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City of Indian Wells

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Page 1 of 30

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County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder

WHEN RECORDED MAIL TO:



City Attorney
City of Indian Wells
44-950 Eldorado Drive
Indian Wells CA 92210

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EXEMPT FROM FILING FEES PURSUANT TO GOV 4 CODE § 27383

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**MODIFICATION NO. 3
TO
DISPOSITION AND DEVELOPMENT AGREEMENT
BY AND BETWEEN
INDIAN WELLS REDEVELOPMENT AGENCY
AND
JERSON INVESTMENTS, LLC.**

MODIFICATION NO. 3

TO

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MODIFICATION NO. 3 ("Modification") 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"). (The effective date of this Modification shall be the date it is executed by the Agency.)

RECITALS

A. On May 6, 2004, the Agency and the Developer entered into a Disposition and Development Agreement (the "Agreement" or the "DDA") relating to certain real property located in the City of Indian Wells. On or about August 17, 2004, the Agency and the Developer entered into a Proposed Modification to the Agreement ("Modification No. 1") which made certain adjustments to Attachment No. 8 to the Agreement. On or about October 6, 2004, the Agency and the Developer entered into Proposed Modification No. 2 ("Modification No. 2") to the Agreement which made certain adjustments and modifications to scheduled dates within the Agreement and Attachment No. 8 to the Agreement in order to allow the Agency and the Developer to consider making certain additional parcels of real property subject to the Agreement. The Agreement and Modification Nos. 1 and 2 are incorporated herein by reference as though set forth in full, and, unless otherwise provided or indicated, all defined terms in those documents shall have the same meanings in this Modification.

B. Affixed to the Agreement was Attachment No. 1, a parcel layout. The parties desire and intend to replace Attachment No. 1 with Revised Attachment No. 1 affixed hereto.

C. As of the effective date of this Modification, the status with respect to ownership of the Agency and City Parcels is as indicated on Attachment No. 1-A affixed hereto, and as depicted on Revised Attachment No. 1 affixed hereto.

D. By this Modification, the parties desire to reflect the current status of parcels to be included within the Site, and make other changes as provided herein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Site as Revised. Anything in the Agreement (or Modification Nos. 1 and/or 2) to the contrary notwithstanding and subject to the terms and provisions of Section 5 hereof, the parcels that will be part of the Site (and be conveyed by the Agency to the Developer) are the City Parcels and Agency Parcels as indicated on Attachment No. 1-A and depicted on Revised Attachment No. 1. It



is understood that, subject to the terms and provisions of Section 5 hereof, the City Parcels will be conveyed by the City to the Agency within sixty (60) days after the effective date of this Modification, or as soon thereafter as is reasonably possible.

2. Purchase Price as Revised. The Purchase Price for the parcels that will be part of the Site (separate and apart from the CVWD Lot) and which shall be conveyed by the Agency to the Developer shall be Nine Million Eighty-One Thousand Four Hundred Thirty-Eight Dollars (\$9,081,438).

3. Attachment No. 8 as Revised. Attachment No. 8 to the Agreement (the Schedule of Performance) is hereby replaced in its entirety by Revised Attachment No. 8 affixed hereto.

4. Condo - Hotel Agreements.

A. Intent of the Parties.

(i) Upon entering into the DDA, the parties originally contemplated that the Project might well include a hotel, and that any such hotel would produce transient occupancy taxes which would be regularly received by the City. The receipt of transient occupancy taxes by the City is of importance and benefit to the residents of the City and such receipt constitutes a material inducement for the City to approve a hotel as part of the Project pursuant to the Agreement, in that such transient occupancy taxes would be a significant source of revenue for payment by the City for reasonable and necessary services for residents and businesses located within the City.

(ii) Following execution of the DDA, the Developer has investigated the possibility of not merely the development of a hotel, but instead the development of a Condo-Hotel, as hereinafter defined, in which (a) certain residential units which are a part of such facility would be sold individually to buyers, (b) thereafter upon the initiative of the purchaser of a unit, in his/her discretion, such unit would be made available for transient rental, periodically or otherwise, by means of a management agreement with a hotel operator, as hereinafter set forth and (c) such residential units could be used by their purchasers for their own residential purposes at least part of the time.

(iii) In order to provide a source of revenue to the City in addition to transient occupancy taxes, and to reasonably enable the City to provide reasonable and necessary services to owners and residents of the Condo-Hotel, and their guests, the parties desire and intend that certain covenants be recorded against the site on which is developed either a hotel or a Condo-Hotel, as hereinafter defined. Such covenants shall provide that (a) if a Condo-Hotel is ever established on that site, then there shall be a hotel operator and an owners' association (the "Owners' Association") for the Condo-Hotel, (b) that such Owners' Association be required to make monthly payment to the City of a certain Resort Amenity Fee, as hereinafter defined, (c) that owners of residential units on the site shall pay monthly to the Owners' Association an amount of money equal to the Resort Amenity Fee for their respective units; and (d) that the Owners' Association be obligated to collect monthly payment of the Resort Amenity Fee from all owners of residential units which are on the site, but that the Owners' Association would have a continuing and independent obligation to make payments to



the City of funds equivalent to all such Resort Amenity Fees due from such owners of units hereunder, whether or not such Resort Amenity Fees are collected by the Owners' Association from owners of residential units.

B. Development of Residential Units, Hotel and/or Condo-Hotel.

Notwithstanding any term or provision in this Modification or the Agreement to the contrary, and except as set forth otherwise hereinafter, the Developer shall not construct as part of the Project any residential units other than those specifically approved by the City or the Agency, in their sole and absolute discretion. Subject to land use approval by the City pursuant to the Agreement, the Developer may develop a hotel in which each and every room or unit therein intended for overnight habitation by persons, is solely used and rented for transient occupancy and produces transient occupancy taxes received by the City.

