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**DEVELOPMENT AGREEMENT**

Among

**CITY OF INDIAN WELLS,**  
a California municipal corporation and charter law city

and

**SANDERSON J. RAY-INDIAN WELLS, LLC**  
a California limited liability company

and

**WOODBIDGE INDIAN WELLS, LLC,**  
a Delaware limited liability company

## **DEVELOPMENT AGREEMENT**

This DEVELOPMENT AGREEMENT (hereinafter "Agreement") is entered into as of this 19<sup>th</sup> day of June, 2008 by and among the CITY OF INDIAN WELLS, a California municipal corporation and charter law city (hereinafter "CITY"); SANDERSON J. RAY-INDIAN WELLS, LLC, a California limited liability company ("SJR"), and WOODBRIDGE INDIAN WELLS, LLC, a Delaware limited liability company ("WOODBRIDGE").

### **RECITALS**

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to the Development Agreement Act and the Development Agreement Ordinance; and

WHEREAS, SJR, WOODBRIDGE and CITY are the fee simple owners of their respective portions of that certain real property comprising approximately 70 acres as described in the Legal Description and as shown on the Site Plan; and

WHEREAS, SJR and WOODBRIDGE have proposed a project consisting of the Retail/Office Component, Hotel Component and Residential Component, each as shown on the Site Plan and described more fully herein and in the Entitlements (the "Project"); and

WHEREAS, SJR and WOODBRIDGE have requested CITY to enter into a development agreement with respect to the Project; and

WHEREAS, Section 21.33.040(b) of the Indian Wells Municipal Code (the "Condominium Hotel Zoning Ordinance") requires a development agreement where the proposed project includes an application for a Condominium Hotel in order to provide for (i) enforcement of all conditions and standards required by the Condominium Hotel Zoning Ordinance, and (ii) terms and conditions that are different from, or in addition to, and supercede the provisions and requirements of the Condominium Hotel Zoning Ordinance; and

WHEREAS, by electing to enter into this Agreement, CITY shall bind future City Councils of CITY to the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY subject to the Reserved Powers; and

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY, its Planning Commission and its City Council and have been found to be fair, just and reasonable; and

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and

WHEREAS, all of the procedures of the CEQA have been satisfied based on an initial study as a result of which certain additional focused studies evaluating the environmental impacts of the Project have been completed and the CITY has made certain findings and determinations that this Agreement and the Project can be supported by the certification of the SEIR and the MMRP, in compliance with the



requirements of CEQA; and

WHEREAS, this Agreement and the Project are consistent with the Indian Wells Comprehensive General Plan and the Specific Plan; and

WHEREAS, all actions taken and approvals given by CITY have been duly taken or approved in accordance with all applicable legal requirements for notice, public hearings, findings, votes, and other procedural matters; and

WHEREAS, Development of the Project in accordance with this Agreement and the additional consideration provided by the SJR under Section 4 hereof will provide substantial benefits to CITY, including the availability of additional services to the residents of the CITY, substantially increased sales tax, property tax, and transient occupancy tax to be received by CITY, schools, and special districts and the furtherance of important policies and goals of CITY; and

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly Development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the Development of the Project and generally serve the purposes for which Development Agreements under the Development Agreement Act, Development Agreement Ordinance and Condominium Hotel Zoning Ordinance, if applicable, are intended; and

WHEREAS, SJR and WOODBRIDGE have incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure Development of the Project and vesting of legal rights to develop the Project in accordance with the Applicable Rules.

### COVENANTS

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as set forth below.

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "Amenity Fee" is defined in Section 4.16.

1.1.3 "Annual Review" is defined in Section 6.1.

1.1.4 "Applicable Land Use Regulations" means the Land Use Regulations in effect on the Approval Date.

1.1.5 "Applicable Processing Fees and Charges" means all processing fees and charges required by the CITY uniformly in connection with all new construction, including, but not limited to,



fees for land use applications, project permits, building permits, grading permits, encroachment permits, tract maps, parcel maps, lot line adjustments, air right lots, street vacations, certificates of occupancy and other similar permits. Processing Fees and Charges shall not include Development Impact Fees or any exaction, impact fee, sharing fee or other fee or charge that is in the nature of a Development Impact Fee.

1.1.6 "Applicable Rules" means this Agreement, the Entitlements, the Applicable Land Use Regulations, the Development Agreement Ordinance, and all Development Impact Fees in effect as of the Approval Date.

1.1.7 "Approval Date" means the date on which the ordinance approving this Agreement becomes effective.

1.1.8 "CC&Rs" means, if the Hotel is a Condominium Hotel, the covenants, conditions and restrictions prepared by the SJR in accordance with Section 21.33.040(c) of the Condominium Hotel Zoning Ordinance governing the Condominium Association and Condominium Hotel Unit Owner(s) with respect to the management and operation of the Condominium Hotel.

1.1.9 "CEQA" means the California Environmental Quality Act (Cal. Public Resources Code sections 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs., Title 14, sections 15000 et seq.).

1.1.10 "CEQA Compliance Documents" means that certain supplemental environmental impact report, State Clearinghouse # 2006111097, dated August 15, 2007 ("SEIR"), for which a Notice of Determination was filed in compliance with CEQA based on an initial study, additional focused studies evaluating the environmental impacts of the Project, the associated mitigation, monitoring and reporting program ("MMRP") and the CITY's findings and determinations with respect thereto.

1.1.11 "CITY" means the City of Indian Wells, a California municipal corporation and charter city.

1.1.12 "City Agency" means each and every agency, department, board, commission, authority, employee, or official acting under the authority of the CITY, including without limitation the City Council and Planning Commission.

1.1.13 "City Council" means the City Council of the CITY.

1.1.14 "Condominium Association" means, if the Hotel is a Condominium Hotel, the association of Condominium Hotel Unit Owner(s) formed by the SJR and governed by the CC&Rs.

1.1.15 "Condominium Hotel" is defined in the Condominium Hotel Zoning Ordinance.

1.1.16 "Condominium Hotel Zoning Ordinance" shall mean Ordinance No. 584, adopted on February 16, 2006, adding Chapter 21.33 to the Indian Wells Municipal Code, as amended on April 6<sup>th</sup>, 2006, by Ordinance No. 585.

1.1.17 "Condominium Hotel Unit(s)" shall have the meaning set forth in Section 21.05.296 of the Indian Wells Municipal Code.



1.1.18 "Condominium Hotel Unit Owner(s)" means, if the Hotel is a Condominium Hotel, the owner(s) of the Condominium Hotel Unit(s).

1.1.19 "Development" or "Develop" means the act of constructing the structures, improvements and facilities comprising the Project including, but not limited to: grading; the construction of infrastructure and public facilities related to the Project whether located within or outside the Property; the construction of buildings and structures; and the installation of landscaping. "Development" or "Develop" does not include the act of maintaining, repairing, reconstructing or redeveloping any building, structure, improvement or facility after the initial construction and completion thereof.

1.1.20 "Development Agreement" means this development agreement, adopted pursuant to the Development Agreement Act, the Development Agreement Ordinance, and the Condominium Hotel Zoning Ordinance.

1.1.21 "Development Agreement Act" means Government Code § 65864 through 65869.5.

1.1.22 "Development Agreement Ordinance" means Ordinance No. 230, § 2 adopted in 1987 (§§ 16.40.020 *et seq.* of the Indian Wells Municipal Code) pursuant to which the CITY has adopted procedures and requirements for considering development agreements.

1.1.23 "Development Exaction" means any requirement imposed by the CITY as a condition of the Entitlements such as the dedication of land, the construction of improvements or public facilities, the providing of facilities, services, or economic concessions or the payment of any Development Impact Fee in order to lessen, offset, mitigate or compensate for the impacts of the Development of the Project on the environment or other public interests.

1.1.24 "Development Impact Fee" means a monetary exaction, other than a tax or special assessment, whether characterized as a fee or a tax and whether established for a broad class of projects by legislation of general applicability or imposed on a specific project on an ad hoc basis, that is charged by a local agency to the applicant in connection with approval of a development project for the purpose of defraying all or a portion of the cost of public facilities related to the Project, and, for purposes of this Agreement only, includes fees collected under development agreements adopted pursuant to Article 2.5 of the Government Code (commencing with Section 65864) of Chapter 4, or fees collected pursuant to agreements with redevelopment agencies that provide for the redevelopment of property in furtherance or for the benefit of a redevelopment project for which a redevelopment plan has been adopted pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code). Development Impact Fees do not include (a) Processing Fees and Charges or (b) impact fees, linkage fees, exactions, assessments or fair share charges or other similar fees or charges imposed by other governmental entities and which the CITY is required to collect or assess pursuant to applicable law (e.g., school district impact fees pursuant to Government Code Section 65995).

1.1.25 "Discretionary Action" means an action proposed by Developer that requires the exercise of judgment, deliberation or a decision on the part of the CITY or any City Agency in the process of approving or disapproving a particular activity, as distinguished from an activity such as the issuance of Ministerial Permits and Approvals, which merely requires the CITY or any City Agency to determine whether there has been compliance with applicable statutes, ordinances and/or regulations.



1.1.26 "Effective Date" means the date on which the ordinance approving and authorizing this Agreement has become effective.

1.1.27 "Entitlements" is defined in Section 2.7 and includes any Subsequent Development Approvals.

1.1.28 "Entry Monument Sign" is defined in Section 4.3.

1.1.29 "Entry Monument Sign Easement" means the easement shown on the Site Plan within which the Entry Monument Sign will be constructed.

1.1.30 "Hotel" means the hotel intended to be constructed and operated at the location shown on the Site Plan and in accordance with the Entitlements. The Hotel may, at the election of SJR, be a Condominium Hotel in whole or in part, provided that any such Condominium Hotel is in compliance with the Condominium Hotel Zoning Ordinance, except as otherwise set forth herein or in the Entitlements. The Hotel will be a luxury resort and spa consisting of up to 300 Condominium Hotel Units, including a ballroom, meeting room(s), restaurant(s) and spa and will provide in-room dining, housekeeping, food and beverage service, concierge, parking and bellman services seven (7) days per week.

1.1.31 "Hotel Component" means the Project Component on which the Hotel and related improvements will be located.

1.1.32 "Hotel Operator" means the entity that manages and operates the Hotel on a day-to-day basis.

1.1.33 "Hotel Resort Guests" means guests of the Hotel and guests of Condominium Hotel Unit Owner(s), if applicable.

1.1.34 "Hotel Transfer" is defined in Section 2.4.1.

1.1.35 "Hotel Transferee" is defined in Section 2.4.1.

