

MODIFICATION NO. 4

TO

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MODIFICATION NO. 4 ("Modification No. 4") 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 No. 4 shall be the date it is executed by the Agency.)

RECITALS

A. On May 6, 2004, 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, Agency and 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. On or about July 21, 2005, the Agency and the Developer entered into Modification No. 3 to Disposition and Development Agreement ("Modification No. 3") to reflect the current status of parcels to be included within the Site and make certain other changes as provided therein. The Agreement and Modification Nos. 1 through 3 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 No. 4.

B. By this Modification No. 4, the parties desire to modify the Agreement (as previously modified), as provided herein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Modification of Condo-Hotel Agreements. Section 4 of Modification No. 3,

entitled "Condo-Hotel Agreements", is revised in the following respects:

(a) Subsection D, entitled "Resort Amenity Fee", is revised in the following respects:

(i) The amount of the Resort Amenity Fee, as referenced in Subsection 4.D(1), is increased from \$1,500 annually per unit (\$125 monthly per unit) to \$2,400 annually per unit (\$200 monthly per unit).

(ii) The language of Subsection 4.D(3) is deleted in its entirety and replaced by the following:

"(3) The Enabling Declaration shall also include provisions pursuant to which the amount of the Resort Amenity Fee (\$2,400 per year per unit at the outset) shall be increased annually (there shall be no decrease in any year) to reflect cost of living increases. The first increase shall occur on the first day of the first calendar year after issuance of the first certificate of occupancy for the first Unit in the Condo-Hotel, and each subsequent increase shall occur on each anniversary date thereafter. Each increase shall be in an amount equal to the percentage change in the CPI (defined below) during the prior one year period (calculated as provided below), but in no event shall any increase exceed 5% of the amount in effect during such prior one year period, and this product shall be added to this Fee. 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). On each adjustment date, the Index for the calendar month which is two months prior (i.e. November) to the adjustment date shall be compared with the Index for the calendar month which is one year prior thereto, and the percentage increase shall be multiplied by the amount of the Resort Amenity Fee then in effect to determine the amount of the Resort Amenity Fee for the ensuing year."

(b) Subsection E entitled Resort Amenity Package is amended to read as follows:

"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 Condo-Hotel 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) Condo-Hotel Unit Owners:

(a) A Condo-Hotel Resort Benefit card .

- (b) Golf fees at the Indian Wells Golf Resort resident rate subject to City policy applicable only to Condo-Hotel Unit owners as set forth by City ordinance or policies.
- (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 Condo-Hotel unit owner present).
- (f) Advance tee time reservations at Indian Wells Golf Resort (to be made up to 60 days in advance).

(2) Hotel Guests:

- (a) Advance tee time reservations at Indian Wells Golf Resort (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.

(3) Hotel Management Company

- (a) Hotel has access to group rates 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. Any such suspension shall remain in effect until such time as such owner of a Condo-Hotel 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."

(c) Subsection F entitled "TOT Guarantee" is deleted in its entirety.

2. Parking Lot Agreements. With respect to Parcel A depicted on Attachment "9" affixed hereto ("Parking Lot Parcel"), the following shall apply:

(a) Lease Agreement. Effective as of the date that the Developer acquires fee title to any portion of the commercial retail portion of the Site, Developer shall lease the Parking Lot Parcel from the Agency, upon the following terms and conditions:

(i) Leased Premises. The Parking Lot Parcel shall constitute the "Leased Premises", which the parties estimate consists of approximately 29,000 square feet.

(ii) Use. The Leased Premises shall be used for purposes of constructing and operating (both solely at Developer's cost and expense) a parking lot to service commercial facilities to be constructed by Developer on that portion of the Site located east of Miles Avenue.

(iii) Rent. Annual rent for the Leased Premises will be equal to the product obtained by multiplying the number of square feet in the Leased Premises times \$15.49 per square foot times 8%. Such annual rent will be paid in equal monthly installments in advance on the first day of each month. (Rent for any partial month shall be prorated as of the commencement date.)

(iv) Term. The term of the lease will be for a period not to exceed five (5) years.

(v) Triple Net. The lease arrangement will be on a "triple net" basis in that the lessee shall pay all taxes, maintenance and insurance, in addition to rent.

(vi) Other Provisions. The lease agreement (which will be in form and substance reasonably acceptable to the parties) shall contain other customary provisions including, without limitation, provisions whereby the lessee indemnifies the lessor from all claims and liabilities relating to acts or omissions of lessee, its agents, employees, guests and invitees; provisions whereby the lessee provides liability insurance coverage comparable to that required by the DDA, as modified; provisions whereby lessee may encumber its leasehold estate (but not lessor's fee estate) for purposes of constructing improvements; provisions requiring lessee to keep the leased premises free from mechanics liens and similar claims; provisions which prohibit assignment without lessor's reasonable consent; and provisions allowing the lessor, upon default by lessee, to evict the lessee and collect past due rent and interest thereon, together with reasonable attorneys fees and costs. Lessee shall provide a proposed lease agreement to the Agency for the Agency's review. The approval and execution of a lease by the Developer and the Agency shall be both a buyer's and seller's condition for close of escrow for the commercial retail portion of the Site.

(b) Purchase Agreement. By execution of this Modification No. 4, Developer agrees to buy from Agency, and Agency agrees to sell to Developer, the Parking Lot Parcel, upon the following terms and conditions:

(i) Purchase Price. The purchase price shall be equal to \$15.49 per

square foot for each square foot of property located within the Parking Lot Parcel. The purchase price shall be adjusted upward to reflect the equivalent of interest accrual at a rate equal to the one (1) year LIBOR rate compounded annually (as the same may change from time to time) from the date of close of escrow for the commercial portion of the retail Site until close of escrow. The entire purchase price shall be paid all cash at close of escrow. (Escrow and title insurance costs shall be divided equally between the parties. Rent for any partial month shall be prorated as of close of escrow.)

(ii) Close of Escrow. Escrow shall close within 60 days after delivery by Developer to Agency of written notice to close, but in any event not later than five (5) years after the effective date of this Modification No. 4. At close of escrow, good and marketable title shall be conveyed to Developer.

(c) Inclusion in Specific Plan. The Developer shall include the Parking Lot Parcel within the Specific Plan application submitted by Developer and reviewed by the City in connection with plans to develop the overall Site. The Specific Plan application shall include, at least, proposed zoning and land use designations and conceptual building designs and landscape criteria.

(d) Parking Requirements. The Developer shall include in the Specific Plan application, at least, parking requirements for the Parking Lot Parcel.

