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INDIAN WELLS REDEVELOPMENT AGENCY
and Orange Coast Title Company
Order No. 140-888378-66
[Palm Desert Escrow, Inc. Escrow No. 240861RW]

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Page 1 of 22
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Larry W. Ward
Assessor, County Clerk & Recorder



WHEN RECORDED MAIL TO:

INDIAN WELLS REDEVELOPMENT AGENCY
ATTN: AGENCY SECRETARY
44-950 Eldorado Drive
Indian Wells, CA 92210

140-888378-66

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*This document is recorded at the request of the INDIAN WELLS REDEVELOPMENT AGENCY.
Pursuant to Section 27383 of the Government Code, no fee shall be charged therefor.*

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MODIFICATION NO. 5

TO

DISPOSITION AND DEVELOPMENT AGREEMENT

JUN 28 2007

MODIFICATION NO. 5

TO

DISPOSITION AND DEVELOPMENT AGREEMENT

THIS MODIFICATION NO. 5 ("Modification No. 5") 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. 5 shall be the date it is executed by the Agency.)

RECITALS

*recorded May 7, 2004 as Instrument
Number 2004-0342453

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. On or about May 9, 2006, the Agency and the Developer entered into Modification No. 4 to Disposition and Development Agreement ("Modification No. 4") to reflect certain updated agreements (referenced in this recital by Section number) regarding the Condo-Hotel (Sections 1 and 9), the Parking Lot Parcel (Section 2), the Phase 2 Property (Section 3), Overall Public Improvements (Section 4), Private Road Improvements (Section 5), the Schedule of Performance (Section 7), and Escrow Closings (Section 8). The Agreement and Modification Nos. 1 through 4 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. 5.

B. By this Modification No. 5, the parties desire to modify the Agreement (as previously modified), as provided herein.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. Further Modification of Condo-Hotel Agreements.

A. Formation of Assessment District to Collect Resort Amenity Fees. The following paragraph is hereby added to Subsection 4.D of Modification No. 3, entitled "Resort Amenity Fee" (as previously revised by Modification No. 4):

"In a document to be entitled "First Amendment to Development Agreement" to be executed by Developer and the City promptly after execution of this Modification No. 5, it will be agreed that an Assessment District will be formed (by the City and at the expense of Developer) for the purpose of placing Resort Amenity Fees on County tax rolls to be collected with real property taxes and assessments applicable to Condo-Hotel Units. When that occurs, further obligations of Developer and the Owner's Association with respect to levying and collecting Resort Amenity Fees will be terminated."

2. Deletion of Parking Lot Agreements. Section 2 of Modification No. 4, and Attachment No. 9 as referenced in said Section 2, are hereby deleted and shall have no further relevance or effect.

3. Deletion of Phase 2 Agreements. Section 3 of Modification No. 4, and Attachment No. 9 as referenced in said Section 3, are hereby deleted and shall have no further relevance or effect.

4. Modification of Agreements Regarding Construction of Highway Improvements. Section 4 of Modification No. 4 is amended to add Subsection 4(d) to read as follows:

"(c) Construction Scheduling. The Overall Public Improvements (except for the signalized intersection entry into the Commercial Property as shown on page 3 of Attachment No. 10 affixed to Modification No. 4) will be scheduled so as to be completed by Developer on or before first occupancy of the Condo-Hotel Property improvements. If Commercial Property improvements are ready for occupancy before Condo-Hotel Property improvements, then the signalized intersection entry into the Commercial Property will be completed before any such occupancy of Commercial Property improvements."

5. Modification of Agreements Regarding Private Road and Improvements. Section 5 of Modification No. 4 is hereby deleted in its entirety and replaced with the following:

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

(a) Definition of Private Road and Improvements. As used herein, any reference to "Private Road" shall mean and refer to Lot A as shown on TTM 34257 (as referenced in Section 7.B below), and any reference to "Private Road Improvements" shall mean and refer to the private road improvements to be constructed on the Private Road. (The Private Road and Private Road Improvements shall be owned by the Agency, subject to easement rights in favor of the Developer as provided below.)