1.1.36 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY adopted by ordinance or resolution governing the development and use of land, including, without limitation, the Development Agreement Ordinance, the Condominium Hotel Ordinance (if applicable), the Sign Code, the Subdivision Code and any other ordinance or resolution governing the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, the provisions for reservation or dedication of land for public purposes, the design, the improvement and construction standards and specifications applicable to the Development of the Project. "Land Use Regulations" does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) the conduct of businesses, professions, and occupations except subdivisions;
- (b) taxes and assessments;



- (c) the control and abatement of nuisances;
- (d) the exercise of the power of eminent domain.

1.1.37 "Legal Description" means the legal description of the Property attached hereto as Exhibit "A" and incorporated herein by reference.

1.1.38 "Mezzanine Lender" means any lender who provides funds for the construction of the Project or Project Components, or parts thereof, and takes a security interest in an asset other than the Property or Project or any Project Component (e.g., a security interest in the ownership interest of SJR or WOODBRIDGE in the Property or Project or any Project Component).

1.1.39 "Ministerial Permits and Approvals" means the permits, approvals, plans, inspections, certificates, documents, licenses, and all other actions required to be taken by the CITY in connection with the implementation of the Entitlements, which actions merely require the CITY or any City Agency to determine whether there has been compliance with applicable statutes, ordinances and/or regulations, including without limitation, building permits, public works permits, grading permits, encroachment permits and other similar permits and approvals. Ministerial Permits and Approvals shall not include any Discretionary Actions.

1.1.40 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or a Mezzanine Lender or any other security-device lender, and their successors and assigns.

1.1.41 "OWNER" means, with respect to the rights and obligations pertaining hereunder to that portion of the Property owned by SJR, Sanderson J. Ray-Indian Wells, LLC, a California limited liability company and all successors or assigns of that portion of the Property, or any part thereof, permitted hereunder ("SJR"). "OWNER" means, with respect to the rights and obligations pertaining hereunder to that portion of the Property owned by Woodbridge, Woodbridge Indian Wells, LLC, a Delaware limited liability company and all successors or assigns of that portion of the Property, or any part thereof, permitted hereunder ("WOODBRIDGE"). OWNER means, with respect to the rights and obligations pertaining hereunder to that portion of the Property owned by CITY, the City of Indian Wells, a California municipal corporation and charter law city and all successors or assigns of that portion of the Property, or any part thereof. Whenever the term "OWNER" is used and an obligation is imposed on such OWNER pursuant to this Agreement, such obligation shall be a joint and several obligation of SJR and WOODBRIDGE. Whenever the term "OWNER" is used and a right is granted to such OWNER pursuant to this Agreement, such right shall constitute a right of CITY, SJR or WOODBRIDGE, individually or collectively, and as applicable pursuant to the terms of this Agreement. "OWNER" shall also refer to Hotel Operator if and to the extent SJR has delegated its rights and obligations arising under Sections 4.4, 4.6, 4.7, 4.11, 4.12, and/or 4.16 to the Hotel Operator.

1.1.42 "Personal Use" is defined in Section 21.33.020(g) of the Indian Wells Municipal Code.

1.1.43 "Processing Fees and Charges" means fees and charges imposed by CITY to cover the estimated actual costs to CITY of processing applications for permits or other entitlements or for monitoring the applicant's compliance with the CITY's issued or granted approval, including, without limitation, fees for zoning variances; zoning changes; use permits; building inspections; building permits;



filing and processing applications and petitions filed with the local agency formation commission or conducting preliminary proceedings or proceedings under the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000, Division 3 (commencing with Section 56000) of Title 5 of the Government Code; the processing of maps under the provisions of the Subdivision Map Act, Division 2 (commencing with Section 66410) of Title 7 of the Government Code; or planning services under the authority of Chapter 3 (commencing with Section 65100) of Division 1 of Title 7 of the Government Code, fees and charges as described in Sections 51287, 56383, 57004, 65104, 65456, 65863.7, 65909.5, 66013, 66014, and 66451.2 of the Government Code, Sections 17951, 19132.3, and 19852 of the Health and Safety Code, Section 41901 of the Public Resources Code, and Section 21671.5 of the Public Utilities Code, as such codes may be amended or superseded, including by amendment or replacement.

1.1.44 Intentionally Left Blank.

1.1.45 "Project" means the Development of the Retail/Office Component, Hotel Component and Residential Component in accordance with the Applicable Rules.

1.1.46 "Project Component(s)" means the Retail/Office Component, Hotel Component or Residential Component.

1.1.47 "Property" means the real property described in the Legal Description and shown on the Site Plan.

1.1.48 "Hotel Management Firm" means (a) a qualified professional management entity or branded company as management in order to maintain and operate all portions of the hotel and or condominium hotel in a manner consistent with the first class hotel standard or (b) an entity formed, owned and controlled by the foregoing together with (i) Sanderson J. Ray-Indian Wells, LLC or (ii) an entity controlling, controlled by or under common control with Sanderson J. Ray-Indian Wells, LLC. As used herein, the term "Hotel Management Firm" may refer to more than one entity meeting the foregoing definition.

1.1.49 "Reserved Powers" means the rights and authority excepted from the assurances and rights provided to SJR and WOODBRIDGE under this Agreement and reserved to CITY under Section 3.2 of this Agreement.

1.1.50 "Residential Component" means a high-end residential development of up to sixty-five (65) single-story, detached single family homes in the location shown on the Site Plan and described in the Specific Plan.

1.1.51 "Residential Owners" means the owners of the residential units within the Residential Component and their successors and assigns in interest to such units.

1.1.52 "Retail/Office Component" means (a) retail, entertainment, and commercial uses (which commercial development is identified in Exhibit "E", attached hereto and incorporated by reference herein), (b) a premium multi-plex cinema as identified in Section 4.13 hereof with appropriate amenities and approved by the City with regard to design, fixtures, finishes and amenities, (c) a parking structure if deemed appropriate by SJR and approved by the CITY, and (d) may include office buildings, all as shown on the Site Plan and described in the Specific Plan.



1.1.53 "Sales Disclosure Documents" means, if the Hotel is a Condominium Hotel, those documents prepared by SJR in connection with the sale of the Condominium Hotel Units disclosing information about the Property, Hotel Component and/or Condominium Hotel Unit(s).

1.1.54 "Sign Code" means Chapter 17 of the Indian Wells Municipal Code.

1.1.55 "Site Plan" means one or more approved alternative plans for Development of the Property as set forth in Exhibit "B" attached hereto and incorporated herein by reference.

1.1.56 "Special Review" is defined in Section 6.2.

1.1.57 "Specific Plan" means the Indian Wells Town Center Specific Plan.

1.1.58 "Subdivision Code" means Chapter 20 of the Indian Wells Municipal Code.

1.1.59 "Subsequent Development Approvals" means those certain actions taken by the CITY after the Effective Date, whether Discretionary Actions or Ministerial Permits and Approvals, in connection with the implementation, amendment and/or modification of the Entitlements.

1.1.60 "Term" is defined in Section 2.3.

1.1.61 "TOT Ordinance" means the City of Indian Wells' Uniform Occupancy Tax Ordinance, currently codified as Chapter 3.12 of the City of Indian Wells Municipal Code, as such ordinance may now or hereinafter exist or be amended.

1.1.62 "Transfer" is defined in Section 2.4.1.

1.1.63 "Transferee" is defined in Section 2.4.1.

1.1.64 "Transferor" means any transferor of a Project Component or any part thereof pursuant to Section 2.4.

1.1.65 "Transient Occupancy Tax" means the transient occupancy tax due to the CITY under the TOT Ordinance.

1.1.66 "Threshold Progress" means the achievement of the degree of progress in the Development of the Project at which all of the following have occurred: (a) The Hotel Component has received approval by the CITY's Architecture and Landscape Committee; (b) working drawings have been submitted to the CITY for construction plan check of an initial phase of the Hotel Component, which shall include up to three hundred (300), but not fewer than one hundred and fifty (150), hotel rooms or Condominium Hotel Units plus all common areas, pool, spa, dining and conference facilities, service areas and site improvements necessary to support the operation of the first phase of the Hotel Component; and (c) a building permit has been issued for an Phase One of the Retail/Office Component, as generally depicted on attached Site Plan.



2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development of the Project is hereby authorized and shall be carried out in accordance with the terms of the Applicable Rules.

2.2 Interest in Property. OWNER represents and warrants that, as of the date of execution of this Agreement, OWNER owns the fee simple interest in the respective portions of the Property as identified in the Exhibits.

2.3 Term. The term ("Term") of this Agreement shall commence on the Effective Date, and shall continue for a period of seven (7) years thereafter unless this Agreement is cancelled, terminated, modified or extended pursuant to the provisions of this Agreement. OWNER shall have the option to extend the Term of this Agreement applicable to its Property by written notice to the CITY for a period of five (5) additional years provided that, as a condition of such extension, the City Council finds that the Project has achieved Threshold Progress. Provided that the City Council determines that the Threshold Progress has been achieved, no further notice, hearing or other action shall be required of the CITY or the City Council. Upon written request by OWNER for the City Council's determination of Threshold Progress, the City Manager shall agendize the matter as a general business (non-public hearing) item at the next available regular City Council meeting. Following the expiration of the Term, and the additional extension (if any), the covenant of the CITY to not impose the CITY'S Admission Tax (contained in Section 3.2.1(g) hereto) shall continue for so long as the obligations of OWNER set forth in Sections 4.8, 4.10, 4.13, and 4.18 herein are true and faithfully kept.

2.4 Assignment.

2.4.1 Right to Assign. OWNER shall have the right, without approval of the CITY, to sell, transfer or assign the Property, in whole or in part, or any Project Component (except the Hotel Component, which shall be subject to the provisions of paragraph (a), below), in whole or in part, (provided that any such partial transfer shall be in compliance with the Subdivision Map Act, Government Code section 66410, et seq. and shall also include a transfer of the applicable portion of the Property ("Transfer") to any person or entity ("Transferee")) at any time during the Term of this Agreement; provided, however, that any sale, transfer or assignment of the Hotel Component ("Hotel Transfer") to a transferee ("Hotel Transferee") shall be made in strict compliance with the following conditions precedent:

(a) Concurrent with any Hotel Transfer, SJR shall notify CITY, in writing, of such Hotel Transfer and shall provide CITY with an executed agreement ("Assignment and Assumption Agreement"), in a form reasonably acceptable to CITY, by the Hotel Transferee and providing therein that the Hotel Transferee expressly agrees to be bound by the terms of this Agreement, but only as to the Hotel Component. The CITY shall have the right to approve or reject any such Hotel Transferee, acting in its reasonable discretion. In exercising such discretion, the CITY may consider only such factors as the financial qualification and the experience of the proposed Hotel Transferee or Hotel Operator (and/or their respective principals or key employees) in owning and operating other similar hotels. The foregoing shall not apply to any sale of any Condominium Hotel Unit to any Condominium Hotel Unit Owner, which sales shall not require CITY approval.



2.4.2 Approval of a Hotel Management Firm. SJR must obtain the CITY's written consent pursuant to and in accordance with the same reasonableness standards as set forth in Section 2.4.1(a) prior to making a Hotel Transfer to any entity that serves as Hotel Management Firm.

