's expense)
2. Prepare the Noise and Air Quality Study, (City's consultant at Developer's expense)
3. Prepare Mitigated Negative Declaration and/or Environmental Impact Report (City's Consultant, at Developer's expense)
4. City processes and Staff of City work with the Developer to finalize the land use applications and the City holds Architecture and Landscape Committee, Planning and City Council meetings. The Project is conditionally approved and developer accepts the special conditions.
5. Prepare the Master CC&R's, (Developer) and submit to the Agency

**PHASE F – Close of Escrow, (30 days after Phase "E")**

1. Escrow closes and the Developer takes title to the property. Site work improvement permits are issued by The City of Indian Wells and construction begins



**PHASE G – Permits for Developer Improvements, (365 days after Phase “F”)**

1. Developer obtains CalTrans, CVWD and all third party approvals for Developer Improvements
2. City issues permits for Developer Improvements

**PHASE H – Completion of Developer Improvements as defined by the DDA, (365 days after Phase “G”)**

1. Developer Improvements are completed (Developer)
2. Certificate of Completion issued for Developer Improvements (City)

**PHASE I – Sale of all lots within the Site, (3 years after Phase “H”)**

1. Agency, Developer and Successor Owners enter into Assumption Agreements
2. Developer closes escrow on sales of all lots within the Site

**PHASE J – Commencement of development of private improvements on last remaining lot, (365 days after Phase “I”)**

1. Successor Owners submit completed application for building permit and start construction, as evidenced by pouring of foundations

**PHASE K - Completion of development of all lots within the Site (within time limits set forth in Assumption Agreements, not to exceed 3 years after Phase I)**

1. All private improvements on the Site are completed, as evidenced by issuance by the Agency of Certificates of Completion (Successor Owners)