(b) Design and Construction. Developer shall, after receipt of necessary permits, commence construction of the Private Road Improvements no later than 180 days following the date that Agency submits written notice to Developer to do so, and Developer 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, be managed by Developer; provided, however, all requirements of the California Public Contract Code applicable 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 Improvements, 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 Improvements). 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, and the heirs, successors and assigns of Developer, shall be obligated to maintain, continuously and in perpetuity and to reasonable standards of the Agency, all such Private Road Improvements; provided, however, Agency shall be obligated to promptly reimburse Developer, on at least a quarterly basis, to the extent of 50% of all costs incurred by Developer in connection with such maintenance. 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 costs incurred by Developer in connection with such maintenance.

(e) Easement Rights in Favor of Developer. Subsequent to completion of the Private Road Improvements, Agency shall grant and Developer 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 Developer, as the owner of the Commercial Property (as referenced in Section 7.B below), and the heirs, successors and assigns of the Developer, and burden the Agency, as the owner of the Private Road and Improvements, and the heirs, successors and assigns of the Agency.

6. Modification of Attachment "8". Attachment "8" to the DDA (the Schedule of Performance), as previously modified in Modification No. 4, is hereby replaced in its entirety by revised Attachment "8" affixed to this Modification No. 5.

7. Escrow Closings - Repurchase Agreement. The language of Section 8 of Modification No. 4 is deleted in its entirety and replaced with the following:

"A. Condo-Hotel Property. With respect to Planning Area 2 as shown on the Specific Plan approved by the City ("Condo-Hotel Property"), the following will apply:

(i) Escrow Closing. Escrow will close no later than June 30, 2007 for a price of \$4,391,244 to be paid all cash at closing. (It is expected that the Condo-Hotel Property will consist of Lots 1 and 2 as shown on Tentative Tract Map ("TTM") 34258, a copy of which is affixed hereto as Attachment "6-A".) At closing, title to the Condo-Hotel Property will be taken in the name of Miles Lodge, L.L.C., a California limited liability company, an affiliate of Developer in which Developer holds management and control. (The Consent of Miles Lodge, L.L.C. is attached.)

(ii) Repurchase Agreement. In the event Developer has not received building permits and initiated substantial construction of improvements on the Condo-Hotel Property within a period of 60 months after closing, the City will have the right to buy (and the Developer will have the obligation to sell) the Condo-Hotel Property, and the Developer will have the right to sell (and the City will have the obligation to buy) the Condo-Hotel Property, for the same \$4,391,244 all cash price referenced in Section 7(A)(i) above (without any interest accrual). In order to effectuate any such right, the party desiring to do so must deliver written notice thereof to the other party within 30 days immediately after the expiration of the 60 month period, and escrow will be then be set up and scheduled to close for all cash within 30 days after delivery of such written notice.

B. Commercial Property. Escrow with respect to Planning Area 1 as shown on the Specific Plan (other than the CVWD Property) ("Commercial Property") will close no later than December 31, 2007 for a purchase price of \$4,341,639 to be paid either (i) all cash at closing, or (ii) in the form of a promissory note secured by a deed of trust. (It is expected that the Commercial Property will consist of numbered Lots 1, 2, 3, 4, 5, 6, 7 and 8, and lettered lots B, C and E, as shown on TTM 34257, a copy of which is affixed hereto as Attachment "6-B".) At closing, title to the Commercial Property will be taken in the name of Miles Crossing Retail, L.L.C., a California limited liability company, an affiliate of Developer in which Developer holds management and control. (The Consent of Miles Crossing Retail, L.L.C. is attached.) If applicable, the note and deed of trust will contain provisions as follows: The note will bear interest at a rate equal to the City's portfolio rate plus 1% (as the same may change from time to time), compounded annually, and be payable in full by a balloon payment due no later than 5 years from closing. (Note: The City's portfolio rate is the yield to maturity on a 365 day equivalent for all investments and cash holdings held within the City's portfolio whether interest bearing or not. Investments of City funds are governed by the California Government Code Sections 53600 et seq, as amended from time to time. Within the context of the limitations, the following investments are authorized: US Treasury Bills, US Treasury Bonds and Notes, Federal Agency Securities, Bankers Acceptance Notes, Certificates of Deposit - Private Placement (CDARS) & Negotiable, Local Agency Investment Fund, and Medium-term Corporate Bonds.) The deed of trust will (a) encumber the Commercial Property, (b) provide that no development other than rough grading may occur on any portion of the property unless such portion has been released from the deed of trust, and (c) provide that from time to time any portion of the property may be released from the lien of the deed of trust upon payment, for any such release, of a

fraction of the then outstanding balance of the note (principal and interest), the numerator of which fraction will be equal to the number of acres to be released and the denominator of which will be the number of acres encumbered by the deed of trust at the time of the release.