2.4.3 Release of Transferee and/or Hotel Transferee. Upon any Transfer and/or Hotel Transfer made in compliance with this Section 2.4, SJR or Woodbridge, as the case may be, shall not be obligated under this Agreement with respect to the transferred Project Component, or parts thereof, and the Transferee shall not be obligated under this Agreement with respect to the Project Component, or parts thereof, not transferred to the Transferee or Hotel Transferee, as applicable. After any such Transfer or Hotel Transfer, as applicable, "OWNER" herein shall refer to the Transferee or Hotel Transferee, as applicable. Notwithstanding any provision contained in this Agreement, CITY may withhold the issuance of any building permit (but not any grading permit) for any structure within the Residential Component unless and until the Project has achieved Threshold Progress.

2.5 Amendment or Cancellation of Agreement. This Agreement may be amended or canceled in whole or in part only in the manner provided for in Government Code section 65868 and the Development Agreement Ordinance. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement.

2.6 Termination. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

- (a) Expiration of the Term.
- (b) Entry of a final judgment setting aside, voiding or annulling the adoption of the ordinance approving this Agreement.
- (c) The adoption of a referendum measure in accordance with applicable laws overriding or repealing the ordinance approving this Agreement.
- (d) Termination of this Agreement based on any material default of any OWNER (except as provided herein) and following the termination proceedings required by this Agreement.

Termination of this Agreement shall not constitute termination of the Entitlements or Land Use Regulations applicable to the Property or the Project. Upon the termination of this Agreement, no party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement that has occurred prior to such termination or with respect to any obligations that are specifically set forth as surviving this Agreement.

Any default by any OWNER or its successors and assigns under this Agreement with respect to any Project Component shall not constitute grounds for the termination of the rights, duties and obligations of any OWNER or its successors and assigns with respect to any other Project Component.

2.7 CITY's Procedures and Actions/Entitlements.



(a) Planning Commission Action. On June 5, 2008, as required by California Government Code Section 65867, the Planning Commission held a duly noticed public hearing to consider the CEQA Compliance Documents, this Agreement and the Entitlements in connection with its recommendation to the City Council regarding adoption or certification, as applicable, of the CEQA Compliance Documents, approval of this Agreement and approval of the Entitlements. Specifically, the CITY's Planning Commission held a duly noticed public hearing to review the following land use entitlements (collectively, the "Entitlements"):

- (1) Specific Plan No. 2007-01;
- (2) Tentative Tract Map No. 35569 for the Residential Component;
- (3) Tentative Parcel Map No. 35114 for the Retail/Office Component
- (4) Tentative Parcel Map No. 35568 for the Hotel Component;
- (5) Conditional Use Permit No. 2005-04 (A,B,C);
- (6) General Plan Amendment No. 2005-06;
- (7) Zoning Text Amendment No. 2005-05; and
- (8) Supplemental Environmental Impact Report State Clearinghouse No. 2006111097, dated August 15, 2007.

The Planning Commission found and determined that: (a) this Agreement and the Entitlements are within the scope of the CEQA Compliance Documents; (b) this Agreement and the Entitlements are consistent with the CITY's Comprehensive General Plan; (c) this Agreement and the Entitlements are compatible with the orderly development of property in the surrounding area; (d) this Agreement and the Entitlements will have an overall positive impact on the health, safety and welfare of the residents of and visitors to the CITY; (e) this Agreement constitutes a lawful, present exercise of the CITY's police power and authority under the Development Agreement Act and the Development Agreement Ordinance; and (f) this Agreement will be entered into pursuant to and in compliance with the requirements of the Development Agreement Act, the Development Agreement Ordinance and the Condominium Hotel Zoning Ordinance. Based on these findings and determinations, the Planning Commission approved a resolution recommending to the City Council the approval of the Agreement and the Entitlements.

(b) City Council Action. On June 19, 2008, the City Council held a duly noticed public hearing to consider the CEQA Compliance Documents, this Agreement and the Entitlements. On June 19, 2008, the CITY found and determined that the CEQA Compliance Documents complied with all requirements of CEQA and certified or approved, as applicable, the CEQA Compliance Documents for the Project. The City Council found and determined that: (a) the CEQA Compliance Documents complied with all requirements of CEQA; (b) this Agreement and the Entitlements are within the scope of the CEQA Compliance Documents; (c) this Agreement and the Entitlements are consistent with the CITY's Comprehensive General Plan and the Specific Plan; (d) this Agreement and the Entitlements are compatible with the orderly Development of the Property and the surrounding area; (e) this Agreement will have an overall positive effect on the health, safety and welfare of the residents of



and visitors to the CITY; (f) this Agreement constitutes a lawful, present exercise of the CITY's police power and authority under the Development Agreement Act and Development Agreement Ordinance; and (g) this Agreement is entered into pursuant to and in compliance with the requirements of the Development Agreement Act, the Development Agreement Ordinance and the Condominium Hotel Zoning Ordinance. On June 19, 2008, the City Council adopted Ordinance No. 613 and Resolution Nos. 2008-29, 2008-30 and 2008-31 approving the Entitlements, and Ordinance No. 615 approving this Agreement, each such ordinance to become effective thirty (30) days after the adoption thereof.

2.8 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below; or (iii) on the date shown on the document as received by the recipient after transmission by facsimile to the recipient named below. In light of the potentially numerous Condominium Hotel Unit Owners contemplated by the Project, if the Hotel is financed and developed as a Condominium Hotel, SJR (and not CITY) shall remain responsible for providing Condominium Hotel Unit Owners with notices required to be provided by CITY to Hotel Developer pursuant to this Section. All notices shall be addressed as follows:

If to CITY: City of Indian Wells  
44-950 Eldorado Drive  
Indian Wells, California 92210-7497  
Attn: City Manager  
Telephone: (760) 346-2489  
Facsimile: (760) 346-0407

Copy to: Best, Best & Krieger, LLP  
3750 University Ave.  
Riverside, CA 92501  
Attn: City Attorney  
Telephone: (951) 686-1450  
Facsimile: (951) 686-3083

If to SJR: Sanderson J. Ray-Indian Wells LLC  
2699 White Road  
Suite 150  
Irvine, CA 92614  
Attn: Michael Ray  
Phone: (949) 222-5775 x229  
Facsimile: (949) 399-9020



Copy to: Gary P. Long, Esq.  
Attorney at Law  
2699 White Road  
Suite 150  
Irvine, CA 92614  
Phone: (949) 222-5775 x225  
Facsimile: (949) 399-9020

If to Woodbridge: Woodbridge Indian Wells LLC  
27285 Las Ramblas, Suite 230  
Mission Viejo, CA 92691-6325  
Attn: Todd Cunningham, President  
949-348-8162 – office  
949-348-8163 - fax

(c) Either party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a party or an officer or representative of a party, and/or to a different address or facsimile number. Notices given before actual receipt of notice of change shall not be invalidated by the change.

### 3. DEVELOPMENT OF THE PROPERTY.

#### 3.1 Vested Rights to Develop.

3.1.1 Project Entitlements/Density. SJR and Woodbridge, and their successors or assigns of that portion of the Property, or any part thereof, permitted hereunder (collectively, "Developer") are hereby granted the vested right to develop the Project and each Project Component in accordance with the Entitlements, subject to the terms and conditions of the Applicable Rules and the Reserved Powers. Without limiting the foregoing, the permitted uses, density, intensity of use, maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standard, implementation program for processing subsequent entitlements and other conditions of development of the Property shall be those set forth in the Entitlements. The parties intend that this Agreement, together with the Entitlements, shall serve as the definitive and controlling document for all subsequent actions, discretionary or ministerial, related to the development and occupancy of the Project, except as expressly provided herein.

3.1.2 Minor Revisions. The parties acknowledge that refinement and further development of the Project will require minor revisions from time to time. In the event OWNER finds that a minor change to the Entitlements, or in the elements of the Phases identified in Section 3.1.6 hereof, is necessary or appropriate, OWNER shall apply in writing to the City Manager to effectuate such minor change. Thereafter, the City Council's Towncenter Subcommittee (or its successor subcommittee) shall, within thirty (30) days from receipt by OWNER of such request, consider and make a recommendation to the City Council on such application in accordance with this Section 3.1.2, except as otherwise provided by this Agreement, including the Reservations of Authority. Thereafter, the City Council shall consider the Towncenter Subcommittee's (or its successor subcommittee's) recommendation at the next available regularly scheduled meeting as a general business (non-public hearing) item, except as set forth in Section



3.1.2(f). Unless otherwise required by law, as determined in City Council's reasonable discretion, a change to the Entitlements or in the elements of the Phases identified in Section 3.1.6 hereof shall be deemed "minor", shall be processed in accordance with this Section 3.1.2, and shall not require an amendment to this Agreement or any further public notice or hearing (including any hearing before the City Council, Planning Commission, or other body of the City) provided such change does not result in any of the items listed in (a) through (f) below occurring.

(a) Alter the permitted uses of the Property as a whole; or,

(b) Increase the density or intensity of use of the Property as a whole; or,

(c) Remove or diminish an element identified in the Phasing identified in Section 3.1.6, without replacing it with an element that is deemed by the City Manager to be of substantially equivalent function, design and quality; or,

(d) Delete a requirement for the reservation or dedication of land for public purposes within the Property as a whole; or,

(e) Constitute a project requiring a subsequent or supplemental environmental impact report pursuant to Section 21166 of the Public Resources Code; or,

(f) Constitute an action for which notice or hearing, or both, is required by the Due Process clauses of the U.S. or California Constitution.

3.1.3 Subsequent Development Approvals. The CITY shall not require Developer to obtain any Subsequent Development Approval that is not required by the Applicable Rules or the Reserved Powers. CITY hereby agrees that it shall not unreasonably withhold or further condition its approval of any Discretionary Action relating to Subsequent Development Approvals.

3.1.4 Moratoria. In the event an ordinance, resolution or other measure is enacted, whether by action of the CITY, the qualified voters, by initiative, or otherwise, which relates to the rate, amount, timing, sequencing, or phasing purportedly applying to the Development of the Project on all or any part of the Property or the implementation or construction of the Project, CITY agrees that, unless required by applicable state law, such ordinance, resolution or other measure shall not apply to the Project, Property or this Agreement, unless such changes are adopted pursuant to the CITY's exercise of its Reserved Powers.