In addition, subject to land use approval by the City pursuant to the Agreement, the Developer may develop condominium hotel facilities ("Condo-Hotel"), comprised of a condominium project, as defined in Civil Code Section 1351(f), in which some or all of the condominium units ("Units") therein are sold, along with the right of purchasers and successor owners of Units to participate in an optional rental program by executing a rental management agreement ("RMA"). Pursuant to such RMA, the unit buyer shall be required to place responsibility for management, control, use and rental of the subject Unit into the hands of a hotel operator who shall manage the Condo-Hotel ("Operator"), and such Operator shall then rent the Unit from time to time on a transient occupancy basis, and thereby cause the receipt of transit occupancy tax ("TOT") by the City.

C. Declaration of Covenants, Conditions and Restrictions. In the event that the Developer develops a hotel or a Condo-Hotel as part of the Project, then the Developer shall record in the Office of the Recorder for Riverside County a declaration of covenants, conditions and restrictions, in a form and substance approved in writing by the City prior to recordation (the "Enabling Declaration"). The Enabling Declaration shall be recorded against all real property on which the hotel or the Condo-Hotel is located. The Enabling Declaration shall be recorded against such real property prior to the issuance of the first building permit for the hotel or Condo-Hotel (whichever is first developed), shall remain by its terms in effect in perpetuity, and shall not be subordinate to any interest in such property that could ripen into a fee. The Enabling Declaration shall provide, at a minimum, the following: (i) that separate and apart from, and in addition to, payment of and receipt by the City of TOT, the owner of each Unit shall be required to remit monthly to the Owners' Association a Resort Amenity Fee, as hereinafter defined; (ii) that the Owners' Association shall be required to pay to the City on a monthly basis an amount of money equal to the Resort Amenity Fee, as hereinafter defined, for each and every Unit within the Condo-Hotel, whether or not the Owners' Association collects or actually receives the Resort Amenity Fee from each Unit owner; (iii) that the City shall be a party to the Enabling Declaration, but solely for purposes of insuring the City shall have the authority and right to enforce, in its sole and absolute



discretion, all terms and provisions of the Enabling Declaration of which the City derives benefit or in which the City may have an interest, although the City shall not have any obligation to enforce any such terms and provisions of the Enabling Declaration; (iv) that in the event the Owners' Association fails to make timely payment to the City of the total amount of Resort Amenity Fees (as hereinafter defined) due the City for any month, then in addition to any and all other remedies which the City may have, the City shall have the right to record and enforce a lien against one or more of the Units to the extent and in the manner permitted by California law; and (v) that the Enabling Declaration shall not be amended, modified or terminated without the prior written consent of the City.

D. Resort Amenity Fee. The Developer agrees that the Enabling Declaration (which shall be subject to reasonable approval by the Agency) shall include, at a minimum, the following:

(1) The Enabling Declaration shall include provisions which obligate the owner of each Unit to pay to the Owners' Association an annual fee ("Resort Amenity Fee") of Fifteen Hundred Dollars (\$1,500), payable in equal monthly installments of One Hundred Twenty-Five Dollars (\$125) per month and due in advance on the first day of each calendar month. With respect to each Unit, the Resort Amenity Fee shall commence as of the first day of the first calendar month after the earlier to occur of the following: (a) the expiration of one hundred eighty (180) days from issuance by the City of a certificate of occupancy for such Unit, and (b) close of escrow with respect to the sale of such Unit by the Developer ("Unit Sale").

(2) The Enabling Declaration shall also include provisions which obliate the Owners' Association to (a) keep track of and promptly notify the City of the date of any and all Unit Sales, ad (b) collect and pay to the City, on or before the twentieth (20th) day of each calendar month, all Resort Amenity Fees due to the City pursuant to this Agreement for that calendar month, regardless of whether or not the Owners' Association has in fact collected such Resort Amenity Fees from the owners of any or all Units.

(3) The Enabling Declaration shall also include provisions pursuant to which, upon expiration of ten (10) years from and after the first day of the first calendar year after issuance of the first certificate of occupancy for the first Unit in the Condo-Hotel ("Initial Fee Period"), the Resort Amenity Fee shall be increased to Twenty-One Hundred Dollars (\$2,100) per year, payable in monthly installments of One Hundred Seventy-Five Dollars (\$175) each; and further, on each fifth (5th) anniversary thereafter, the Resort Amenity Fee shall be increased by an amount equal to the increase in the CPI (defined below) during the prior five (5) year period, subject to the following: the amount of the increase at the expiration of each five (5) year period shall be based on compounding each annual rate of increase during the five (5) year period, but in no event shall any such five (5) year increase exceed twenty-five percent (25%). The CPI to be used shall be the Consumer Price Index for All Urban Consumers in the Los Angeles-Anaheim-Riverside area (or any successor index or other comparable index selected by the City) for each twelve (12) month period, commencing two (2) months prior to the expiration of the Initial Fee Period (provided that any CPI adjustment shall be rounded up to the nearest full dollar).



4. The Enabling Declaration shall provide that the consideration for payment to the City of the Resort Amenity Fee shall be the benefits conferred by the Resort Amenity Package referenced below.

The Developer shall inform in writing all prospective purchasers and owners of Units of the existence of and requirements for the payment of the Resort Amenity Fee. For this purpose, the Developer shall provide to the Agency for its review and reasonable approval the Unit offering documents submitted to potential Unit purchasers which contain such notice to purchasers.

E. Resort Amenity Package. The Agency, as the owner of the Indian Wells Golf Resort, hereby agrees that on condition that all Resort Amenity Fees are and have been paid to the City as required under this Modification, each Unit owner and Condo-Hotel guest will be entitled to benefits as indicated below (and further, with respect to Condo-Hotel guests, that no better terms will be offered by the Agency to any other hotel located within the City of Indian Wells ("Resort Amenity Package").

(1) Unit Owners:

- (a) An Indian Wells residential property owner ID card.
- (b) Golf fees at the Indian Wells resident rate.
- (c) Subject to and conditioned upon the agreement of such restaurants, 20% discount at Indian Wells resort hotel restaurants.
- (d) 20% discount on merchandise at Indian Wells Golf Resort.
- (e) 4 free golf rounds per year for guests (with owner present).
- (f) Advance tee time reservations (to be made up to 60 days in advance).