(e) In the event that Developer fails to complete its purchase of the Parking Lot Parcel as provided and within the time set forth in this Modification No. 4, then in addition to all other remedies available to the Agency and/or the City, Developer and the Site shall be deemed automatically, without the requirement of further findings or action by any party, to be in violation of land use approvals given by the City with respect to the Site including without limitation, any and all conditional use permits, and the City shall be entitled to revoke any and all such approvals. Notwithstanding the foregoing, Developer shall automatically be provided a period of time for close of escrow for the Parking Lot Parcel equal to sixty calendar days following the date otherwise set forth in this Modification No. 4 as the deadline for the close of escrow for the Parking Lot Parcel, without any notice or other action required by any party.

3. Phase 2 Agreements. With respect to Parcel B depicted on Attachment "9" affixed hereto ("Phase 2 Property"), the following shall apply:

(a) Purchase Agreement. By execution of this Modification No. 4, Developer agrees to buy from Agency, and Agency agrees to sell to Developer, the Phase 2 Property, upon the following terms and conditions:

(i) Purchase Price. The purchase price shall be equal to \$15.49 per square

foot for each square foot of property located within the Phase 2 Property (excluding any square footage contained within the Private Road depicted on Attachment "9"). The purchase price shall be adjusted upward to reflect the equivalent of interest accrual at a rate equal to the one (1) year LIBOR rate compounded annually (as the same may change from time to time) from the date of close of escrow for the commercial retail portion of the Site until close of escrow. The entire purchase price shall be paid all cash at close of escrow. (Escrow and title insurance costs shall be divided equally between the parties.)

(ii) Close of Escrow. Escrow shall close within 60 days after delivery by Developer to Agency of written notice to close, but in any event not later than five (5) years after the effective date of this Agreement. At close of escrow, good and marketable title shall be conveyed to Developer.

(b) Inclusion in Specific Plan. The Developer shall include the Phase 2 Property within the Specific Plan application submitted by Developer and reviewed by the City in connection with plans to develop the overall Site. The Specific Plan application shall include, at least, proposed zoning and land use designations. Final Building and landscape design shall require City review and approval.

4. Agreements Regarding Construction of Street and Highway Improvements.

(a) Background. The background with respect to the above is as follows:

(i) Overall Public Improvements. The Overall Public Improvements are generally identified on Attachment "10" affixed hereto. The Developer will build the Highway 111 improvements that are shown in the attached plan prepared by Developer's engineer (MSA) and identified on Attachment 10.

(ii) Commercial and Condo-Hotel Facilities. Developer intends, as part of the development, to construct certain private commercial and condo-hotel facilities ("Commercial and Condo-Hotel Facilities").

(b) Design and Construction Methods.

(i) Actual Design and Construction. The parties agree that design and construction shall, subject to reasonable approval by Agency and City, be managed by Developer or Developer's Partners. Upon receipt of invoices in a form and substance approved by the Agency in its reasonable discretion, the City and/or Agency shall reimburse the Developer or Developer's partners a total, in the aggregate, of up to \$40,000 for overhead expense at the conclusion of substantial construction, as reasonably determined by the City, of the Overall Public Improvements as determined by the City in

its reasonable discretion.. In undertaking and completing the Overall Public Improvements, Developer shall comply with all applicable requirements of the California Public Contract Code relating to bidding and payment of prevailing wages. Financing of actual design and construction shall be handled as provided below.

(c) Financing of Design and Construction. Financing of design and construction shall be handled as follows:

(i) Cost Sharing. Subject to the provisions of Section 4(b) above, all costs incurred in connection with the design and construction of the Overall Public Improvements, shall be shared 50% Agency and/or City, and 50% Developer.

(ii) Arrangements for Cost Sharing. The parties shall set up a joint escrow account into which one hundred percent (100%) of the estimated costs of the Overall Public Improvements due from each party shall be deposited and from which design and construction costs shall be paid. The parties shall sign any and all documents reasonably necessary or expedient to establish and effectuate such funding procedure, and, in addition, provide satisfactory evidence of such party's then current ability to deposit all required funds, e.g., by providing satisfactory evidence of available cash or providing satisfactory surety bonding.

(iii) Developer shall maintain and make available for inspection and copying by the City and the Agency (and their employees and agents) at all times invoices and other documentation demonstrating compliance with any and all applicable bidding and prevailing wage requirements, and actual costs incurred in completing the Overall Public Improvements, including without limitation all hard and soft costs attributable thereto.

5. Agreements Regarding Private Road Improvements. With respect to the design and construction of the Private Road Improvements (as defined below), the following shall apply:

(a) Definition of Private Road Improvements. As used herein, any reference to Private Road Improvements or Private Road shall mean and refer to the private roadway to be constructed as generally identified on Attachment "9" affixed hereto.

(b) Design and Construction. Developer shall, after receipt of title and necessary permits, commence construction of the Private Road Improvements within one hundred (100) days following the date that the Agency submits written notice to Developer to do so, and shall thereafter diligently and continuously undertake such construction in order to expeditiously complete the Private Road Improvements. The parties agree that design and construction of the Private Road Improvements shall, subject to reasonable approval by Agency and City, be managed by Developer; provided, however, all applicable requirements of the California Public Contract Code relating to bidding and payment of prevailing wages shall be met.

(c) Financing of Design and Construction. Developer shall advance all amounts necessary or expedient for design and construction of the Private Road, and Agency shall promptly reimburse Developer, on at least a monthly basis, for all amounts so advanced (it being understood that Developer shall have no responsibility for ultimate payment of design and construction of the Private Road). Developer shall at all times be obligated to provide Agency and its employees and agents with any and all documents and/or information necessary in the reasonable discretion of the Agency to substantiate and verify amounts advanced by Developer and expended in connection with design and construction of the Private Road Improvements.

(d) Ongoing Maintenance. Subsequent to completion of the Private Road Improvements, Developer, as the owner of fee title thereto, shall be obligated to maintain, continuously and in perpetuity and to reasonable standards of the Agency, all such Private Road Improvements solely at the Developer's cost and expense.

(e) Easement Rights in Favor of Agency. Subsequent to completion of the Private Road, Agency shall have an easement in perpetuity for ingress, egress, access and all underground utilities over, under, across and through the Private Road. Said easement shall run to the benefit of Agency (and the heirs, successors and assigns of the Agency), as the owner of the Senior Housing Property identified on Attachment "9" affixed hereto, and to the benefit of the Senior Housing Property and burden the owner of the Private Road, and the heirs, successors and assigns of the owner of the Private Road.