3.1.5 Timing of Development. The parties acknowledge that Developer cannot at this time predict when or if the Property will be developed. Such decisions depend upon numerous factors that are not within the control of SJR or WOODBRIDGE, such as market orientation and demand, interest rates, absorption, completion and other similar factors. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal.3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that, subject to the ability of the CITY to withhold building permits for the Residential Component based on the failure of SJR to achieve Threshold Progress, SJR and WOODBRIDGE shall have the right to Develop the Property at such rate and at such time as they



individually deem appropriate within the exercise of each entity's subjective business judgment. However, the release of any further entitlements beyond those contained in the Entitlements for the Residential Component for construction is subject to the Threshold Progress as described in Section 1.1.66 of this Agreement. Specifically, and notwithstanding any provision contained in this Agreement, CITY may withhold the issuance of any building permit (but not any grading permit) for any structure within the Residential Component unless and until the Project has achieved Threshold Progress.

3.1.6 Phasing Plan. Development of the Property shall be subject to all timing and phasing requirements established by this Agreement. WOODBRIDGE shall have no right to the issuance of building permits for the Residential Component until SJR has met the Threshold Progress, as set forth herein, including, but not limited to, Sections 1.1.50 and 1.1.66 hereof. The following aspects of the Hotel, Retail/Office, and Residential Components shall be included in the following phases, and as set forth in the attached Exhibits:

#### **Condo-Hotel/Hotel -- Phase I**

- Commencement of construction plan check for the first phase of the Hotel Component;
- Construction of the initial phase of the Hotel Component, approximately 150 units;
- Construction of approximately 15,000 square feet of conference space and approximately 8,000 square feet of restaurant space;
- Construction of a spa facility, approximately 20,000 square foot.

#### **Retail Site – North Miles Avenue -- Phase I**

- Construction of the initial phase of Retail/Office Component as depicted on Exhibit "D" hereto and all related infrastructure, including without limitation, the movie theatre referenced in Section 4.13 hereof.

#### **Condo-Hotel/Hotel -- Phase II**

- Construction of the remaining phase(s) of Hotel Component, up to approximately 150 units, up to a total of 300 units.

#### **Retail Site – North Miles Avenue -- Phase II**

- Construction of remaining phase(s) of the Retail/Office Component.

#### **Residential Component**

- Subject to the Threshold Progress as set forth in Section 1.1.66, construction of a high-end residential development of up to sixty-five (65) single-story, detached single family homes in the location shown on the Site Plan and described in the Specific Plan.

3.1.7 Development Impact Fees. Development Impact Fees imposed by the CITY with respect to the Project shall be only those Development Impact Fees in force and effect as of the Effective Date. Development Impact Fees imposed by the CITY on the Project may not be increased in amount. The cost of certain public improvements identified in the Development Exactions that are required in connection with the Project may exceed the amount of the applicable Development Impact Fees. The CITY therefore, agrees that the installation of those public improvements identified in the Exactions



required in connection with the Project shall be deemed to satisfy those applicable Development Impact Fees that specifically relate to the type of public improvements required by such Development Exactions or other fees required to be paid by Developer, pursuant to the Applicable Rules including the fee credit policies of the City or applicable City Agency.

### 3.2 Reservation of Rights.

3.2.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following regulations shall apply to the Development of the Project as and to the extent that such regulations apply generally to similar developments proposed or approved within the City of Indian Wells:

- (a) Processing Fees and Charges.
- (b) Procedural regulations relating to hearing bodies, petitions, applications; notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure; provided such regulations do not unreasonably and materially interfere with the development rights granted to Owner hereunder.
- (c) Written regulations, policies and rules approved by the CITY governing engineering and construction standards and specifications applicable to public and private improvements, including, without limitation, all uniform codes adopted by the CITY and any local amendments to those codes adopted by the CITY, including, without limitation, the CITY's Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code and Grading Code.
- (d) Written regulations approved by the CITY that may be in material conflict with this Agreement but that are reasonably necessary to protect the residents of the Project or the immediate community from a condition perilous to their health or safety. To the extent possible, any such regulations shall be applied and construed so as to provide OWNER with the rights and assurances provided under this Agreement.
- (e) Written regulations approved by the CITY that are not in material conflict with the Applicable Rules or the rights granted under Agreement. Without limiting the foregoing, any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of Development of the Property shall be deemed to materially conflict with the Applicable Rules and shall therefore not be applicable to the Development of the Project.
- (f) Written regulations approved by the CITY that are in material conflict with the Applicable Rules; provided OWNER has given written consent to the application of such regulations to Development of the Property, or the Project, or any Project Component.
- (g) Written regulations approved by the CITY that impose, levy, alter or amend fees, charges, or Land Use Regulations relating to consumers or end users, as opposed to Development, such as, without limitation, trash can placement, service charges and limitations on vehicle parking; provided, however, that no such fees, charges or Land Use Regulations shall materially interfere with or impose an adverse material burden upon the rights granted to Owner or its consumers or end users under this Agreement. Without limiting the foregoing, the parties acknowledge and agree that, during the



Term of this Agreement, the Project's cinema described in Section 4.13 above shall not be subject to the Admission Tax set forth in Chapter 3.14 of the Indian Wells Municipal Code, or any amendment or replacement thereof.

3.2.2 Modification or Suspension by State or Federal Law. In the event that State, County or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provision(s) of this Agreement shall be modified or suspended as may be necessary to comply with such State, County or Federal laws or regulations; provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

3.2.3 Intent. The parties acknowledge and agree that CITY is restricted in its authority to limit certain aspects of its police power by contract and that the limitations, reservations and exceptions contained in this Agreement are intended to reserve to CITY all of its police power that cannot, by law, be expressly so limited. To this end, this Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority that, by law, cannot be so restricted. This Agreement is intended to limit the CITY's authority to adopt, amend or otherwise alter the Applicable Rules during the Term, but not thereafter.

3.3 Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies, not within the control of CITY, possess authority to regulate aspects of the Development of the Property separately from the CITY. This Agreement does not limit the authority of such other public agencies. Nothing contained in this Agreement shall be construed as limiting, in any way, the authority of the CITY to impose on the Project any new or increased development impact fees, linkage fees, exactions, assessments, fair share charges or other similar fees or charges imposed by any other public agency, but collected by the CITY.

3.4 Conditional Use Permit. Notwithstanding Section 21.06.040(e)(2) of the Indian Wells Municipal Code, any conditional use permit issued in connection with the Project shall not expire or become null or void during the Term of this Agreement, or thereafter, as a result of abandonment or lapse as set forth therein.

#### 4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that Development of the Property will result in substantial public needs that will not be fully met by the Development of the Project and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER that should be balanced by commensurate public benefits. Accordingly, the parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of the public needs resulting from the Project. Whenever this Agreement confers a public benefit, the parties acknowledge and agree that the benefit(s) shall be conferred even if the Hotel is not a Condominium Hotel.

4.2 Law Enforcement CFD. On September 20, 2007, CITY has adopted Resolution 2007-37—Goals and Policies and Resolution 2007-39—Resolution of Intent to form a community facilities district ("CFD") for the purpose of financing CITY's providing of law enforcement services to the Project.



SJR shall cooperate with CITY in the formation of such CFD. Such CFD may levy a special tax on the portion of the Property comprising the Retail/Office Component and the Residential Component, but not the Hotel Component, in an amount not to exceed that amount necessary to provide one (1) dedicated peace officer (one shift per day) for the Project, the cost of which is currently estimated to be approximately Two Hundred Fifty Thousand Dollars (\$250,000) per year, including required training and allowance for overtime, which amount shall be adjusted the first fiscal year following the fiscal year in which the CFD was created, and annually thereafter to reflect the actual cost charged by the Riverside County Sheriff's Department to provide such services, in accordance with the rate and method set forth in Resolution No. 2007-39.

4.3 Entry Monument Sign. SJR shall, at its sole cost and expense, and without credit, reimbursement or other consideration from the CITY, construct and install within the Entry Monument Sign Easement an entry monument sign that: (1) identifies the "City of Indian Wells", as jointly designed by CITY and SJR; (2) is consistent with the CITY's other primary road entry monuments; and (2) compliments and enhances the Project (the "Entry Monument Sign"). The SJR shall offer for dedication the Entry Monument Sign Easement within one (1) year from the issuance of the first building permit for the Retail/Office Component, without credit, reimbursement or other consideration from the CITY, and the Entry Monument Sign upon completion of the Entry Monument Sign to the reasonable satisfaction of the City Manager or designee. Thereupon, the CITY shall formally accept title to the Entry Monument Sign, and, thereafter, the CITY shall own, operate, maintain and repair the Entry Monument Sign as CITY property at its cost and expense.

4.4 Local Resident Amenities. During the Term, SJR shall provide residents of the CITY with the amenities described below. SJR shall establish for itself reasonable guidelines for determining CITY residency for purposes of this Section.

(1) A twenty percent (20%) courtesy discount at the restaurants located within, or as part of, the Hotel Component. The discount shall not apply to one (1) signature fine dining designated by OWNER. The discount shall also not apply to alcoholic beverages.

(2) Free valet parking with validation from the Hotel or the Retail/Office Component. Free valet parking will not be available (a) at the Hotel or the Retail/Office Component during events at the Indian Wells Tennis Gardens or (b) at the Hotel during major events at the Hotel. Valet attendants shall not be prohibited from accepting voluntary gratuities.

(3) Up to nine (9) Indian Wells residents per day shall be entitled to receive free admission to the Hotel gym. Reservations with the spa services desk shall be required. Free admission to the gym shall not entitle the admittee to free access to other amenities or services which may be offered at the spa or gym including, without, limitation, pool access, spa treatments, personal training, exercise classes or other services. Residents and all other uses of the gym shall be required to abide by the posted rules for the gym.

4.5 CITY Condominium Hotel Zoning Ordinance. The CITY has adopted a zoning ordinance regulating the construction and operation of Condominium Hotels within the CITY (the "Condominium Hotel Zoning Ordinance"). SJR may seek to qualify the Hotel as a condominium hotel within the definition of the Condominium Hotel Zoning Ordinance. Based on SJR's review of said Ordinance, SJR agrees and acknowledges that, if the Hotel is a Condominium Hotel, the Condominium Hotel Zoning



Ordinance shall constitute an Applicable Land Use Regulation and, except as expressly set forth herein, shall apply to the Hotel.

4.6 Hotel Operating Standards. During the term of this Agreement, the Hotel shall be operated as a luxury resort Hotel with services and amenities that exceed those of the currently existing hotels in the CITY and that will be comparable with other first class resorts in Southern California. Pursuant to the provisions of Condominium Hotel Zoning Ordinance Sections 21.33.020(d), 21.33.090 and 21.33.100, the Hotel shall meet the First Class Hotel Standard provided in the Condominium Hotel Zoning Ordinance.

4.7 Restaurant Types. During the Term of this Agreement, no "drive-through" type restaurant or low-end fast food restaurants shall be constructed or operated on the Property.