(2) Hotel Guests:

- (a) Advance tee time reservations (to be made up to 60 days in advance) by Hotel Operator.
- (b) 10% discount off lowest golf rates offered to the public for the day and time of play.
- (c) 10% discount on merchandise at Indian Wells Golf Resort.

The parties agree, and the Enabling Declaration shall provide, that in addition to any and all other remedies which the City may have, the City shall have the right and authority to suspend the Resort Amenity Package (i) for any Unit and its owner and guests in the event such owner has failed to pay the Resort Amenity Fee as required hereunder, and (ii) in City's sole and absolute discretion, for the entire Condo-Hotel in the event the Owners' Association has failed to pay in full the Resort Amenity



Fees to the City as required hereunder. An such suspension shall remain in effect until such time as such owner of a Unit or the Owners' Association, as applicable, pays in full together with interest thereon at the maximum rate allowed by law, all Resort Amenity Fees then due and owing to the City.

F. TOT Guarantee. For purposes of insuring receipt by the City of at least Five Hundred Thousand Dollars (\$500,000) per calendar year in TOT receipts ("TOT Minimum Annual Amount"), Developer shall deposit, prior to the first issuance of a certificate of occupancy for the hotel or any Unit of a Condo-Hotel (whichever is first developed), with a neutral escrow depository of Agency's choice ("Escrow Depository"), cash in the amount of One Million Dollars (\$1,000,000). Such sum shall be placed into an interest bearing account ("TOT Account"), and shall be distributed in accordance with the provisions of this Section. The TOT Account shall remain in place for a term ("TOT Term"), which shall commence on the first day of the first calendar year after the last certificate of occupancy has been issued by the City for the last Unit of a Condo-Hotel, or issuance of a certificate of occupancy for a hotel on the subject property, whichever is applicable, and continue for a period of five (5) years and four (4) months thereafter. If, with respect to any complete calendar year during the TOT Term, the City has not received TOT from the subject property on which the hotel (or the Condo-Hotel) is located at least equal to the TOT Minimum Annual Amount, the Agency or the City shall be entitled, for a period not longer than sixty (60) days after the expiration of such calendar year, to unilaterally submit to the Escrow Depository a demand in writing (with copy to the Developer) to withdraw without any right of objection by the Developer, funds held in the TOT Account equal to the difference between the TOT Minimum Annual Amount and such actual receipts by the City of TOT. Upon receipt of any such demand from the Agency or the City, the Escrow Depository shall deliver the requested amount to the City, without any further instruction or consent required from the Developer. If, at a point in time which is more than one hundred twenty (120) days after the expiration of the TOT Term, funds remain on deposit in the TOT Account from which no request for payment by the Agency or the City is pending, such funds shall be released and delivered to the Developer, without any further instruction or consent from the Agency or the City. The parties shall expeditiously execute and deliver any and all escrow instructions reasonably requested by the Escrow Depository in order to effectuate the intents and purposes of this Section 4.F. The Agency agrees, at all relevant times, to expeditiously provide, or cause the City to provide, accounting books and records sufficient for the Developer to verify amounts from time to time claimed to be owing to the City pursuant to this Section. In the event of any dispute or disagreement regarding such amounts, the matter shall be submitted to binding arbitration, to be conducted in the City of Indian Wells, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Except to the limited extent provided in this Section 4.F, the Developer shall have no responsibility to the City or the Agency for payment of TOT in connection with the hotel operation, or otherwise, except insofar as the Developer is during any time after completion of the hotel or the Condo-Hotel, an "Operator," or is otherwise a party responsible for collection and/or payment to the City of transient occupancy taxes pursuant to Chapter 3.12 of the Indian Wells Municipal Code, or successor ordinances.



5. Lissoy Agreements.

A. With respect to APN 633-410-026 ("Parcel 026"), the Agency and the Developer acknowledge that on or about the 11th day of November, 2002, the City entered into a Property Acquisition and Settlement Agreement ("Settlement Agreement") with Albert O. Lissoy ("Lissoy"). The Settlement Agreement provided, among other things, (a) that Lissoy agreed to donate and grant to the City not less than a 1/10th undivided interest per year in and to Parcel 026, over a 10 year period, beginning no later than 3.5 years after the date of the Settlement Agreement, and (b) beginning immediately on the date of the Settlement Agreement, and continuing thereafter, the City shall have possessory use and control of the entirety of said Parcel 026, and shall make any such use of said Parcel 026 which it (the City) deems appropriate. Thus, as of the date of this Agreement, the City has full possessory use and control of Parcel 026, but does not yet own 100% of the undivided fee title interests therein.

B. Notwithstanding any term or provision herein to the contrary, the Agency and the Developer understand and agree that (i) a copy of the Settlement Agreement has been provided by the Agency to the Developer, (ii) the Settlement Agreement speaks for itself, and (iii) the Agency and the City make no representation or warranty about the terms and provisions of the Settlement Agreement or the enforceability thereof. In connection with this Agreement, the parties agree that the City (or the Agency) shall (i) initially convey to the Developer such full possessory use and control of Parcel 026 as the City has pursuant to the Settlement Agreement, (ii) concurrently therewith convey to the Developer all undivided fee title interests in Parcel 026 that the City then has, and (iii) thereafter from time to time upon receipt of conveyances of undivided interests in and to Parcel 026 from Lissoy, immediately convey the same to the Developer.

6. CVWD Parcel. The parties acknowledge and agree that the Developer is currently in negotiations with the Coachella Valley Water District ("CVWD") with respect to acquiring fee title or a long term leasehold estate in and to APN 633-310-015 ("CVWD Parcel"). The Agency acknowledges and agrees that if the Developer is successful in acquiring such fee title or a long term leasehold estate, then the Developer shall incorporate the CVWD Parcel into the overall Project. For this purpose, the Developer shall provide to the City on or before submission of applications for land use approval which include the CVWD Parcel, evidence deemed satisfactory by the City, in its sole and absolute discretion, that the Developer has acquired all interests in the CVWD Parcel that are deemed necessary by the City, in its sole and absolute discretion, for purposes of including the CVWD Lot in the Project.