7. Attachment No. 8 as Revised. Attachment no. 8 to the DDA (the Schedule of Performance), as previously modified in Modification No. 3, is hereby replaced in its entirety by Re-Revised Attachment No. 8 affixed hereto.

8. Modification of Escrow Closing Date. Notwithstanding anything to the contrary in the DDA, as previously modified, it is agreed that escrow with respect to purchase of the Site (other than the Phase 2 Property) by Developer shall close prior to the date of issuance of the first grading permit for the Site, but in any event no later than May 9, 2007. (As used herein, grading permit shall not include a stockpile permit.)

9. Covenant Against Use of Condo-Hotel Units As Permanent Residences. Developer agrees that each and every Condo-Hotel Unit shall not be used as a permanent residence. For this purpose, the Declaration of Covenants, Conditions and Restrictions recorded against the Site shall clearly provide and require that each Condo-Hotel Unit Owner shall not use his/her Condo-Hotel Unit as a place of permanent residence. Furthermore, any and all promotional and advertising material, Condo-Hotel Unit sales contracts and the like shall clearly state for information purposes and as a covenant that each Condo-Hotel Unit shall not be used for purposes of a permanent residence.

Any use by a Condo-Hotel Unit Owner of his/her Condo-Hotel Unit for personal use (as defined in Indian Wells Municipal Code Section 21.33 for more than sixty (60) days, in the aggregate, during any calendar year shall be deemed to be a "transient occupancy use"

and shall, subject to the Development Agreement to be entered into by the City and the Developer at approximately the same time as this Modification No. 4, be subject to all policies, rules, regulations and the like imposed by the Hotel upon occupancy of a Condo-Hotel Unit by a transient occupant for each day beyond said sixty (60) days. The Declaration of Covenants, Conditions and Restrictions shall contain provisions, in a form and substance reasonably approved by the City, setting forth these requirements.

Any and all promotional and advertising material, Condo-Hotel Unit sales contracts and the like shall include notices and requirements applicable to the obligations of Condo-Hotel Unit Owners to pay homeowners' association fees, the Resort Amenity Fee, Transient Occupancy Payments for each day in excess of sixty (60) days, in the aggregate, during each calendar year of occupancy by the Condo-Hotel Unit Owner, and other rules and regulations applicable to the Condo-Hotel Unit required by this Agreement.

Developer and each successor Condo-Hotel Unit Owner covenants and agrees that they shall not knowingly sell any Condo-Hotel Unit to a purchaser who desires and/or intends to occupy the Condo-Hotel Unit as a permanent residence.

The provisions set forth in this Section 9 shall be included, in a form and substance deemed satisfactory to the City in its reasonable discretion, in the Declaration of Covenants, Conditions and Restrictions recorded against the Site. The Declaration of Covenants, Conditions and Restrictions shall clearly provide that, once approved, there shall be no amendment, modification, addition or deletion with respect to said provisions without the prior written approval of the City, in its sole and absolute discretion.

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

11. Effect of Modification. This Modification No. 4 shall amend and supercede the original DDA (and Modification Nos. 1, 2 and 3) to the extent provided herein; provided, however, the original DDA (including Modifications Nos. 1, 2 and 3) shall otherwise remain in full force and effect as originally written.

SIGNATURES ON FOLLOWING PAGE

IN WITNESS WHEREOF, the Agency and the Developer have signed this Modification No. 4 on the respective dates set forth below.

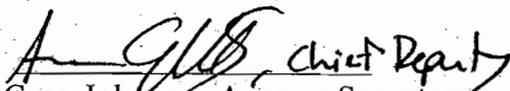
INDIAN WELLS REDEVELOPMENT AGENCY

Dated: May 9, 200~~6~~⁶

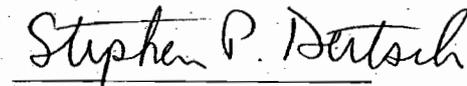
By: 

Ed Monarch, Chairperson

ATTEST:


Greg Johnson, Agency Secretary

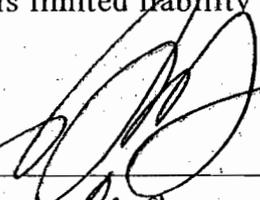
APPROVED AS TO FORM:


Stephen P. Deitsch, Agency Counsel

DEVELOPER:

Dated: MAY 5, 200~~6~~⁶

Jerson Investments, LLC
An Illinois limited liability company.

By: 
Title: 

NOTARIES ARE ATTACHED.

THE CITY OF
INDIAN  WELLS
CALIFORNIA

State of California
County of Riverside
City of Indian Wells

On May 9, 2006, before me, Anna Grandys, Chief Deputy City Clerk, personally appeared Ed Monarch, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by his 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.

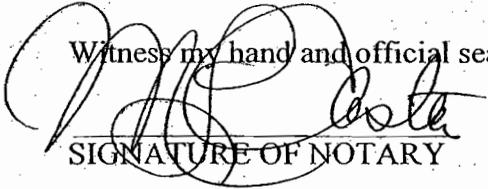
Signature

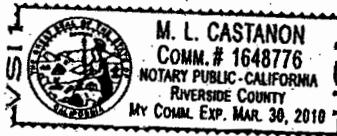


STATE OF CALIFORNIA COUNTY OF RIVERSIDE

On May 5 2006 before me, M. L. Castañon, Notary Public, personally appeared Gerald W. Fogelson 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 the person(s) acted, executed the instrument.

Witness my hand and official seal.


SIGNATURE OF NOTARY



STATE OF CALIFORNIA COUNTY OF RIVERSIDE

On _____, before me, _____, personally appeared _____ 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 the person(s) acted, executed the instrument.

Witness my hand and official seal.

SIGNATURE OF NOTARY

ATTACHMENT #8

Schedule of Performance (Revised as of February 2, 2006)

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 re-convey 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 (1/16/06)

1. Prepare preliminary Grading Plan, (Developer)
2. Prepare the Specific Plan for submission, (Developer)
3. Prepare the virtual reality presentation, (Developer)
4. Complete the Master Site Plan, (Developer)
5. Complete the Preliminary Landscape Plan, (Developer)
6. Complete the Massing Studies, (Developer)

7. Negotiate preliminary LOI's with users, (Developer)
8. Negotiate preliminary financing with lenders, (Developer)
9. Prepare preliminary Phasing Plan, (Developer)
10. Select name of Development, (Developer)
11. 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 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.