4.8 Police Substation with Parking. SJR shall provide a standard building shell, space not to exceed five hundred (500) square feet of floor area, within the Retail/Office Component, at no rental cost to the CITY, for use as a CITY police substation, including uncovered nearby parking for four (4) police vehicles ("Substation"). The Substation shall be located as mutually agreed by SJR and CITY and may be relocated at the option and the sole expense of SJR to another mutually agreeable location. The Substation shall be made available prior to the issuance of the first certificate of occupancy for the Retail/Office Component. If commercially feasible, the security system for the Retail/Office Component described in Section 4.9 shall be located and available to Police services personnel from within the Substation and SJR's security team shall have reasonable access to and use of the Substation. CITY may enter into a lease with SJR on SJR's standard form retail lease, a copy of which has been provided to the CITY. The lease shall remain in force so long as any portion of the Retail/Office Component is operated as a retail use, but (1) shall be terminable by CITY upon thirty (30) days written notice; and (2) shall be terminable by SJR in the event the City shall cease to occupy and operate the Substation for a period of 360 consecutive days during the lease term. CITY shall not be liable for base rent nor will the CITY be responsible for any other obligations of SJR or other lessee's under the retail lease, including, without limitation, tenant improvements or any pro-rata share of common area maintenance charges, real property taxes and insurance premiums. The CITY shall however pay its own utility, insurance, and janitorial costs for the Substation. For purposes of this Section 4.8, "standard building shell" means SJR shall construct and install industry standard "vanilla" tenant improvements which include a 100-AMP electrical panel, demising walls, ceiling, lighting, HVAC distribution and one (1) ADA-compliant unisex restroom all of which shall be designed in consultation with the Riverside County Sheriff's Department. CITY shall be responsible for all other improvements to the space including, without limitation, paint, flooring and partitioning and for payment of utility services to the Substation upon occupancy.

4.9 Security System. Prior to the issuance of the first certificate of occupancy for each Project Component, SJR shall, at SJR's sole cost and expense, and without credit, reimbursement or other consideration from the CITY, install a security system for such Project Component. The details of the security system, such as technology employed, location and hours of operation, will be established by SJR based on a study prepared by a security system consultant retained by SJR and reasonably approved by the CITY. Said security system shall be operated by SJR or its designee throughout the Term of this Agreement, at SJR's sole cost and expense, and without credit, reimbursement or other consideration from the CITY. At the option of SJR and with the reasonable approval of CITY, a private security force may be provided for the Hotel Component in lieu of a security system. SJR agrees, at its sole cost and



expense, to the install and maintain public safety, non-monitored, passive camera devices at the Retail Component with digital recording equipment set up at the Substation.

4.10 CITY Office Space. SJR shall lease to the CITY a standard building shell (as defined above) within the Retail/Office Component not to exceed fourteen hundred (1,400) square feet of floor area for CITY government office use ("City Office Space"). The CITY may sublet the City Office Space for office use to the Chamber of Commerce or other public or nonprofit lessee but only for non-commercial purposes and only, in the case of a public or nonprofit lessee other than the Chamber of Commerce, with SJR's prior written consent, which consent will not be unreasonably withheld provided such public nonprofit use is consistent with and an enhancement to the overall character of the Retail/Office Component. The City Office Space lease shall: (1) be for an indefinite term expiring upon the earlier of: (a) the written notice of surrender of the CITY Office Space by the CITY, (b) the failure of the City or its sublessee to open, occupy or operate the City Office Space, where such failure continues for a period of 180 consecutive days during the lease term, or (c) cessation of operation of the Retail/Office Component by SJR or its successors or assigns; (2) provide for the CITY to pay initial base rent of FIFTY CENTS (\$.50) per square foot per month to the then owner of the Retail/Office Component; (3) provide for the CITY to pay a share of common area operating expenses of the Retail/Office Component in the initial amount of SEVENTY-FIVE CENTS (\$.75) per square foot per month; and (4) provide for increases in base rent and common area operating expenses every five (5) years, commencing upon actual occupancy, based on a CPI adjustment (based on 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)) of the Retail/Office portion of the development where the City Office Space is located, but not to exceed fifteen percent (15%) for any such five (5) year adjustment period. CITY shall pay its own utility, insurance, tax (if any) and janitorial costs for the City Office Space. The City Office Space shall be located as mutually agreed by SJR and CITY and may be relocated at the option and the sole expense of SJR to another mutually agreeable location. The standard building shell improvements constructed by SJR shall be designed in consultation with the CITY, and the CITY or its sublessee shall be responsible for the cost of all additional improvements to the City Office Space and for payment of any taxes attributable to its occupancy of the City Office Space and all improvements therein.

4.11 Golf Concierge. During the Term of this Agreement and following the opening of the Hotel, the SJR shall provide a golf concierge desk at the Hotel, staffed by an employee of the Hotel Operator. SJR shall establish and enforce a policy prohibiting the golf concierge from offering or receiving any financial incentives from other hotels, golf courses, country clubs or otherwise to direct golf play from the Indian Wells Golf Resort to another golf course or facility. The CITY will be permitted (at the CITY's cost) to place an understated, elegant, leather-bound book with information about golfing and other CITY activities with the golf concierge and main concierge desks located at the Hotel, and at other appropriate locations in the resort to be determined by the Hotel Operator and the CITY cooperating in good faith.

4.12 Cooperative Marketing Program. The Hotel shall become a member of the CITY's Cooperative Marketing Program and contribute an amount equal to the amount contributed by each other hotel in the City of Indian Wells up to TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) per year to the program for advertising and marketing.



4.13 Cinema Standards. The Project's cinema shall be developed and maintained as a first-class, primarily first run cinema in accordance with the Entitlements, and shall incorporate interior décor features and provide services that are equal to or, in the aggregate, measurably better than other cinemas in the area as of the Effective Date, such as the "Century Rancho Mirage The River 12" located at the River in Rancho Mirage California.

4.14 Naming of Project. The Project shall, during the Term, incorporate the name of "Indian Wells", and no other name of another city or governmental agency.

4.15 Transient Occupancy Tax. If the Hotel is developed as a Condominium Hotel, any use of any Condominium Hotel Unit, except for any Personal Use, shall be subject to the CITY's Transient Occupancy Tax as defined in the TOT Ordinance. If the Hotel is not developed as a Condominium Hotel, it shall be subject to the CITY's Transient Occupancy Tax as defined in the TOT Ordinance. Notwithstanding Condominium Hotel Zoning Ordinance Section 21.33.060, Condominium Hotel Unit Owners shall be permitted to use their own (or an independent third party's) reservation system to rent out their Condominium Hotel Units, provided that all Hotel Resort Guests shall be required to check-in at the Hotel's front desk for the purpose of determining their obligations under the TOT Ordinance. Condominium Hotel Unit Owners shall be permitted to occupy their Condominium Hotel Units for a period of up to sixty (60) cumulative days per calendar year, without payment of Transient Occupancy Tax for such period or the payment of any amount in lieu of the Transient Occupancy Tax. However, the Amenity Fee provided in Section 4.16 below shall be paid by the Condominium Hotel Unit Owner. In addition, notwithstanding Section 21.08.167 of the Indian Wells Municipal Code, Condominium Hotel Unit Owners shall be permitted to occupy their Condominium Hotel Units for an aggregate period in excess of sixty (60) cumulative days per calendar year, without payment of Transient Occupancy Tax, provided that each such Condominium Hotel Unit Owner shall pay to CITY an amount in lieu of the Transient Occupancy Tax of Fifteen Dollars (\$15.00) per day for such occupancy in excess of sixty (60) cumulative days per calendar year pursuant to Section 21.33.110(b) of the Indian Wells Municipal Code. Condominium Hotel Unit Owners shall have the option to put their Condominium Hotel Unit into a rental pool to be available for rent for transient use. Condominium Hotel Unit Owners electing not to put their Condominium Hotel Units into the rental pool, and who do not occupy their Condominium Hotel Unit for a period in excess of sixty (60) cumulative days per calendar year, shall not pay the Transient Occupancy Tax or any amount in lieu of the Transient Occupancy Tax but the Amenity Fee described in Section 4.16 below shall be paid by such Condominium Hotel Unit Owner. For purposes of this Section 4.15, a Condominium Hotel Unit Owner shall be deemed to be in occupancy of the Condominium Hotel Unit if the Condominium Hotel Unit Owner occupies a portion of the Condominium Hotel Unit and rents or makes available for rental the other portion of the Condominium Hotel Unit. Each Condominium Hotel Unit Owner shall be responsible for Transient Occupancy Tax and such in lieu amount owed with respect to his or her own Condominium Hotel Unit.

4.16 Tee Times and Amenity Fee. CITY will provide Hotel Resort Guests, Condominium Hotel Unit Owners, and Residential Owners access to the CITY's 36-hole golf course in accordance with adopted CITY policies concerning golf course access. Hotel Resort Guests, Condominium Hotel Unit Owners and Residential Owners shall, through the Hotel golf concierge, be permitted to reserve tee times consistent with CITY policy applicable to hotels throughout the CITY. Condominium Hotel Unit Owners and Residential Owners, and their spouses or significant others and minor children, shall be entitled to green fees equal to the fee charged to residents of the City of Indian Wells. Hotel Resort Guests shall be



entitled to green fees equal to the "hotel rate" established annually by CITY, or such more favorable green fee rates as may be charged to hotel guests of other resort hotels within the City. Condominium Hotel Unit Owners shall be permitted to benefit from any revenue sharing (in accordance with the terms of their management agreement) that develops from room nights booked in their Condominium Hotel Units as a result of the foregoing amenities being available. The rights applicable to Condominium Hotel Unit Owners shall be contingent upon the SJR's (or its permitted successor's or assignee's) construction and management or maintenance of Condominium Hotel Units, including through the use of a Hotel Operator.

SJR or the Hotel Operator may issue identification cards approved by the CITY to Condominium Hotel Unit Owners which shall constitute satisfactory identification for purposes of obtaining the rights pursuant to this Section 4.16. The foregoing rights to tee times and green fees constitute covenants that shall run with the land and are transferable to SJR, Condominium Hotel Unit Owners, Residential Owners, and the successors and assigns of each, but shall not be assignable or transferable without a concurrent transfer of the subject property. CITY shall cooperate in good faith with SJR to prepare, execute and record such written instruments as are necessary to create such covenants that shall exist in perpetuity for so long as CITY operates the golf course and offers tee-times, green fee rates to residents of the City of Indian Wells and "hotel rate" green fees to Hotel Resort Guests. In exchange for such rights, each Condominium Hotel Unit Owners shall pay the CITY, in perpetuity, an annual amenity fee in the amount of Two Hundred Dollars (\$200.00) per month per Condominium Hotel Unit owned by such Owner (the "Amenity Fee"), payable in arrears annually on or before June, but only after the recordation of a deed first conveying each such Condominium Hotel Unit to a member of the public. The payment of the Amenity Fee shall only be applicable if the Hotel is constructed and operated as a "condominium hotel" as defined in the Condominium Hotel Zoning Ordinance, as such ordinance exists as of the Effective Date of this Agreement. In addition to any other remedies available to CITY to collect such Amenity Fee, OWNER agrees, on behalf of itself, and its successors in interest to any portion of the Hotel Component (including, without limitation, any and all future condo hotel unit owners within the Hotel Component), that the CITY may collect the Amenity Fee annually (in advance for the following year) on the County Tax Collector's secured property tax roll.