7. Release of City Easement over CVWD Parcel. When CVWD acquired the CVWD Parcel pursuant to grant deed recorded on March 16, 1965, as Instrument No. 29975, Records of Riverside County, California, the grantor reserved an easement for golf, recreation and other purposes, over the CVWD Parcel for certain other appurtenant property described in said grant deed as the "Dominant Tenement". The City is currently the owner of said Dominant Tenement property. The Agency shall use its reasonable efforts in order to obtain agreement from the City that the City refrain from



endeavoring to enforce any such easement rights during the term of any long term leasehold estate that the Developer obtains from CVWD (or in perpetuity if fee title is acquired by the Developer) with respect to the CVWD Parcel, on condition that the City approves the Developer's plans, use and development of the CVWD Parcel and such use and development continue without interruption thereafter. Nothing set forth herein shall prevent the City from undertaking eminent domain to acquire any real property interest in or with respect to the CVWD Parcel in the future if the City can make all findings required by law to do so.

8. Other Acknowledgments and Agreements. By execution of this Modification:

A. Preliminary Title Report. The Developer acknowledges and agrees that it has received and approved one or more Preliminary Title Reports covering all parcels within the Site.

B. Site Plan. The Agency acknowledges and agrees that it has timely received from the Developer a proposed Site Plan, as referenced in Section 302 of the Agreement and in paragraph 13 under Phase C of original Attachment No. 8 to the Agreement.

C. Housing Covenants. The Agency and the Developer acknowledge and agree that prior to conveying the applicable portion of APN 633-410-017, existing housing covenants shall be removed.

D. License. The Agency grants to the Developer a revocable temporary license, to go upon the Site and erect and maintain, in accordance with plans and specifications to be reasonably approved by the Agency, (i) a temporary structure to serve as a sales office to provide sales, leasing and other related information to potential buyers and tenants, as well as members of the public, and (ii) three marketing signs which contain Project and contact information described and set forth in Attachment 9 affixed hereto. The parties understand that the Developer anticipates a need to use such license for up to three (3) years following its issuance. With respect to the license, the following shall apply:

(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 without limitation attorneys' fees and costs) and liability of any kind or nature relating to any activities of the Developer, its agents, employees, guests or invitees, in connection with the license and/or exercise of rights thereunder, 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 Modification and the 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 regardless of when such damage shall accrue or be discovered. The foregoing notwithstanding, 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.

(2) Insurance. Prior to and for purposes of exercising any rights under the license, the Developer shall, with respect to the license, meet all of the requirements set forth in Section 311 of the Agreement, as amended by this Modification, separate and apart from and in addition to the application of such requirements to the Developer's commencement of construction or other work on the Developer Improvements.

(3) The Developer shall inform all parties who seek information about the proposed project or the Site that the proposed project is subject to future review and approval by the City and Agency. For this purpose, the Developer shall provide to the Agency for its reasonable approval a written notice to prospective purchasers and/or tenants of the proposed project containing the foregoing information, and the Developer shall distribute such notice to all such prospective purchasers and tenants while the Developer holds the license hereunder.

9. Amendment of Section 311 (Insurance) of the Agreement. Section 311 of the Agreement is amended by deleting therefrom:

- “(a) One Million Dollars for any one person; and
- (b) Two Million Dollars for any one occurrence; and
- (c) One Million Dollars for any property damage”

and by substituting therefor the following:

- “(a) Two Million Dollars for any one person; and
- (b) Two Million Dollars for any one occurrence; and
- (c) Two Million Dollars for any property damage; and
- (d) Three Million Dollars in the aggregate.

Notwithstanding the foregoing, the Developer may satisfy the requirements for minimum insurance by obtaining and maintaining an excess/umbrella liability insurance policy in the minimum amount of Ten Million Dollars for any one occurrence, and Ten Million Dollars in the aggregate; provided that all other requirements of this Section 311 shall be satisfied with respect to such excess/umbrella liability insurance.

10. Attachments. All Attachments hereto are incorporated herein by reference as though set forth in full.

11. Effect of Modification. This Modification shall amend and supercede the Agreement (and Modification Nos. 1 and 2) to the extent provided herein; provided, however, the Agreement (including Modifications Nos. 1 and 2) shall otherwise remain in full force and effect as originally written.



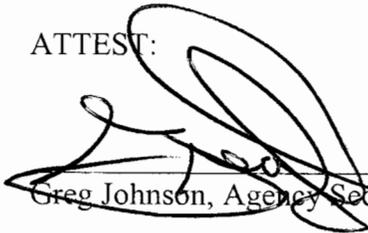
IN WITNESS WHEREOF, the Agency and the Developer have signed this Modification on the respective dates set forth below.

INDIAN WELLS REDEVELOPMENT AGENCY

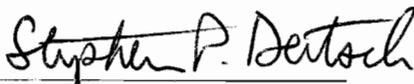
Dated: July 21, 2005

By: 
Ed Monarch, Chairperson

ATTEST:


Greg Johnson, Agency Secretary

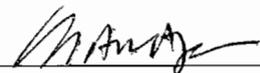
APPROVED AS TO FORM:


Stephen P. Deitsch, Agency Counsel

DEVELOPER:

Dated: July 20, 2005

Jerson Investments, LLC
An Illinois limited liability company

By: 
Title: 

NOTARIES ARE ATTACHED.

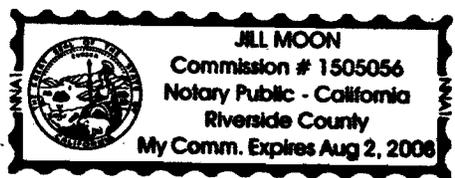
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Riverside } ss.