PHASE F – Intentionally Blank

PHASE G – Permits for Developer Improvements (365 days after Phase "E")

1. Developer obtains all third party approvals for Developer improvements.
2. Prepare the Master CC&R's, (Developer) and submit to the City for approval prior to final map approval.
3. Escrow closes
4. Contract approval prior to issuance of Grading Permits for off-site improvements. Open escrow accounts or other funding mechanism for 50/50 off-site improvements.
5. City issues permits for Developer Improvements
6. RDA/Housing off-site improvements per Exhibit 9 approved and permitted by City of Indian Wells.

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

1. Off site Highway 111 right of way Developer and City of Indian Wells improvements are completed by Developer.
2. RDA/Housing improvements are completed by Developer and paid for by the Agency
3. Certificate of Completion issued for Developer off-site Infrastructure/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 – Intentionally Blank

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)

OPTION/LEASE PARCELS

PHASE L – Exercising of Option to Purchase additional land, (not to exceed 5 Years from effective date of DDA Modification #4)

1. Developer purchases Lot A, (see Exhibit 9)
2. Developer purchases Lot B and accepts ingress/egress easements over option Parcel B in favor of the City for senior housing, (see Exhibit 9).

PHASE M – Commencement of development of private improvements on last Remaining lot, (365 days after Phase “L”)

1. Successor Owners submit application for building permits for all private improvements for Lot B, (see Exhibit 9).

ATTACHMENT NO. 8

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)

ATTACHMENT NO. 8

Schedule of Performance

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) {continued}

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 (1/16/06)

4. Prepare preliminary Grading Plan, (Developer)
5. Prepare the Specific Plan for submission, (Developer)
6. Prepare the virtual reality presentation, (Developer)
7. Complete the Master Site Plan, (Developer)
8. Complete the Preliminary Landscape Plan, (Developer)
9. Complete the Massing Studies, (Developer)
10. Negotiate preliminary LOI's with users, (Developer)
11. Negotiate preliminary financing with lenders, (Developer)
12. Prepare preliminary Phasing Plan, (Developer)
13. Select name of Development, (Developer)
14. 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)

ATTACHMENT NO. 8

Schedule of Performance

PHASE E – City of Indian Wells Formal Review, (120 days (365 days if EIR 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 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.

PHASE F – Close of Escrow

Planning Area 1 & 2

1. Close of Escrow: Planning Areas 1&2 (Hotel & Commercial sites) shall close escrow on or before May 4, 2007 or within 365 days of May 4, 2006. Planning Areas 1 & 2 received land use entitlement approval on May 4, 2006.

Planning Area 3

2. Close of Escrow: Planning Area 3 (Accent Homes) shall close escrow on or before 365 days following land use entitlements of Planning Area 3.

PHASE G – Permits for Developer Improvements (365 days after Phase "E")

1. Developer obtains all third party approvals for Developer improvements.
2. Prepare the Master CC&R's, (Developer) and submit to the City for approval prior to final map approval.
3. Escrow closes
4. Contract approval prior to issuance of Grading Permits for off-site improvements. Open escrow accounts or other funding mechanism for 50/50 off-site improvements.
5. City issues permits for Developer Improvements
6. RDA/Housing off-site improvements per Exhibit 9 approved and permitted by City of Indian Wells.

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

1. Off site Highway 111 right of way Developer and City of Indian Wells improvements are completed by Developer.
2. RDA/Housing improvements are completed by Developer and paid for by the Agency
3. Certificate of Completion issued for Developer off-site Infrastructure/Improvements (City)

ATTACHMENT NO. 8

Schedule of Performance

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 – Intentionally Blank

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)

OPTION/LEASE PARCELS

PHASE L – Exercising of Option to Purchase additional land, (not to exceed 5 Years from effective date of DDA Modification #4)

1. Developer purchases Lot A, (see Exhibit 9)
2. Developer purchases Lot B and accepts ingress/egress easements over option Parcel B in favor of the City for senior housing, (see Exhibit 9).

PHASE M – Commencement of development of private improvements on last Remaining lot, (365 days after Phase “L”)

1. Successor Owners submit application for building permits for all private improvements for Lot B, (see Exhibit 9).

**ATTACHMENT #9
LEGAL DESCRIPTION**

PARCEL "A":

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:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 24 AS SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 58, AT PAGE 45 OF RECORDS OF SURVEY, RIVERSIDE COUNTY RECORDS;

THENCE SOUTH $00^{\circ}07'12''$ EAST ALONG THE WESTERLY LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 466.78 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 2,410.00 FEET, A RADIAL LINE PASSING THROUGH SAID POINT BEARS NORTH $25^{\circ}02'53''$ EAST, SAID CURVE BEING PARALLEL WITH AND 85.00 FEET NORTHEASTERLY OF THE CENTERLINE OF STATE HIGHWAY 111 AS SHOWN ON CALIFORNIA DIVISION OF HIGHWAYS MONUMENTATION MAP 11-RIV-111 DATED OCTOBER 28, 1970;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF $02^{\circ}23'05''$, AN ARC DISTANCE OF 100.31 FEET TO THE **TRUE POINT OF BEGINNING**, A RADIAL LINE PASSING THROUGH SAID POINT BEARS NORTH $27^{\circ}25'58''$ EAST;

THENCE NON-TANGENT TO SAID CURVE NORTH $17^{\circ}00'00''$ EAST, A DISTANCE OF 126.24 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 2,449.00 FEET, A RADIAL LINE PASSING THROUGH SAID POINT BEARS SOUTH $19^{\circ}04'23''$ WEST;

THENCE EASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF $04^{\circ}57'23''$, AN ARC DISTANCE OF 211.85 FEET, A RADIAL LINE PASSING THROUGH SAID POINT BEARS NORTH $24^{\circ}01'46''$ EAST;

THENCE NON-TANGENT TO SAID CURVE SOUTH $30^{\circ}40'23''$ WEST A DISTANCE OF 69.10 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 45.00 FEET;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF $29^{\circ}32'29''$, AN ARC DISTANCE OF 23.20 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 55.00 FEET, A RADIAL LINE PASSING THROUGH SAID

POINT BEARS SOUTH 29°47'09" EAST;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 29°32'29", AN ARC DISTANCE OF 28.36 FEET;

THENCE TANGENT TO SAID CURVE SOUTH 30°40'23" WEST, A DISTANCE OF 34.00 FEET;

THENCE NORTH 59°19'37" WEST A DISTANCE OF 30.03 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 2,410.00 FEET;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 03°14'26", AN ARC DISTANCE OF 136.30 FEET TO THE **TRUE POINT OF BEGINNING.**

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

CONTAINING 26,367 SQUARE FEET OR 0.605 ACRES, MORE OR LESS.