C. Residential Property. Escrow with respect to Planning Area 3 as shown on the Specific Plan (other than the CVWD Property) ("Residential Property") will close no later than December 31, 2007 for a purchase price of \$231,250 to be paid all cash at closing. (It is expected that the Residential Property will consist of Lots 1 and 2 as shown on TTM 34256, a copy of which is affixed hereto as Attachment "6-C".) At closing, title to the Residential Property will be taken in the name of Miles Accent Homes, L.L.C., a California limited liability company, an affiliate of Developer in which Developer holds management and control. (The Consent of Miles Accent Homes, L.L.C. is attached.)"

8. Attachments. All Attachments affixed to this Modification No. 5 are incorporated herein by reference as though set forth in full.

9. Effect of Modification. This Modification No. 5 shall amend and supercede the original DDA (and Modification Nos. 1, 2, 3 and 4) to the extent provided herein; provided, however, the original DDA (as modified by Modifications Nos. 1, 2, 3 and 4) shall otherwise remain in full force and effect as originally written.

IN WITNESS WHEREOF, the Agency and the Developer have signed this Modification No. 5 on the respective dates set forth below.

SIGNATURES ON FOLLOWING PAGE.

THE CITY OF
INDIAN ▼ WELLS
CALIFORNIA

State of California
County of Riverside
City of Indian Wells

On June 26, 2007, before me, Anna Grandys, Chief Deputy City Clerk of the City of Indian Wells, personally appeared Robert A. Bernheimer, 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  _____



INDIAN WELLS REDEVELOPMENT AGENCY

Dated: June 25, 2007

By: [Signature]
~~Rob Bernheimer~~, Chairperson
Robert A. Bernheimer

ATTEST:

[Signature], Chief Deputy
Greg Johnson, Agency Secretary



SIGNED IN COUNTERPART

APPROVED AS TO FORM:

[Signature]
Stephen P. Deitsch, Agency Counsel

DEVELOPER:

Dated: _____, 2007

Jerson Investments, LLC
An Illinois limited liability company

By: _____
Title: _____

CONSENT AND ASSUMPTION:

By signature below, Miles Lodge, LLC, consents to the provisions of Section 7.A above, which relates to the Condo-Hotel Property, and assumes responsibility for full performance of said Section 7.A and all other matters relevant to the Condo-Hotel Property under the DDA, as modified, with the understanding and agreement that such assumption does not in any way serve to relieve Jerson Investments, LLC, from primary responsibility for its obligations under the DDA, as modified.

Dated: _____, 2007

Miles Lodge, L.L.C.
A California limited liability company

By: _____
Gerald Fogelson,
Managing Member

By signature below, Miles Crossing Retail, LLC, consents to the provisions of Section 7.B above, which relates to the Commercial Property, and assumes responsibility for full performance of said Section 7.B and all other matters relevant to the Commercial Property under the DDA, as modified, with the understanding and agreement that such assumption does not in any way serve to relieve Jerson Investments, LLC, from primary responsibility for its obligations under the DDA, as modified.

Dated: _____, 2007

Miles Crossing Retail, L.L.C.
A California limited liability company

By: _____
Gerald Fogelson,
Managing Member

INDIAN WELLS REDEVELOPMENT AGENCY

Dated: _____, 2007

By: _____
Rob Bernheimer, Chairperson

ATTEST:

Greg Johnson, Agency Secretary

SIGNED IN COUNTERPART

APPROVED AS TO FORM:

SIGNED IN COUNTERPART

Stephen P. Deitsch, Agency Counsel

DEVELOPER:

Dated: 6/21, 2007

Jerson Investments, LLC
An Illinois limited liability company

By: _____
Title: _____

Gerald Fogelson,
Managing Member

CONSENT AND ASSUMPTION:

By signature below, Miles Lodge, LLC, consents to the provisions of Section 7.A above, which relates to the Condo-Hotel Property, and assumes responsibility for full performance of said Section 7.A and all other matters relevant to the Condo-Hotel Property under the DDA, as modified, with the understanding and agreement that such assumption does not in any way serve to relieve Jerson Investments, LLC, from primary responsibility for its obligations under the DDA, as modified.