On August 19, '05 before me, Jill Moon, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Ed Monarch
Name(s) of Signer(s)

personally known to me
 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/she/they executed the same in his/his/their authorized capacity(ies), and that by his/his/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.
Jill Moon
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

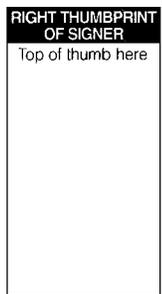
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

- Individual
- Corporate Officer -- Title(s): _____
- Partner -- Limited General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: _____

Signer Is Representing: _____



STATE OF ILLINOIS)
)ss
COUNTY OF COOK)

On July 20, 2005, before me, Gerald W. Fogelson, personally appeared 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 entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Tamara L. Trock
SIGNATURE OF NOTARY



STATE OF CALIFORNIA)
) ss
COUNTY OF RIVERSIDE)

On _____, before me, _____, personally appeared _____ 9 personally known to me - or - 9 proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

SIGNATURE OF NOTARY

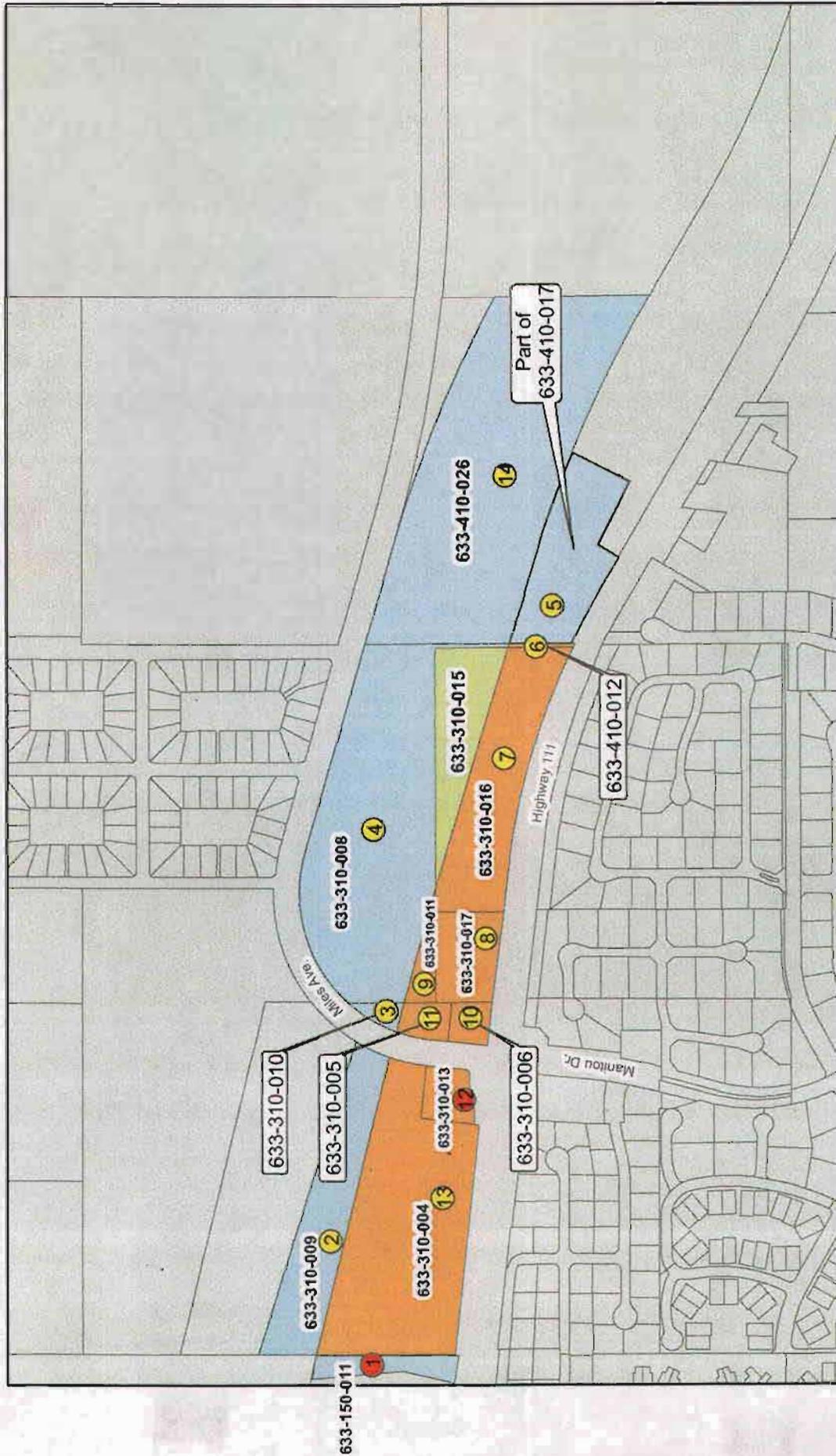
STATE OF CALIFORNIA)
) ss
COUNTY OF RIVERSIDE)

On _____, before me, _____, personally appeared _____ 9 personally known to me - or - 9 proved to me on the basis of satisfactory evidence, to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

SIGNATURE OF NOTARY

Miles Crossing Project



- Redevelopment Agency
- City of Indian Wells
- Added DDA Area
- Original DDA Area
- Added CVWD Parcel to DDA Area

Note: Map denotes title not funding source

SCALE: NTS

Exhibit 1-A

Exhibit 1A

List of Parcels subject to the Disposition Development Agreement

APN	Ownership Title
633-310-004	City
633-310-013	RDA
633-310-005	City
633-310-006	City
633-310-011	City
633-310-017	City
633-310-016	City
633-410-012	City
633-410-026	Lissoy/City
633-310-008	City
633-310-010	City
633-310-009	City
633-150-011	RDA

Exhibit 1A

List of portion parcels Parcels subject to the Disposition Development Agreement

APN	Ownership Title	
633-150-011	RDA	Portion noted as Exhibit "A"
633-410-017	City	Portion noted as Exhibit "B"



2005-0685165
08/22/2005 08:08A
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EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL "A":

IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, THAT PORTION OF THE EAST HALF OF SECTION 23, TOWNSHIP 5 SOUTH, RANGE 6 EAST, S.B.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 23;

THENCE SOUTH 00°05'00" EAST ALONG THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 23, A DISTANCE OF 72.44 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 111 AS SHOWN ON CALIFORNIA DIVISION OF HIGHWAYS MONUMENTATION MAP 11-RIV-111 DATED SEPTEMBER 14, 1967;

THENCE NORTH 84°02'46" WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 110.00 FEET;

THENCE NORTH 17°28'29" EAST, A DISTANCE OF 164.00 FEET;

THENCE NORTH 20°17'45" WEST, A DISTANCE OF 428.65 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF THE COACHELLA VALLEY STORMWATER CHANNEL AS DESCRIBED IN DEED RECORDED MAY 19, 1965 AS INSTRUMENT NO. 57945, O.R.