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:

COMMENCING AT THE CENTER QUARTER CORNER OF SAID SECTION 24 AS SHOWN ON RECORD OF SURVEY ON FILE IN BOOK 58, AT PAGE 45 OF RECORDS OF SURVEY, RIVERSIDE COUNTY RECORDS;

THENCE SOUTH 00°07'12" EAST ALONG THE WESTERLY LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 466.78 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 2,410.00 FEET, A RADIAL LINE PASSING THROUGH SAID POINT BEARS NORTH 25°02'53" EAST, SAID CURVE BEING PARALLEL WITH AND 85.00 FEET NORTHEASTERLY OF THE CENTERLINE OF STATE HIGHWAY 111 AS SHOWN ON CALIFORNIA DIVISION OF HIGHWAYS MONUMENTATION MAP 11-RIV-111 DATED OCTOBER 28, 1970;

THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 05°37'31", AN ARC DISTANCE OF 236.61 FEET;

THENCE TANGENT TO SAID CURVE SOUTH 59°19'37" EAST, A DISTANCE OF 30.03 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE NORTH 30°40'23" EAST, A DISTANCE OF 34.00 FEET TO THE BEGINNING OF A TANGENT CURVE, CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 55.00 FEET;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 29°32'29", AN ARC DISTANCE OF 28.36 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHWESTERLY, HAVING A RADIUS OF 45.00 FEET, A RADIAL LINE PASSING THROUGH SAID POINT BEARS NORTH 29°47'08" WEST;

THENCE NORTHEASTERLY ALONG THE ARC OF LAST SAID CURVE, THROUGH A CENTRAL ANGLE OF 29°32'29", AN ARC DISTANCE OF 23.20 FEET;

THENCE TANGENT TO LAST SAID CURVE NORTH 30°40'23" EAST, A DISTANCE OF 103.31 FEET TO THE BEGINNING OF A NON-TANGENT CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 2,483.00 FEET, A RADIAL LINE PASSING THROUGH SAID POINT BEARS SOUTH 24°07'15" WEST;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 00°35'18", AN ARC DISTANCE OF 25.50 FEET;

THENCE NON-TANGENT TO SAID CURVE NORTH 00°00'00" EAST, A DISTANCE OF 160.78 FEET;

THENCE SOUTH 75°25'23" EAST, A DISTANCE OF 162.86 FEET;

THENCE SOUTH 59°19'37" EAST, A DISTANCE OF 370.44 FEET;

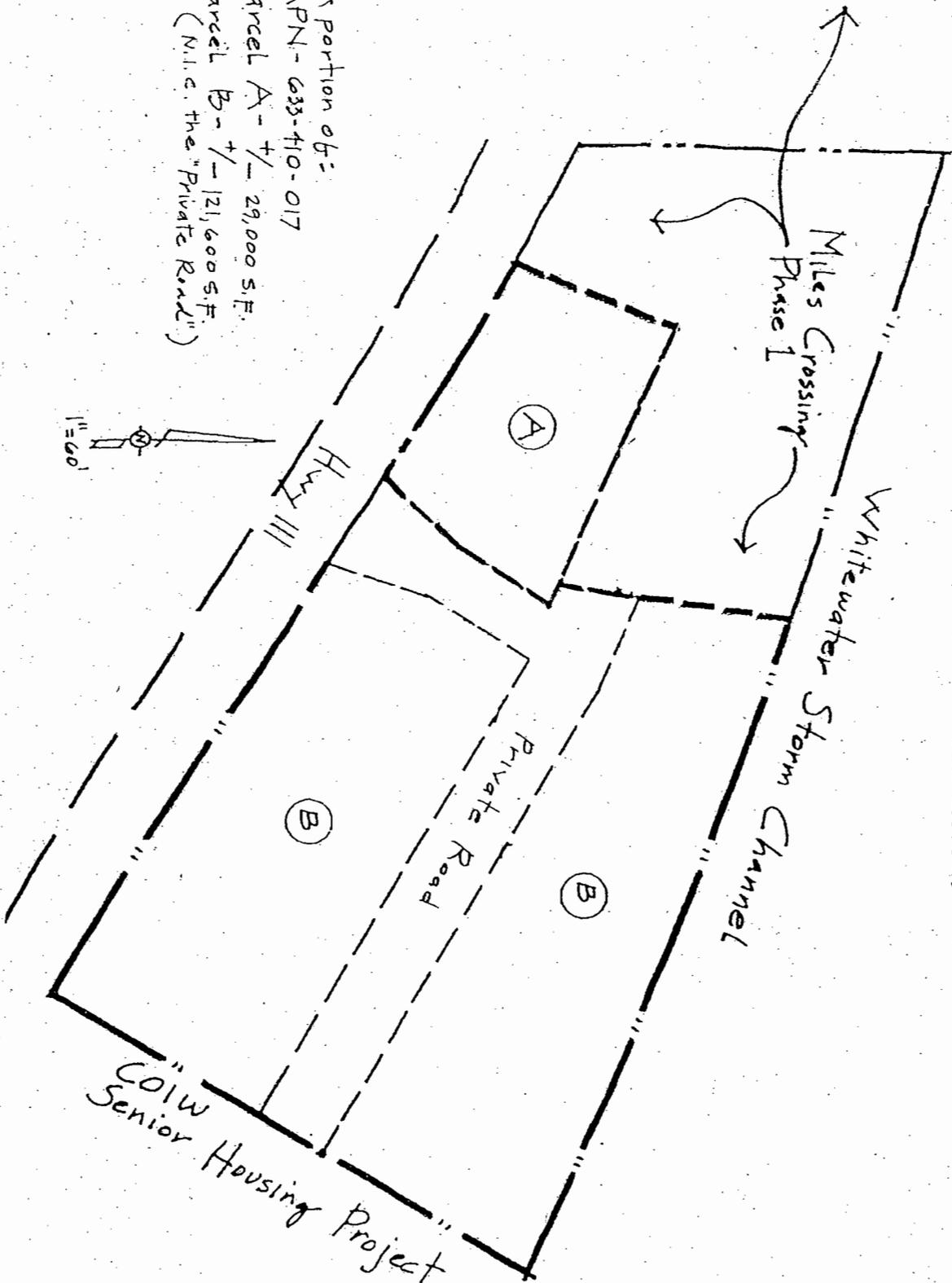
THENCE SOUTH 30°40'23" WEST, A DISTANCE OF 367.01 FEET;

THENCE NORTH 59°19'37" WEST, A DISTANCE OF 432.58 FEET TO THE **TRUE POINT OF BEGINNING**.