4.17 Non-Residential Character of Project. SJR hereby agrees to include within the Sales Disclosure Documents and CC&Rs for any portion of the Project constituting a Condominium Hotel the following:

4.17.1 Disclosure of Transient Nature of Use. All Sales Disclosure Documents and CC&Rs shall state for information purposes and as a covenant that: (a) the Hotel Component constitutes commercial property and not residential property; (b) neither ownership of a Condominium Hotel Unit nor occupancy of a Condominium Hotel Unit, regardless of the period of such occupancy, shall constitute permanent residency therein; and (c) each Condominium Hotel Unit Owner shall be required to comply with the restrictions contained in the Condominium Hotel Ordinance and this Agreement concerning Personal Use.

4.17.2 Amendment. Any amendment to the CC&R's that affect the provisions required by Section 4.17 shall first be consented to and approved by the City Council, which consent may be granted, denied, or conditioned in the City Council's sole and absolute discretion.

4.17.3 Applicability. The provisions of this Section 4.17 shall apply to the Condominium Hotel Units only.



4.18 Additional Community Space and Services. In addition to City Office Space provided under Section 4.10 above, SJR shall also enter into a lease with a nonprofit/not for profit cultural, educational or community focused organization mutually acceptable to SJR and the City to provide up to 3,500 square feet lease of space within the Retail Component for non-commercial, cultural, educational or community purposes (the "Community Space"). The lease for the Community Space shall be for an indefinite term expiring upon the earlier of: (1) the written notice of surrender of the Community Space by the lessee; (2) the failure of the lessee to open to the public, occupy or operate the Community Space, where such failure continues for a period of 180 consecutive days during the lease term; or (3) cessation of operation of the Retail/Office Component by SJR. SJR shall provide a basic building shell to the Community Space tenant, together with a standard tenant improvement allowance not to exceed \$20/square foot. The lease for the Community Space shall not require the payment of base rent, but shall only require the tenant to pay its own utility, insurance, tax (if any) and janitorial costs for the Community Space and improvements therein, as well as its pro rata share of common area expenses (including, but not limited to, taxes, insurance, utility and maintenance costs for the Retail Component of the Property). Subject to the foregoing, the exact location, size, and configuration of the Community Space and the other terms of the lease therefore shall be as agreed upon between SJR and the Community Space tenant. The City Office Space and Community Space shall not be subject to, or included within, otherwise applicable City parking requirements for the Retail Component. If the Community Space is utilized for the creation or public display of art, the lease of the Community Space pursuant to this section shall be deemed to satisfy any requirement of fee that would otherwise be imposed on or payable by Owner or the Project to fund public art or art in public places. To further reinforce the positioning and operation of the Project as Indian Well's "Town Center", SJR will specifically market a portion of the Retail Component to commercial businesses which include "local post office" type services (such as Mail Boxes, Etc. or the Postal Connection) and book store/reading room/community café type services.

## 5. PURCHASE OF ADDITIONAL LAND.

The CITY agrees to sell to SJR and SJR agrees to purchase from the CITY approximately eight and four-tenths of an acre (8.4 acres) of undeveloped land (the "City Property") lying to the west of the Residential Component, as shown on the Site Plan and more particularly described in Exhibit "A". The purchase price for the City Property shall be \$6,222,216 ("City Property Purchase Price"). Such transaction shall be evidenced by a purchase and sale form approved by CITY and SJR, provided however, that such form shall provide that escrow shall close on the City Property at or prior to the time of issuance of building permits for the first phase of the Residential Component. The purchase and sale form shall provide for the conveyance of title to the City Property to SJR free and clear of all (i) adverse claims; (ii) monetary liens and encumbrances; and (iii) any covenants, conditions, restrictions or easements other than those of record as of the Effective Date or those created with the consent of SJR. The City Property Purchase Price shall be adjusted monthly from July 2006 by the ENR Construction Cost Index for the combined increase in building cost and skilled labor up to the close of escrow. SJR reserves the right to effectuate an exchange of the City Property and CITY agrees to cooperate in effectuating such an exchange and to execute such additional escrow instructions, deeds, documents or instruments as may be necessary or convenient for that purpose, provided that such exchange shall not delay the close of the purchase of the City Property and the City shall incur no additional costs, expenses or liabilities in connection with such an exchange and further provided that SJR shall hold City harmless of any liability, damages or costs including reasonable attorney fees that may arise from City's participation in the exchange. Notwithstanding anything to the contrary contained in this Agreement, (1)



City agrees that this Agreement will not be amended or cancelled as to the City Property without SJR's written consent (unless this Agreement is cancelled as to all portions of the Property; and (2) the rights and obligations under this Section 5 shall be personal to SJR and shall not run with or bind any portion of the Property or any Transferee, successor or assign thereof. Upon the closing of the purchase and sale of the City Land, the City Land shall become a part of Planning Area 3 as shown on the Specific Plan.

6. REVIEW FOR COMPLIANCE.

6.1 Annual Review. The CITY shall review this Agreement annually ("Annual Review"), on or before each anniversary date of the Effective Date and/or conduct Special Review, as described in Section 6.2, in order to ascertain the good faith compliance by OWNER with the terms of the Agreement. OWNER shall submit a report describing its compliance with the Development Agreement during the immediately preceding twelve (12) months, in the form required by the City Manager, within thirty (30) days after written notice from the City Manager, which notice shall include the form of the report.

6.2 Special Review. A special review of compliance with this Agreement may be made either by agreement of the parties or by initiation in one or more of the following ways:

(a) Recommendation of the Planning staff, including, without limitation, based on an alleged default of OWNER pursuant to Section 7.3;

(b) Affirmative vote of a majority of the City Council.

6.3 Procedure for Annual Review and/or Special Review. With respect to either Annual Review or Special Review, the provisions of Section 16.40.080 of the Indian Wells Municipal Code shall be followed.

6.4 Certificate of Agreement Compliance. If, at the conclusion of an Annual Review or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon request by any OWNER, issue a Certificate of Agreement Compliance ("Certificate") to such OWNER stating that after the most recent periodic or special review and based upon the information known or made known to the Community Development Director and City Council that (1) this Agreement remains in effect and (2) such OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after a periodic or special review and shall state the anticipated date of commencement of the next periodic review. OWNER may record the Certificate with the County Recorder. Whether or not the Certificate is relied upon by assignees or other transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the periodic or special review, but was concealed from or otherwise not known to the Community Development Director or City Council.

7. DEFAULT AND REMEDIES.

7.1 Remedies in General. Each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement.



7.2 Specific Performance. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary equitable relief are a particularly appropriate remedy for the enforcement of this Agreement and therefore shall be available to the parties to this Agreement, and to their successors and assigns.

7.3 Termination of Agreement for Default. Either party may terminate this Agreement for any failure of the other party to perform any material duty or obligation of such other party under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, the non-defaulting party may terminate this Agreement pursuant to this Section only after providing written notice to the defaulting party of default setting forth the nature of the default and the actions, if any, required by the defaulting party to cure such default and, where the default can be cured, the defaulting party has failed to take such actions and cure such default within 90 days after the effective date of such notice or, in the event that such default cannot (with the exercise of commercially reasonable diligence) be cured within such 90 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 90 day period and to diligently proceed to complete such actions and cure such default.

## 8. LITIGATION.

8.1 General Plan Litigation. CITY has determined that this Agreement is consistent with its Comprehensive General Plan, as such General Plan exists as of the Effective Date ("General Plan"), and the Specific Plan, as such Specific Plan exists as of the Effective Date (hereinafter collectively, the "Plans") and that the Plans meet all requirements of law. SJR and WOODBRIDGE have reviewed the Plans and concur with CITY's determination. CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of any OWNER to develop the Property as contemplated by this Agreement as the result of any judicial determination that, as of the Effective Date, or at any time thereafter, the Plans, or any portions thereof, are invalid or inadequate or not in compliance with applicable law.

8.2 Third Party Litigation Concerning Agreement. OWNER shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its agents, officers and employees from any claim, action or proceeding brought by a third party against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the Entitlements, except any such claim, action or proceeding based on the Specific Plan or the General Plan. CITY shall promptly notify SJR and WOODBRIDGE of any claim, action, proceeding or determination included within this section 8.2, and CITY shall cooperate in the defense. If CITY fails to promptly notify SJR and WOODBRIDGE of any such claim, action, proceeding or determination, or if CITY fails to cooperate in the defense, SJR or WOODBRIDGE, as applicable, shall not thereafter be responsible to defend, indemnify, or hold harmless CITY. CITY may, in its discretion, participate in the defense of any such claim, action, proceeding or determination.

8.3 Environmental Assurances. OWNER shall indemnify and hold CITY, its officers, agents, and employees free and harmless from any liability, based or asserted, upon any act or omission of SJR or WOODBRIDGE, or both, and as long as there is no contributory act by CITY its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors, for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and



groundwater conditions, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents and employees in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

8.4 Reservation of Rights. With respect to Section 8.1 herein, OWNER reserves, and with respect to Sections 8.2 and 8.3 herein, CITY reserves, the right to approve the attorney(s) that the indemnifying party selects, hires or otherwise engages to defend the indemnified party hereunder, which approval shall not be unreasonably withheld.

8.5 Challenge to Entitlements. By accepting the benefits of this Agreement, OWNER, on behalf of itself and its successors in interest, hereby expressly agrees and covenants not to sue or otherwise challenge any Land Use Regulation or Entitlements affecting the Property and in effect as of the Effective Date except to the extent any such Land Use Regulation and/or Entitlement may be improperly or illegally applied to OWNER. Such agreement and covenant includes, without limitation, the covenant against any direct suit by OWNER or its successor in interest, or any participation, encouragement or involvement whatsoever that is adverse to CITY by OWNER or its successor in interest, other than as part of required response to lawful orders of a court or other body of competent jurisdiction.

9. MORTGAGEE PROTECTION. The parties hereto agree that this Agreement shall not prevent or limit OWNER or its successors and assigns, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon or other interests of OWNER by any mortgage, deed of trust or other security device securing financing with respect to the Property or other interests of OWNER. CITY acknowledges that the Mortgagees providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such Mortgagees to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold, condition or delay its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) Any Mortgagee that has submitted a request in writing to the CITY in the manner specified herein for giving notices shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, deed in lieu of such foreclosure or



otherwise shall take the Property, or part thereof, subject to the terms of this Agreement. Notwithstanding any other provision of this Agreement to the contrary, no Mortgagee shall have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder, and further provided that any sale, transfer or assignment by any Mortgagee in possession shall be subject to the provisions of Section 2.4 of this Agreement.