THENCE SOUTH 76°23'40" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 214.50 FEET TO THE EAST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 23;

THENCE SOUTH 00°01'57" EAST ALONG SAID EAST LINE, A DISTANCE OF 446.98 FEET TO THE **POINT OF BEGINNING**.

SUBJECT TO EXISTING EASEMENTS, COVENANTS, RIGHTS AND RIGHTS-OF-WAY OF RECORD.

CONTAINING 62,576 SQUARE FEET
OR 1.437 ACRES, MORE OR LESS.

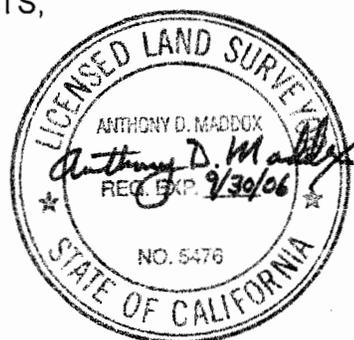


EXHIBIT "A"
LEGAL DESCRIPTION

THENCE CONTINUING ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE AND NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°53'04", AN ARC DISTANCE OF 202.90 FEET TO THE POINT OF BEGINNING.

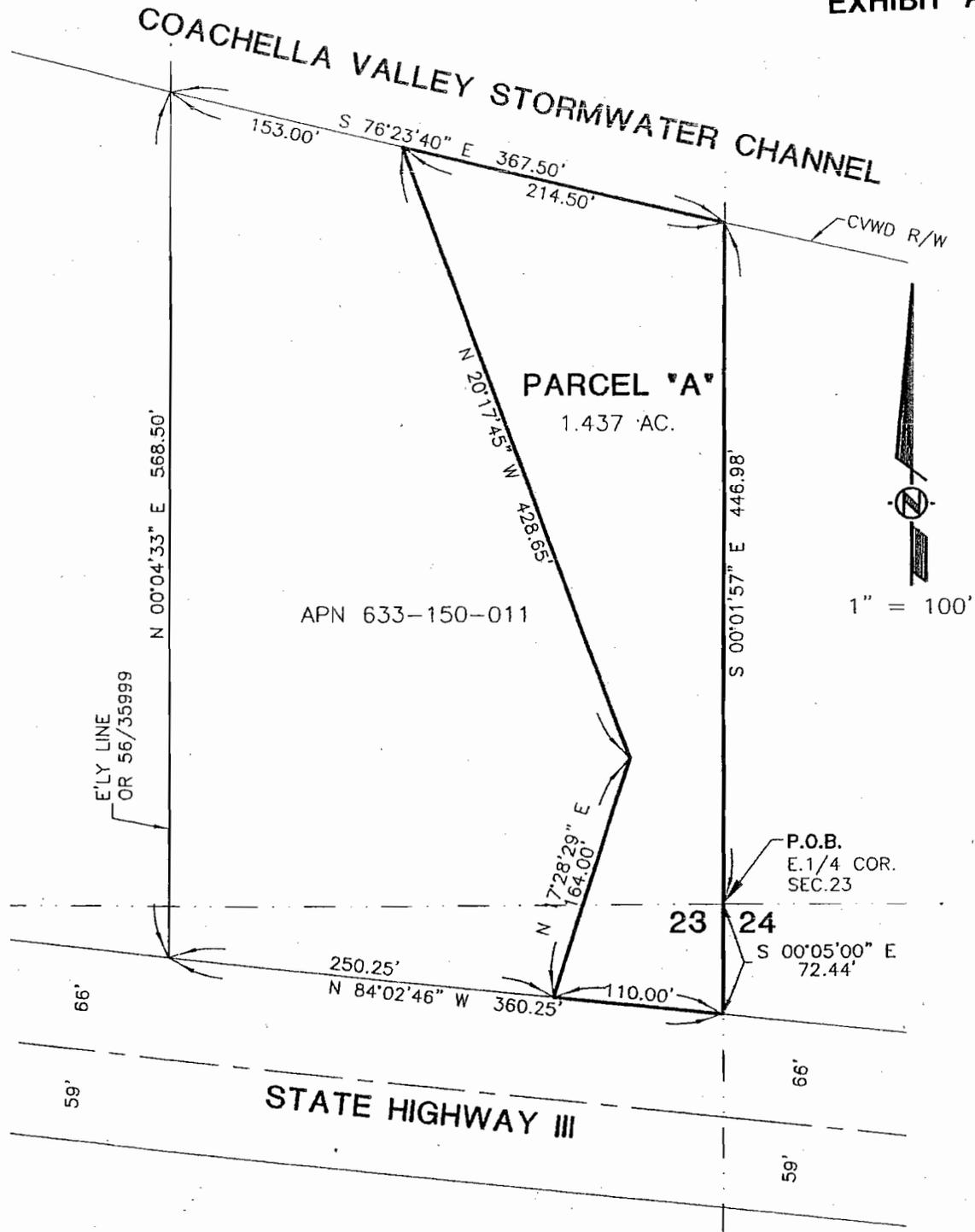
SUBJECT TO EXISTING EASEMENTS, COVENANTS, RIGHTS AND RIGHTS-OF-WAY OF RECORD.

CONTAINING 192,036 SQUARE FEET OR 4.409 ACRES, MORE OR LESS.



2005-0685165
08/22/2005 08:00A
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EXHIBIT "A"



A PORTION OF THE EAST HALF
OF SEC.23, T.5S., R.6E., S.B.M.
CITY OF INDIAN WELLS



MSA CONSULTING, INC.