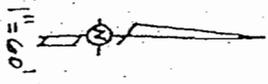
SUBJECT TO EXISTING EASEMENTS, COVENANTS, RIGHTS AND RIGHTS-OF-WAY OF RECORD.

CONTAINING 165,210 SQUARE FEET
OR 3.793 ACRES, MORE OR LESS.

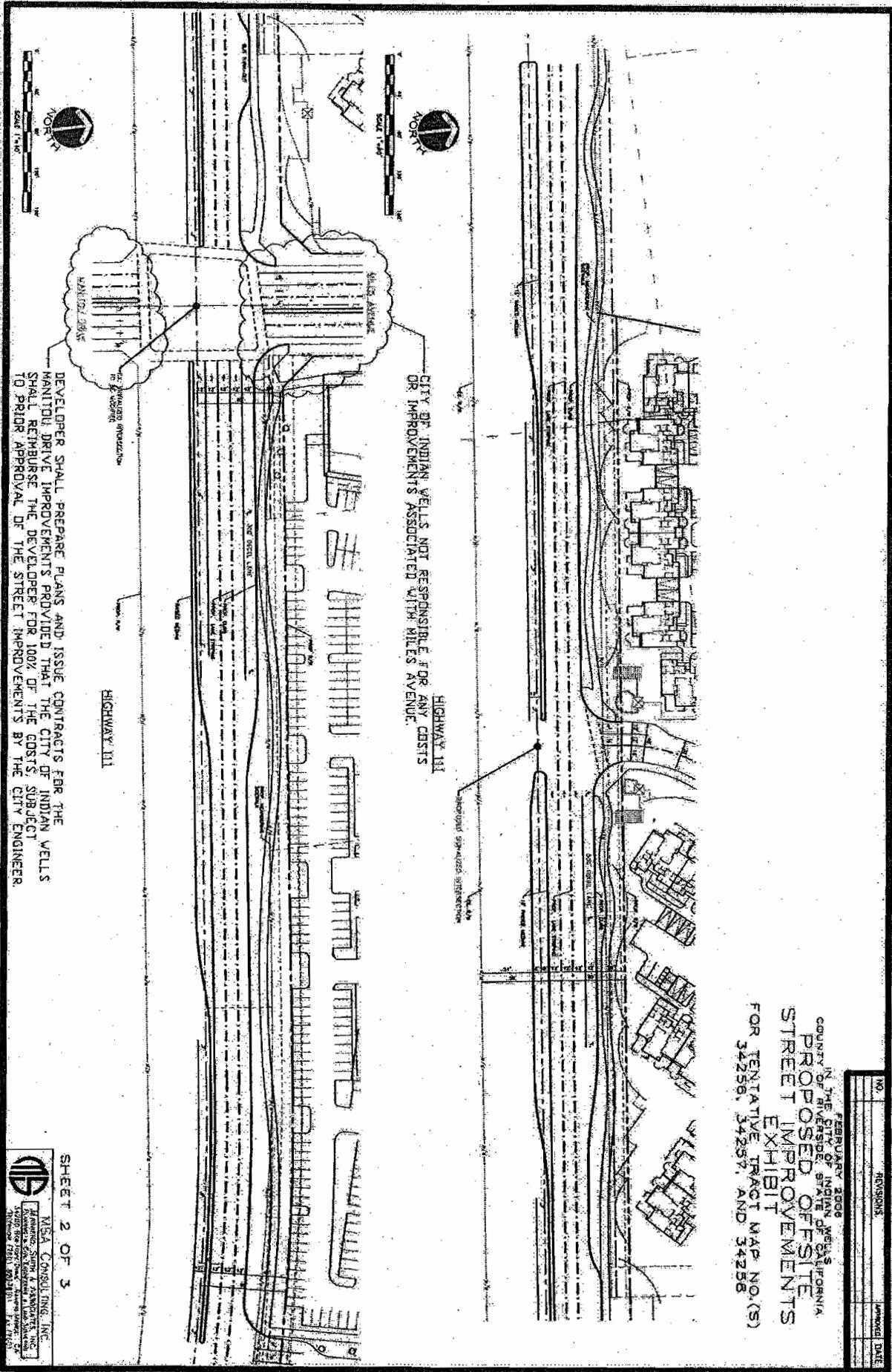
ATTACHMENT #9



A portion of:
APN - 633-410-017
Parcel A - +/- 29,000 S.F.
Parcel B - +/- 121,600 S.F.
(N.I.C. the "Private Road")



" COLW Senior Housing Project "



CITY OF INDIAN WELLS NOT RESPONSIBLE FOR ANY COSTS OR IMPROVEMENTS ASSOCIATED WITH MILES AVENUE.

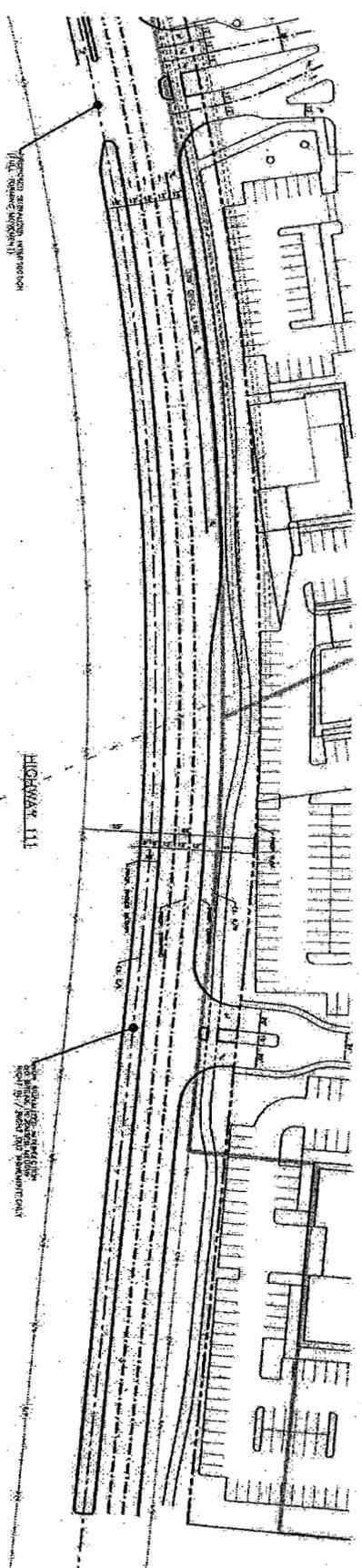
DEVELOPER SHALL PREPARE PLANS AND ISSUE CONTRACTS FOR THE MANITOU DRIVE IMPROVEMENTS PROVIDED THAT THE CITY OF INDIAN WELLS SHALL REIMBURSE THE DEVELOPER FOR 100% OF THE COSTS SUBJECT TO PRIOR APPROVAL OF THE STREET IMPROVEMENTS BY THE CITY ENGINEER.