Dated: 6/21, 2007

Miles Lodge, L.L.C.
A California limited liability company

By: _____
Gerald Fogelson,
Managing Member

By signature below, Miles Crossing Retail, LLC, consents to the provisions of Section 7.B above, which relates to the Commercial Property, and assumes responsibility for full performance of said Section 7.B and all other matters relevant to the Commercial Property under the DDA, as modified, with the understanding and agreement that such assumption does not in any way serve to relieve Jerson Investments, LLC, from primary responsibility for its obligations under the DDA, as modified.

Dated: 6/21, 2007

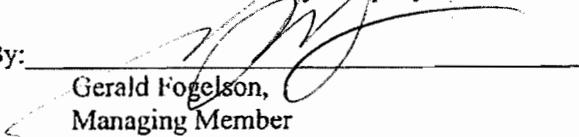
Miles Crossing Retail, L.L.C.
A California limited liability company

By: _____
Gerald Fogelson,
Managing Member

By signature below, Miles Accent Homes, LLC, consents to the provisions of Section 7.C above, which relates to the Residential Property, and assumes responsibility for full performance of said Section 7.C and all other matters relevant to the Residential Property under the DDA, as modified, with the understanding and agreement that such assumption does not in any way serve to relieve Jerson Investments, LLC, from primary responsibility for its obligations under the DDA, as modified.

Dated: 6/21, 2007

Miles Accent Homes, L.L.C.
A California limited liability company

By: 
Gerald Fogelson,
Managing Member

NOTARIES ARE ATTACHED.

STATE OF CALIFORNIA)
) ss
COUNTY OF RIVERSIDE)

On _____, before me, _____, personally appeared **Rob Bernheimer**, personally known to me - or - proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

SIGNATURE OF NOTARY

STATE OF CALIFORNIA)
) ss
COUNTY OF RIVERSIDE)

On _____, before me, _____, personally appeared **Greg Johnson**, personally known to me - or - proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

SIGNATURE OF NOTARY

STATE OF CALIFORNIA)
) ss
COUNTY OF RIVERSIDE)

On _____, before me, _____, personally appeared **Stephen P. Deitsch**, personally known to me - or - proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

SIGNATURE OF NOTARY

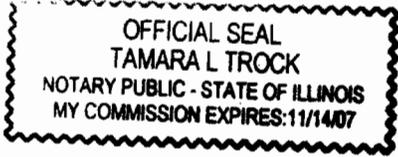
Alexis Cook
STATE OF CALIFORNIA)
) ss
COUNTY OF RIVERSIDE)

On 6/21/2007, before me, TAMARA L. TROCK, A NOTARY PUBLIC personally appeared **Gerald Fogelson**, personally known to me - or - proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

Witness my hand and official seal.