MAINIERO, SMITH & ASSOCIATES, INC.
PLANNING ■ CIVIL ENGINEERING ■ LAND SURVEYING
34200 BOB HOPE DRIVE ■ RANCHO MIRAGE ■ CA 92270
TELEPHONE (760) 320-9811 ■ FAX (760) 323-7893

SHEET 1 OF 1

IN. 1702



2005-0685165
08/22/2005 08:00A
20 of 30

EXHIBIT "A"
LEGAL DESCRIPTION

PARCEL "B":

IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, S.B.M., MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHEASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 111 AS SHOWN ON CALIFORNIA DIVISION OF HIGHWAYS MONUMENTATION MAP 11-RIV-111 DATED OCTOBER 28, 1970 AND A LINE PARALLEL WITH AND 15.00 FEET EASTERLY OF THE WEST LINE OF SAID SOUTHEAST QUARTER OF SECTION 24;

THENCE NORTH $00^{\circ}07'12''$ WEST ALONG SAID PARALLEL LINE, A DISTANCE OF 245.69 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF THE COACHELLA VALLEY STORMWATER CHANNEL AS DESCRIBED IN DEED RECORDED MAY 4, 1964 AS INSTRUMENT NO. 54840, O.R.;

THENCE SOUTH $74^{\circ}02'26''$ EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 272.16 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHERLY AND HAVING A RADIUS OF 4,000.00 FEET;

THENCE CONTINUING EASTERLY ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE AND ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $07^{\circ}42'14''$, AN ARC DISTANCE OF 537.84 FEET;

THENCE LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE AND NON-TANGENT TO SAID CURVE SOUTH $30^{\circ}40'23''$ WEST, A DISTANCE OF 267.81 FEET;

THENCE NORTH $59^{\circ}19'37''$ WEST, A DISTANCE OF 305.00 FEET;

THENCE SOUTH $30^{\circ}40'23''$ WEST, A DISTANCE OF 105.00 FEET TO A POINT ON SAID NORTHEASTERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 111;

THENCE NORTH $59^{\circ}19'37''$ WEST ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE, A DISTANCE OF 157.61 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 2,380.00 FEET;



EXHIBIT "A"
LEGAL DESCRIPTION

THENCE CONTINUING ALONG SAID NORTHEASTERLY RIGHT-OF-WAY LINE AND NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 04°53'04", AN ARC DISTANCE OF 202.90 FEET TO THE **POINT OF BEGINNING**.

SUBJECT TO EXISTING EASEMENTS, COVENANTS, RIGHTS AND RIGHTS-OF-WAY OF RECORD.

CONTAINING 192,036 SQUARE FEET OR 4.409 ACRES, MORE OR LESS.

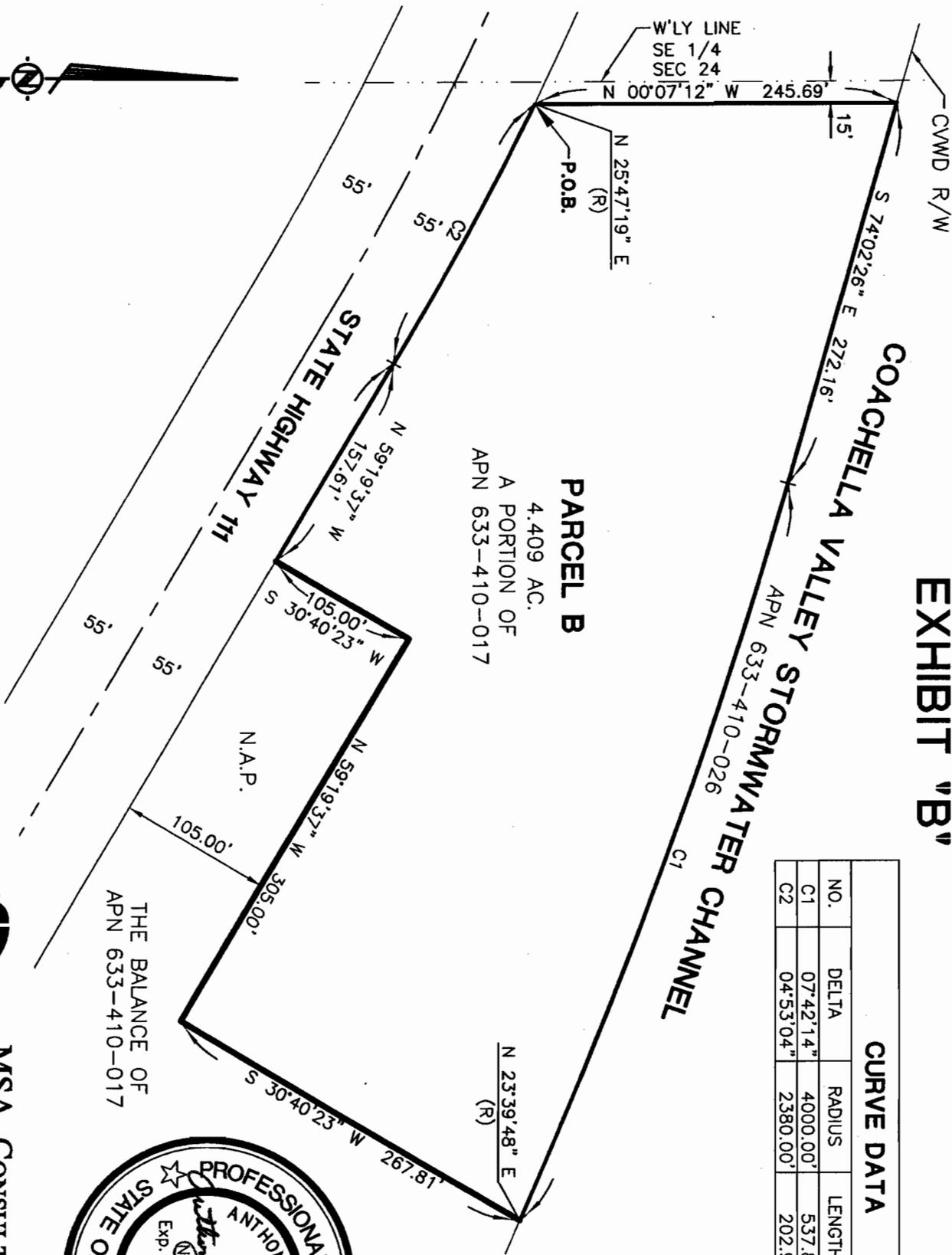


EXHIBIT "B"