FEBRUARY 2006
 IN THE CITY OF INDIAN WELLS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA
 PROPOSED OFFSITE
 STREET IMPROVEMENTS
 EXHIBIT
 FOR TENTATIVE TRACT MAP NO.(S)
 342256, 342257, AND 342258

NO.	REVISIONS	APPROVED DATE

SHEET 2 OF 3

M&A CONSULTING, INC.
 14100 156th Street, Suite 100, Irvine, CA 92618
 (949) 261-1111



FEBRUARY 2006
 COUNTY OF BERKLEY, STATE OF CALIFORNIA
**PROPOSED OFF-SITE
 STREET IMPROVEMENTS**
 EXHIBIT
 FOR TENTATIVE TRACT MAP NO. (S)
 34256, 34257, AND 34258

NO.	REVISIONS	APPROVED DATE

SUPPLEMENTAL
SUMMARY REPORT

**PERTAINING TO THE
DISPOSITION OF REAL PROPERTY
LOCATED WITHIN THE CONSOLIDATED WHITEWATER
REDEVELOPMENT PROJECT AREA**

**(California Community Redevelopment Law
Section 33433)**

**PURSUANT TO A PROPOSED
MODIFICATION NO. 4 TO A
DISPOSITION AND DEVELOPMENT AGREEMENT**

by and between

INDIAN WELLS REDEVELOPMENT AGENCY

and

JERSON INVESTMENTS, LLC

Date: February 2, 2006

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127

Introduction

This summary report has been prepared for the Indian Wells Redevelopment Agency ("Agency") pursuant to Section 33433 of the California Health and Safety Code. This report sets forth certain details of a proposed Disposition and Development Agreement as amended (the "Agreement") between the Agency and Jerson Investments, LLC (the "Developer") regarding real property APN's 633-150-11, 633-310-04, 633-310-05, 633-310-06, 633-310-11, 633-310-13, 633-310-16, 633-310-17 and 633-410-12 and added parcels known as APN's 633-310-008, 633-310-010, 633-310-009 and a portion of APN's 633-410-017 and 633-310-011 shown as Exhibits within Amendment Number 3 of the "Agreement" located in the Consolidated Whitewater Redevelopment Project Area and within the jurisdiction of Indian Wells (the "Site"). The Site is comprised of approximately sixty (60) gross acres of real property located on the north side of Highway 111 and on the east and west sides of Miles Avenue. The proposed Agreement establishes terms and conditions applicable to the development of the Site.

This report is based upon information presented in the Agreement including, without limitation, Modifications Nos. 1 through 4 (as proposed). The report is organized into the following sections:

1. Summary Description of the Proposed Agreement: This section includes a description of the major provisions of the Agreement.
2. Estimated Cost of the Agreement to the Agency: This section outlines the total and net costs to the Agency of the proposed Agreement.
3. Estimated Value of Interests to be Conveyed, Determined at the Highest Uses Permitted: This section summarizes the value of the interests to be conveyed, at the highest use permitted under the Consolidated Whitewater Redevelopment Plan.
4. Estimated Reuse Value of the Interests to be Conveyed, Determined on the basis of the Conditions, Covenants and Development Costs required by the proposed Agreement: This section summarizes the value of the parcels subject to conveyance, determined at the uses required by the proposed Agreement, and recognizes the economic impact of the proposed Agreement's terms and conditions (if any).
5. Purchase Price: This section describes the compensation to be received by the Agency and the reasons for any difference between the compensation and applicable reuse value(s).
6. Blight Alleviation: This section describes the blighting conditions applicable to the Site and provides an explanation of how the proposed Agreement will assist in alleviating the blighting conditions.
7. Conformance with the Five Year Implementation Plan: This section identifies how the proposed Agreement will result in a development that fulfills goals and objectives established in the Agency's Five Year Implementation Plan.

1. Summary Description of the Proposed Agreement

Description/Purpose: Sale of approximately 60 acres of property currently owned by the City and the Agency on the northwest and northeast corners of Highway 111 and Miles Avenue for

development of a mixed use project.

Contract Term: The Agreement has a Schedule of Performance requiring development of both public improvements and all private improvements on all lots to be completed within a certain timeframe. The Development of all private improvements on the Site may take as long as approximately nine (9) years following Phase "F" of revised Attachment No. 8, subject to additional extensions based upon "force majeure," as provided in the Agreement.

Contract Amount: The Purchase Price is \$9,081,438 (Nine Million-Eighty-One Thousand-Four Hundred Thirty-Eight Dollars and Zero cents).

Payment Terms and Budget Account: The Developer will pay the Purchase Price in cash on close of escrow, except the portion of the site described in Modification No. 4 for which escrow will close five years after the effective date of Modification No. 4 and for which the Developer shall pay the purchase price, plus interest at the LIBOR rate, for such portion.

Performance Schedule: Land use approvals would be granted by the City during the escrow. As set forth above, the completion of all private improvements on the Site may take as long as approximately nine (9) years following Phase "F" of revised Attachment No. 8, subject to "force majeure," as set forth in the Agreement.

Contract Summary:

- The Developer is required to pay to the Agency a good faith deposit of \$100,000 which will be applied to the Purchase Price upon close of escrow. In addition, the Developer is required to pay a non-refundable exclusive negotiation fee of \$15,000 to the Agency to cover the Agency's legal fees and other costs incurred in connection with the negotiation, preparation and implementation of the Agreement. (Sections 201, 201.1)

- The sale of the property by the Agency to the Developer is conditioned upon the Agency's acquisition of that portion of the property currently owned by the City. The City Council approved on May 6, 2004 conveyance of the City's parcels to the Agency, with transfer to become effective just prior to the close of escrow for conveyance of the entire Site to the Developer. (Section 201)

- The Developer will generally pay for escrow fees and costs, including without limitation the premium for a title policy, documentary transfer taxes and the like. (Section 202.1)

- The Developer will have a reasonable opportunity to approve exceptions to title, the condition of the soils and other environmental and development issues applicable to the property prior to the close of escrow. The Developer has already been provided by the Agency the preliminary title report and all underlying property documents. (Sections 203, 208.1, 208.2, 208.3)