## 10. MISCELLANEOUS PROVISIONS.

10.1 Recordation of Agreement. This Agreement and any amendment or cancellation thereof shall be recorded with the Riverside County Recorder by the Clerk of the City Council within ten (10) days after the CITY enters into the Agreement, in accordance with Section 65868.5 of the Government Code. If the parties to this Agreement or their successors in interest amend or cancel this Agreement, or if the CITY terminates or modifies this Agreement as provided herein for failure of the OWNER to comply in good faith with the terms and conditions of this Agreement, the City Clerk shall have notice of such action recorded with the Riverside County Recorder.

10.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements that are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

10.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provisions of Section 4 of this Agreement, and the payment of the Development Impact Fees are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

10.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

10.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

10.6 Singular and Plural. As used herein, the singular of any word includes the plural.



10.7 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

10.8 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

10.9 Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

10.10 Force Majeure. Neither party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the party's control, (including the party's employment force), government regulations, court actions (such as restraining orders or injunctions), or other causes beyond the party's control. If any such events shall occur, the Term of this Agreement and the time for performance by either party of any of its obligations hereunder shall be extended automatically for the period of time that such events prevented such performance, provided that the Term of this Agreement shall not be extended under any circumstances for more than five (5) years.

10.11 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the party benefited thereby of the covenants to be performed hereunder by such benefited party.

10.12 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement, including, without limitation, any and all Condominium Hotel Unit Owners. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to Development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and (c) is binding upon each party, each of OWNER's assignees and successors in interest, during their respective ownership of the Property or any portion thereof.

10.13 Counterparts. This Agreement may be executed by the parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the parties had executed the same instrument.

10.14 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Superior Court of the County of Riverside, State of California, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

10.15 Project as a Private Undertaking. It is specifically understood and agreed by and between the parties hereto that the Development of the Project is a private undertaking, that neither party is acting



as the agent of the other in any respect hereunder, and that each party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

10.16 Further Actions and Instruments. Each of the parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either party at any time, the other party shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

10.17 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

10.18 Agent for Service of Process. In the event SJR or WOODBRIDGE is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venturer resident of the State of California, or it is a foreign corporation, then in any such event, SJR or WOODBRIDGE, as applicable, shall file with the Community Development Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon such party. If for any reason service of such process upon such agent is not feasible, then in such event such party may be personally served with such process out of this County and such service shall constitute valid service upon such party. SJR and WOODBRIDGE is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. SJR and WOODBRIDGE for itself, assigns and successors hereby waives the provisions of the Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638). Copies of any service of process served on SJR or WOODBRIDGE, as applicable, shall be provided to any permitted assignee of such party with respect to any Project Component signed in accordance with Section 2.7 of this Agreement.

10.19 Authority to Execute. The person or persons executing this Agreement on behalf of each party warrants and represents to the other that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity or the CITY, as the case may be, and further warrants and represents that he or she/they has/have the authority to bind CITY or such OWNER, as the case may be, to the performance of the respective party's obligations hereunder.

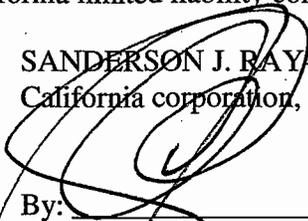


IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement on the last day and year set forth below.

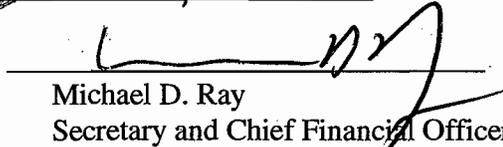
**“SJR”**

SANDERSON J. RAY-INDIAN WELLS, LLC,  
a California limited liability company

By: SANDERSON J. RAY-INDIAN WELLS, INC., a  
California corporation, Its Sole Member

By:   
Chase O. Sanderson, Jr.  
President

Dated: June 26, 2008

By:   
Michael D. Ray  
Secretary and Chief Financial Officer

Dated: June 26, 2008

**“WOODBIDGE”**

WOODBIDGE INDIAN WELLS LLC,  
a Delaware limited liability company

By: Woodbridge Riverside County, LLC  
a California limited liability company,  
Its Managing Member

By: Woodbridge Homes, Inc.,  
a California corporation  
Its Manager

By: \_\_\_\_\_  
Todd S. Cunningham,  
President

Dated: \_\_\_\_\_





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

## NOTARY CLARITY

Under the provisions of Government Code 27361.7, I certify under the penalty of perjury that the notary seal on the document to which this statement is attached reads as follows:

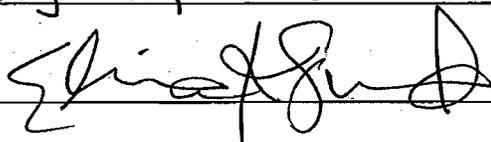
Name of Notary: Elaina K. Sword

Commission #: 1780755

Place of Execution: 2699 White Rd, Irvine CA 92614

Date Commission Expires: Nov. 18, 2011

Date: Aug. 20, 2008

Signature: 

Print Name: Elaina K. Sword



# CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Orange

On 6-26-08 before me, Elaina K. Sward, notary public  
Date Here Insert Name and Title of the Officer

personally appeared Chase O. Sanderson Jr. and Michael  
Name(s) of Signer(s)

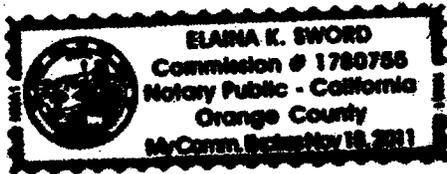
D. Ray

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Elaina K. Sward*  
Signature of Notary Public



Place Notary Seal Above

## 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: \_\_\_\_\_

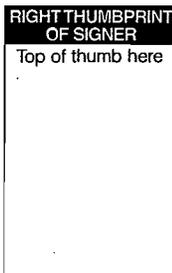
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

### Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

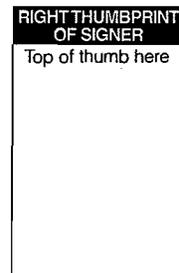
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

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



Signer Is Representing: \_\_\_\_\_



IN WITNESS WHEREOF, the parties hereto have executed this Development Agreement on the last day and year set forth below.

**“SJR”**

SANDERSON J. RAY-INDIAN WELLS, LLC,  
a California limited liability company

By: SANDERSON J. RAY-INDIAN WELLS, INC., a  
California corporation, Its Sole Member

By: \_\_\_\_\_  
Chase O. Sanderson, Jr.  
President

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Michael D. Ray  
Secretary and Chief Financial Officer

Dated: \_\_\_\_\_

**“WOODBIDGE”**

WOODBIDGE INDIAN WELLS LLC,  
a Delaware limited liability company

By: Woodbridge Riverside County, LLC  
a California limited liability company,  
Its Managing Member

By: Woodbridge Homes, Inc.,  
a California corporation  
Its Manager

By: \_\_\_\_\_  
Todd S. Cunningham,  
President

Dated: 6/30/08



STATE OF CALIFORNIA

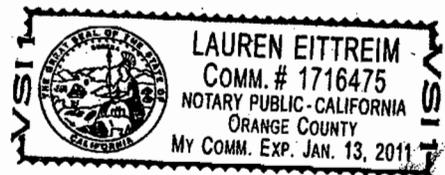
COUNTY OF Orange

On June 30, 2008 before me, Lauren Eittreim, a Notary Public,  
personally appeared Todd S. Cunningham

who 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/hers/their authorized capacity(ies), and that by his/hers/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Lauren Eittreim (Seal)

**OPTIONAL INFORMATION**

**Capacity Claimed by Signer**

- Individual
- Corporate Officer  
\_\_\_\_\_ Title
- Partner(s)
- Attorney-in-Fact
- Trustee(s)
- Guardian/Conservator
- Other: \_\_\_\_\_

**Description of Attached Document**

\_\_\_\_\_ Title or Type of Document

\_\_\_\_\_ Date of Document

\_\_\_\_\_ Number of Pages



“CITY”

CITY OF INDIAN WELLS, a California municipal corporation and charter law city

By: Mary T. Roche  
Mary T. Roche, Mayor

Dated: July 23, 2008

ATTEST:

[Signature], Chief Deputy  
City Clerk 08-08-08

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP,

Stephen P. Deutsch  
City Attorney

[Signature Page to Development Agreement]



**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of California

County of Riverside }

On July 23, 2008 before me, Jill Moon, Notary Public  
Date Here Insert Name and Title of the Officer

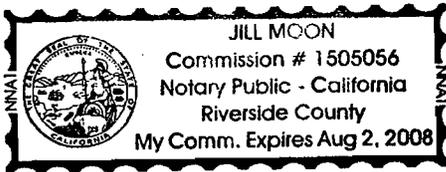
personally appeared Mary T Roche, Mayor  
Name(s) of Signer(s)

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Jill Moon  
Signature of Notary Public



Place Notary Seal Above

**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: \_\_\_\_\_

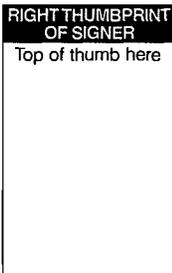
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_

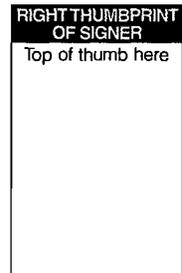
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

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



Signer Is Representing: \_\_\_\_\_



**EXHIBIT "A"**

Legal Description of the Property

**RETAIL/OFFICE COMPONENT**

REAL PROPERTY IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL ONE

PARCEL 3 AS SHOWN BY PARCEL MAP NO. 28833 ON FILE IN BOOK 195 PAGES 10 THROUGH 15 OF PARCEL MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

EXCEPTING THEREFROM AN UNDIVIDED 15/16THS OF ALL OIL, GAS, MINERAL AND OTHER HYDROCARBON SUBSTANCES IN AND UNDER SAID LAND, AS RESERVED BY HOWARD CHARTER, IN DEED RECORDED JULY 23, 1956 IN BOOK 1947 PAGE 92 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPTING THEREFROM ONE-SIXTEENTH OF ALL COAL, OIL, GAS AND OTHER MINERAL DEPOSITS CONTAINED IN SAID LAND, AS PROVIDED BY AN ACT OF THE LEGISLATURE, APPROVED MAY 25, 1921 (CHAPTER 303, STATUTES OF CALIFORNIA 1921) AND RESERVED IN THAT CERTAIN PATENT RECORDED MAY 12, 1928 IN BOOK 9, PAGE 310 OF PATENTS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA;

ALSO EXCEPTING THEREFROM ANY INTEREST IN THAT CERTAIN UNLOCATED 20.00 FOOT SQUARE WELL SITE REFERRED TO IN DEED FROM HARRY L. BOYNTON, ET UX, TO JOHN D. CARTER, DATED MARCH 20, 1930 IN BOOK 859 PAGE 118 OF DEEDS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA

PARCEL TWO

THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING ALL OF PARCELS 4 AND A PORTION OF PARCEL 5 OF PARCEL MAP NO. 28833 RECORDED IN BOOK 195, PAGES 10 THROUGH 15, OF PARCEL MAPS, IN THE OFFICE OF THE COUNTY RECORDED OF SAID COUNTY OF RIVERSIDE, MORE PARTICULARLY DESCRIBED AS FOLLOWS.