Tamara L Trock

SIGNATURE OF NOTARY



Attachment No. 6A, 6B, 6C

ATTACHMENT "6A"
SHEET 2

APN: 633-310-004
APN: 633-310-013
APN 633-310-009
A PORTION OF APN 633-150-011*

*PORTION NOTED AND DESCRIBED AS PARCEL "A" IN ATTACHMENT NO. 1-A TO
MODIFICATION NO. 3

ATTACHMENT "6B"
SHEET 2

APN: 633-310-005

APN: 633-310-006

APN: 633-310-017

APN: 633-310-011

APN: 633-310-016

APN: 633-410-012

APN: 633-310-010

A PORTION OF APN 633-310-008**

A PORTION OF APN: 633-410-017* - EXCEPTING THEREFROM THE "PRIVATE ROAD" DEFINED IN SECTION 5 OF THIS MODIFICATION NO. 5

A PORTION OF APN 633-410-026**

*PORTION NOTED AND DESCRIBED AS PARCEL "B" IN ATTACHMENT NO. 1-A TO
MODIFICATION NO. 3

**LEGAL TO BE MUTUALLY AGREED UPON BY THE PARTIES

ATTACHMENT "6C"
SHEET 2

A PORTION OF APN: 633-310-008*

A PORTION OF APN: 633-410-026*

*LEGAL TO BE MUTUALLY AGREED UPON BY THE PARTIES

Attachment No. 8

ATTACHMENT NO. 8

Schedule of Performance

PHASE A - Phase completed

PHASE B – Phase Completed

PHASE C – Phase Completed

PHASE C – Phase Completed

PHASE D – Phase Completed

PHASE E – Phase Completed

PHASE F – Close of Escrow

Planning Area 1 – Commercial Property

1. Close of Escrow: Planning Area 2 shall close escrow on or before 12/31/07.

Planning Area 2 – Condo Hotel Property

2. Close of Escrow: Planning Area 1 shall close escrow on or before 06/30/07.

Planning Area 3 – Residential Property

3. Close of Escrow: Planning Area 3 shall close escrow on or before 12/31/07.

PHASE G – Permits for and Commencement of Developer Improvements

1. Planning Area 1 – Commercial Property (18 Months after Phase F-1)

- a. Developer submits and City approves CC&R's.
- b. City issues permits for Private Road Improvements.
- c. Developer commences construction (not later than 180 days after City notice).
- d. City issues permits for new signalized intersection per Attachment 10.
- e. Developer commences construction.
- f. Developer receives permits for improvements on commercial parcels.
- g. Developer pays release price – commercial parcels are released from trust deed.
- h. Developer commences construction (1st phase).

2. Planning Area 2 – Condo Hotel Property (60 Months after Phase F-2)

- a. Developer submits and City approves CC&R's.
- b. City issues permits for off-site Highway 111 improvements.
- c. Developer commences construction.
- d. Developer receives permits for condo-hotel improvements (1st phase).
- e. Developer commences construction.

ATTACHMENT NO. 8

Schedule of Performance

3. Planning Area 3 – Residential Property (18 Months after Phase F-3)

- a. Developer submits and City approves CC&R's.
- b. City issues permits for off-site Miles Avenue improvements.
- c. Developer commences construction.
- d. Developer receives permits for residential parcels (1st phase).
- e. Developer commences construction.

**PHASE H – Completion of Developer Improvements
(18 Months after commencement)**

1. Planning Area 1 – Commercial Property

- a. Developer completes Private Road Improvements.
- b. Developer completes new signalized intersection per Attachment 10.
- c. Developer completes improvements on commercial parcels (1st phase).
- d. City issues certificates of occupancy.

2. Planning Area 2 – Condo-Hotel Property

- a. Developer completes off site Highway 111 improvements.
- b. Developer completes construction of condo-hotel improvements (1st phase).
- c. City issues certificates of occupancy.

3. Planning Area 3 – Residential Property

- a. Developer completes off site Miles Avenue improvements.
- b. Developer completes residential parcels (1st phase).
- c. City issues certificates of occupancy.

PHASE I – Sale of lots within Planning Area 1 (3 years after Phase “H-1”)

- a. Agency, Developer, and Successor Owners enter into Assumption Agreements
- b. Developer closes escrow on sales of all lots within Planning Area 1.

PHASE J – Intentionally Blank

**PHASE K – Completion of all improvements in Planning Areas 1, 2 and 3
(within time limits in Assumption Agreements, not to exceed 3 years
after Phase I**

- a. All private improvements within Planning Areas 1, 2 and 3 are completed, as evidenced by issuance of Certificates of Completion (Successor Owners).



LARRY W. WARD
COUNTY OF RIVERSIDE
ASSESSOR-COUNTY CLERK-RECORDER

Recorder
P.O. Box 751
Riverside, CA 92502-0751
(951) 486-7000

www.riversideacr.com

CERTIFICATION

Pursuant to the provisions of Government Code 27361.7, I certify under the penalty of perjury that the following is a true copy of illegible wording found in the attached document:

(Print or type the page number(s) and wording below):

Legal

portions of sections 24 and the east half of section 23, township 5 South,
Range 6 east, San Bernardino base and meridian.

Legal

Date:

6-29

Signature:

Print Name:

MORO