CURVE DATA				
NO.	DELTA	RADIUS	LENGTH	TANGENT
C1	07°42'14"	4000.00'	537.84'	269.33'
C2	04°53'04"	2380.00'	202.90'	101.51'

COACHELLA VALLEY STORMWATER CHANNEL
 APN 633-410-026

PARCEL B
 4.409 AC.
 A PORTION OF
 APN 633-410-017



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SHEET 1 OF 1 J.N. 1702

A PORTION OF THE SE 1/4
 OF SEC. 24, T.5S., R.6E., S.B.M.
CITY OF INDIAN WELLS



1" = 100'



REVISED ATTACHMENT NO. 8

Miles Avenue, East, West and North Parcels
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. (Intentionally Deleted)

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. (Intentionally Deleted - Moved to Phase C, Item 14)
7. Select the Hydrology/Wash Consultant, (Developer)
8. Select the Transactional Attorney, (Developer)
9. (Intentionally Deleted - Moved to Phase C, Item 15)
10. (Intentionally Deleted - Moved to Phase C, Item 16)
11. Order Retail, Hotel, Senior and Residential Studies, and other necessary studies. (Developer)

PHASE C - Continuing Pre-Design Tasks and Commencement of Preliminary Design, (270 days after Date of Agreement, i.e., by February 5, 2005 per Modification No. 1)

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)
9. Select preferred Master Plan, (Developer)
10. Commence preparation of Economic Models, (Developer)
11. Commence identification of 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)
14. Select the Environmental Consultant, (City of Indian Wells, paid for by Developer)
15. Select the Traffic Consultant, (City of Indian Wells, paid for by Developer)
16. Select the Noise and Air Quality Consultant, (City of Indian Wells, paid for by Developer)
17. Select other Consultants as deemed necessary (City of Indian Wells, paid for by Developer)
18. Intentionally Deleted - moved to Phase D, item 13.

PHASE D - Completion of Development Plan Submittal and Other Related Items, (485 days after Date of Agreement, i.e., by September 5, 2005)

1. Prepare Preliminary Grading Plan, (Developer)
2. Prepare the Specific Plan for submission, (Developer)
3. Complete a Traffic Management Plan
4. Intentionally Deleted - moved to Phase E, item 7
5. Complete the Master Site Plan, (Developer)
6. Intentionally Deleted - moved to Phase G, item 3
7. Complete the Massing Studies and Building Preliminary Elevations, (Developer)
8. Negotiate preliminary LOI's with users, (Developer)
9. Negotiate preliminary financing with lenders, (Developer)
10. Intentionally Deleted
11. Select name of Development, subject to approval by City (Developer)



12. Formal submittal of the Master Plan and Other related documents, and land use applications including, without limitation, the Specific Plan (if needed), to the City of Indian Wells, (Developer)
13. Developer to provide to the City fiscal analysis of viability of proposed hotel and revenue (Fiscal Impact Analysis) and submit for review by City and third party consultant. Consultant fees to be paid by the Developer, as well as City administrative fees.

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. Complete the Traffic Study, (City's consultant at Developer's expense)
2. Complete 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. Commencing on receipt by City of formal submittal per Phase D, item 12, City processes and Staff of City work with the Developer to finalize the land use applications and the City holds Architecture and Landscape Committee meetings, and Planning and City Council public hearings. The Project is conditionally approved and the Developer accepts the special conditions. (Expected City process time is 120 days from commencement, unless an EIR is required on basis of results of initial study)
5. Prepare the Master CC&R's (Developer) and submit to the Agency for review and approval.
6. Complete other reports as necessary with the aid of consultants. May include, but not be limited to, the environmental review documents. All third party costs will be paid by the Developer, including all City applicable administrative fees.
7. Prepare the virtual reality presentations, to the extent required by the City, (Developer)

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. Developer to submit all necessary improvement plans (on site and off site) for plan check, and pay all applicable fees.
3. Complete the Preliminary Landscape Plan and on and off site lighting subject to review and approval by City, (Developer)
4. City issues permits for Developer Improvements

PHASE H - Completion of Developer Improvements as defined by the DDA (545 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 undeveloped 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)

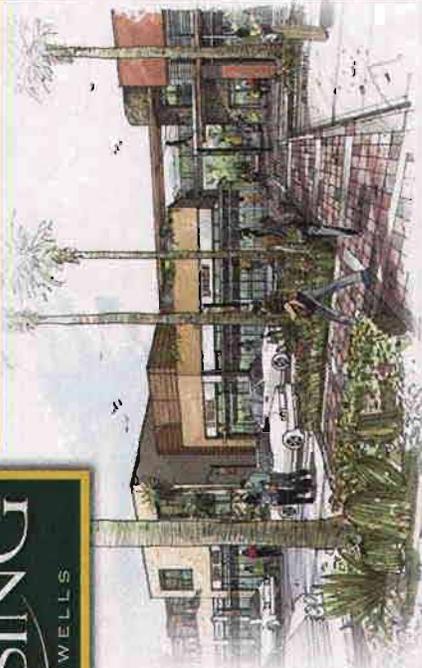
1. All private improvements on the Site are completed, as evidenced by issuance by the Agency of Certificates of Completion (Successor Owners)



24 ft



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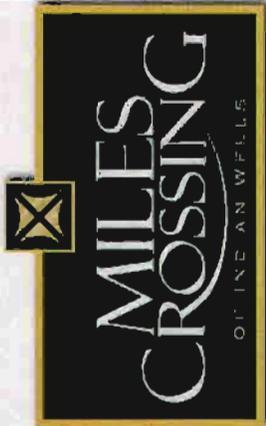
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30'



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24 ft



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COMING FALL 2006

10 ft

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