- Aside from causing the development of private improvements comprising a mixed use project by successor owners of each lot, the Developer is required to construct or install the applicable portion of all public improvements lawfully imposed on the Developer as part of conditions of approval of land use applications and permits by the City for the development of the property. (Section 301)

- The City reserves full discretion in considering land use applications. (Section 303)

- The Developer is required to file performance and payment bonds with the City pertaining to the public improvements associated with development of the property. (Section 309)

- The Developer will clear and grade the Site and prepare discreet building pads on the Site for ultimate development by third parties (NOT the Developer); the Developer will then sell or ground lease individual lots to successor developers of each lot, who each (1) will become part of a property owners association; and (2) will post bonds or other security approved by the Agency to guarantee completion of private improvements on their lots. (Section 312)

- Aside from the sale of graded, subdivided lots, as well as certain limited permissible assignments of the Agreement, the Developer is prohibited from assigning its rights and obligations under the Agreement to any other party unless the assignment is approved by the Agency; and if Mr. Fogelson is no longer able to manage the Project, then Jerson Investments, LLC will carry on without him. (Sections 603.1, 603.2, 603.3)

- The Agency and the Developer are providing mutual indemnification for the benefit of each other, except to the extent injury or damage is caused by each party's own negligence or willful misconduct. (Sections 306.1, 306.2)

- The Developer is required to obtain, and to maintain during the project, insurance naming the Agency and the City (and their officials, officers, employees, agents and contractors) as additional insureds. (Section 311)

- The Agreement contains generally "standard" default procedures and rights and remedies pertaining to defaults, as well as a "enforced delay" provision governing delays in the performance of obligations caused by disasters, acts of third parties and unusual events ("force majeure"). (Sections 500 through 505, 602)

- The amount of the Resort Amenity Fee, as originally described in Modification No. 3, is increased from \$1500 annually to \$2400 annually (and \$200 monthly).

- The transient occupancy tax guaranty set forth in Modification No. 3 is deleted in its entirety.

- A small portion of the Site on the easterly portion, which will be improved by the Developer as a parking lot, will be leased by the Developer for five years until close of escrow; and the Developer shall pay to the Agency a lease payment equal to the product obtained by multiplying the number of square feet by \$15.49, then multiplied by 8% (the lease shall be "triple net").

- Five years after the effective date of Modification No. 4, the Developer shall purchase the "parking lot portion" of the Site described above for a purchase price equal to \$15.49 per square foot adjusted upward to reflect the equivalent of interest accrual at a rate equal to LIBOR as the same may change from time to time from the effective date of Modification No. 4 until close of escrow.

- Another portion of the Site (the "Phase 2 Property") on the easterly area thereof shall be conveyed to the Developer upon close of escrow five years following the effective date of Modification No. 4; and the purchase price shall be equal to \$15.49 per square foot adjusted upward to reflect the equivalent of interest accrual at a rate equal to LIBOR as the same may change from time to time from the effective date of Modification No. 4.

- The Developer and the City shall each pay 50% of public improvement costs for improvements adjacent to the project (studies performed for the City have indicated that the Developer's obligation for such improvements is 50% of the cost thereof based upon impacts caused by or related to the Developer's proposed project).

- The Agency shall install a private road over the Phase 2 Property leading from Highway 111 to the Agency's existing low and moderate income housing project.

- The Schedule of Performance is revised to reflect the current status of the project and changes caused by Modification No. 4.

2. Estimated Cost of the Agreement to the Agency

The Agency is conveying the property to the Developer for a sales price equal to the sales price paid by the Agency and the City for acquisition of all parcels comprising the Site (i.e., \$9,081,438). There are no anticipated future Agency costs regarding the public improvements and the private improvements which will comprise the Project.

3. Estimated Value of the Interests to be Conveyed, Determined at the Highest Use Permitted under the Redevelopment Plan

R. F. Sweet and Associates prepared various Appraisal Reports for all parcels contained with the "Agreement" and Amendments No. 1, 2, 3 and proposed Amendment No. 4 to the "Agreement" dated March 30, 2004, March 15, 2005, April 1, 2005, and June 25, 2005, and Capital Realty Analysts prepared an Appraisal Report dated November 8, 2004 for one APN 633-310-008, with respect to the Site. Pursuant to the Appraisal Reports, the "indicated market value as mixed commercial zone" is \$9,081,438. The sales price set forth in the Agreement exceeds this value by \$122,012.

4. Estimated Reuse Value of the Interest to be Conveyed, Determined on the basis of the Required Use and with the Conditions, Covenants and Development Costs required by the proposed Agreement

The Appraisal Report described above, which indicated a market value of \$9,081,438, took into account certain development costs presumably associated with the development of the Site.

5. Purchase Price paid by the Developer

The Developer on close of escrow is required to pay the Agency the sum of \$9,081,438 as the purchase price for the Site.

6. Blight Alleviation

The Site is presently undeveloped. It is located on either side of Miles Avenue in a relatively "thin" site between Highway 111 and a flood control channel. As a result of the shape of the Site, it naturally has development constraints.

The proposed redevelopment of the Site will bring economic vitality to a portion of Highway 111 which is

in need of development. The anticipated Project will provide a tourist and resident destination which will support existing and possible future hotels in the City and serve the residents of the community, especially within the Consolidated Whitewater Redevelopment Project Area.

7. Conformance with the Five Year Implementation Plan

The Five-Year Implementation Plan adopted by the Agency contains several broad operational goals and objectives. Among these are the following:

- (a) To eliminate physical and economic blight within the Project Area:

The proposed project will cause revitalization of the Project Area along Highway 111 near the easterly boundary of the City by creating a vital commercial/hotel/residential development on currently vacant property. The proposed project is cleverly designed to fit within a "thin" strip of undeveloped property which has significant development constraints. Upon completion, the project will create employment opportunities, establish a well-designed and esthetically pleasing development to serve tourists and residents of the Project Area and the City, and facilitate and accelerate the redevelopment of nearby properties.

- (b) To fulfill affordable housing obligations imposed by the Redevelopment Law:

The proposed project will serve the existing low and moderate income housing project owned and developed by the Agency to the east of the proposed project, and a private road will be constructed on the Site to lead from Highway 111 to the low and moderate income housing project.

- (c) To construct public improvements that will encourage further private sector investment in commercially designated areas on Highway 111:

The Developer and the Agency/City will complete a widening of Highway 111 and construction and installation of additional public improvements related to the proposed project.

Based on the preceding factors, the proposed Agreement is consistent with the adopted Five-Year Implementation Plan.