BEGINNING AT THE NORTHEAST CORNER OF SAID PARCEL 4;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL 4, SOUTH 89°59'15" WEST 536.12;

THENCE SOUTH 00°08'34" EAST 316.00 FEET;

THEN SOUTH 89°15'15" EAST 394.50 FEET;

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THENCE SOUTH 00°08'34" EAST 410.94 FEET;

THENCE EAST 40.55 FEET;

THENCE SOUTH 00°08'34" EAST 200.16 FEET

THENCE EAST 194.00 FEET, TO A POINT ON THE EASTERLY LINE OF SAID PARCEL 5;

THENCE ALONG SAID EASTERLY LINE, SOUTH 00°08'34" EAST 15.98 FEET TO THE SOUTHWESTERLY CORNER OF SAID PARCEL 4;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 4 THROUGH THE FOLLOWING TWO (2) COURSES; NORTH 89°51'26" EAST 122.53 FEET;

THENCE NORTH 44°44'30" EAST 413.74 FT TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF WASHINGTON STREET AS SHOWN ON SAID PARCEL MAP NO. 28833;

THENCE LEAVING SAID SOUTHERLY LINE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE THROUGH THE FOLLOWING TWO (2) COURSE:  
NORTH 45°15'30" WEST 175.56 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 2067.00 FEET;

THENCE ALONG SAID CURVE NORTHWESTERLY 653.73 FEET THROUGH A CENTRAL ANGLE OF 18°07'15", A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS SOUTH 63°51'45" WEST, SAID POINT ALSO BEING THE POINT OF BEGINNING.

EXCEPTING THEREFROM THAT PORTION LYING WITH LOT "E" OF SAID PARCEL MAP NO. 28833.

ALSO KNOWN AS PARCEL A OF LOT LINE ADJUSTMENT 7-05-03 RECORDED APRIL 27, 2006 AS DOCUMENT NO. 20060303159 OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY.

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CITY LAND

THE EASTERLY 8.40 ACRES OF THE FOLLOWING LAND;

REAL PROPERTY IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS;

PARCEL "A" OF LOT LINE ADJUSTMENT NO. 7-05-04 RECORDED MARCH 10, 2006 AS INSTRUMENT NO. 2006-0174897 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

THAT CERTAIN PARCEL OF LAND SITUATED IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING ALL OF THAT PROPERTY DESCRIBED IN A GRANT DEED RECORDED MARCH 7, 2003 AS INSTRUMENT NO. 2003-163830 TOGETHER WITH A PORTION OF PARCEL 2 OF PARCEL MAP NO. 28833 RECORDED IN BOOK 195 PAGES 10 THROUGH 15, INCLUSIVE, OF PARCEL MAPS, BOTH IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY OF RIVERSIDE, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, S.B.M., AS CALCULATED PER SAID PARCEL MAP NO. 2883;

THENCE SOUTH 00°06'53" EAST 27.81 FEET TO THE TRUE POINT OF BEGINNING, SAID POINT BEING ON THE SOUTHERLY RIGHT-OF-WAY LINE OF MILES AVENUE AS CALCULATED PER SAID PARCEL MAP 28833, SAID POINT ALSO BEING ON A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 5050.99 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS NORTH 05°21'06 EAST;

THENCE ALONG SOUTHERLY RIGHT-OF-WAY LINE THROUGH THE FOLLOWING THREE (3) COURSE;

ALONG SAID CURVE EASTERLY 473.70 FEET THROUGH A CENTRAL ANGLE OF 05°22'28";

THENCE TANGENT FROM SAID CURVE NORTH 89°58'38" EAST 856.46 FEET;

THENCE NORTH 83°37'37" EAST 505.62 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A";

THENCE LEAVING SAID SOUTHERLY RIGHT-OF-WAY LINE, SOUTH 00°09'06" EAST 1468.73 FEET TO A POINT ON THE SOUTHERLY LINE OF AN EASEMENT TO THE COACHELLA VALLEY WATER DISTRICT FOR STORM WATER CHANNEL PURPOSES, AS DESCRIBED IN A DOCUMENT RECORDED DECEMBER 31, 1963 AS INSTRUMENT NO. 137804, SAID POINT BEING ON THE SOUTHERLY LINE OF PARCEL 2 OF SAID PARCEL MAP NO. 28833, SAID POINT ALSO BEING ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 4000.00 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS NORTH 07°03'00" EAST;

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THENCE ALONG SAID SOUTHERLY LINE AND SAID CURVE WESTERLY 515.13 FEET THROUGH A CENTRAL ANGLE OF 07°22'43" TO A POINT ON THE EASTERLY LINE OF THAT PARCEL OF LAND CONVEYED TO THE COACHELLA VALLEY WATER DISTRICT PER GRANT DEED RECORDED MAY 20, 1965 AS INSTRUMENT NO. 58614, SAID POINT ALSO BEING THE SOUTHWEST CORNER OF SAID PARCEL 2;

THENCE NON-TANGENT FROM SAID CURVE ALONG SAID EASTERLY LINE NORTH 00°09'06" WEST 94.05 FEET TO THE NORTHEAST CORNER OF SAID GRANT DEED;

THENCE ALONG THE NORTHERLY LINE OF SAID PARCEL OF LAND, SOUTH 89°56'14" WEST 310.97 FEET TO A POINT OF THE SOUTHERLY LINE OF SAID STORM WATER CHANNEL, SAID POINT BEING ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 4000.900 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS NORTH 19°05'08" EAST;

THENCE ALONG SAID CURVE AND SAID SOUTHERLY LINE, NORTHWESTERLY 828.06 FEET THROUGH A CENTRAL ANGLE OF 11°51'40";

THENCE CONTINUING ALONG SAID SOUTHERLY LINE, TANGENT FROM SAID CURVE NORTH 59°03'12" WEST 316.41 FEET TO THE WEST LINE OF SAID NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24;

THENCE NORTH 00°06'53" WEST 7874.63 FEET TO THE TRUE POINT OF BEGINNING;

CONTAINING 50.123 ACRES, MORE OR LESS

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RESIDENTIAL COMPONENT

REAL PROPERTY IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL "B" OF LOT LINE ADJUSTMENT NO. 7-05-04 RECORDED MARCH 10, 2006 AS INSTRUMENT NO. 2006-174897 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, S.B.M., AS CALCULATED PER PARCEL MAP NO. 28833 RECORDED IN BOOK 195, PAGES 10 THROUGH 15 OF PARCEL MAPS IN THE OFFICE OF THE COUNTY RECORDER OF THE COUNTY OF RIVERSIDE;

THENCE SOUTH 00°06'53" EAST 27.81 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY OF MILES AVENUE AS CALCULATED PER SAID PARCEL MAP 28833, SAID POINT BEING ON A NON-TANGENT CURVE NORTHERLY AND HAVING A RADIUS OF 5050.00 FEET, A RADIAL LINE OF SAID CURVE FROM POINT BEARS NORTH 05°21'06" EAST;

THENCE ALONG SOUTHERLY RIGHT-OF-WAY LINE THROUGH THE FOLLOWING THREE (3) COURSES;

ALONG SAID CURVE EASTERLY 473.70 FEET THROUGH A CENTRAL ANGLE OF 05°22'28";

THENCE TANGENT FROM SAID CURVE NORTH 89°58'38" EAST 856.46 FEET;

THENCE NORTH 89°33'37" EAST 505.62 FEET TO THE TRUE POINT OF BEGINNING AND HEREINAFTER REFERRED TO AS POINT "A";

THENCE SOUTH 00°09'06" EAST 1468.73 FEET FROM POINT "A" TO A POINT ON THE SOUTHERLY LINE OF AN EASEMENT TO THE COACHELLA VALLEY WATER DISTRICT FOR STORM WATER CHANNEL PURPOSES, AS DESCRIBED IN A DOCUMENT RECORDED DECEMBER 31, 1963 AS INSTRUMENT NO. 137804, SAID POINT BEING ON THE SOUTHERLY LINE OF PARCEL 2 OF SAID PARCEL MAP NO. 28833, SAID POINT ALSO BEING ON A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 4000.00 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS NORTH 07°03'00" EAST;

THENCE ALONG SAID SOUTHERLY LINE OF PARCELS 1 AND 2 THROUGH THE FOLLOWING SIX (6) COURSES ALONG SAID CURVE EASTERLY 562.18 FEET THROUGH A CENTRAL ANGLE OF 08°08'10";

THENCE TANGENT FROM SAID CURVE NORTH 88°59'50" EAST 120.06 FEET;

THENCE SOUTH 26°15'24" WEST 181.49 FEET;

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THENCE SOUTH 82°33'16" EAST 264.12 FEET;

THENCE SOUTH 26°15'24" EAST 42.23 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 300.00 FEET;

THENCE ALONG SAID CURVE NORTHEASTERLY 272.55 FEET THROUGH A CENTRAL ANGLE OF 52°03'09";

THENCE NON-TANGENT FROM SAID CURVE NORTH 00°26'23" WEST 565.10 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 547.05 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS NORTH 19°49'04" EAST;

THENCE ALONG SAID CURVE NORTHWESTERLY 709.83 FEET THROUGH A CENTRAL ANGLE OF 74°20'40";

THENCE NON-TANGENT FROM SAID CURVE NORTH 00°26'23" WEST 129.20 FEET;

THENCE SOUTH 89°33'37" WEST 103.98 FEET;

THENCE NORTH 00°26'23" WEST 200.44 FEET;

THENCE NORTH 45°00'00" WEST 35.69 FEET;

THENCE NORTH 00°26'23" WEST 25.00 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "B", SAID POINT BEING ON SAID SOUTHERLY RIGHT-OF-WAY LINE OF MILES AVENUE;

**EXCEPTING THEREFROM THOSE CERTAIN PARCELS OF LAND SITUATED IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, BEING A PORTION OF THAT PROPERTY DESCRIBED IN PARCEL MAP WAIVER 7-05-04 RECORDED MARCH 10, 2006 AS INSTRUMENT NO. 2006-0174897 IN THE OFFICE OF THE COUNTY RECORDER, OF SAID COUNTY OF RIVERSIDE, MORE PARTICULARLY DESCRIBED AS FOLLOWS;**

**BEGINNING AT THE NORTHWEST CORNER OF PARCEL "C" AS DESCRIBED IN SAID PARCEL MAP WAIVER 07-05-04;**

THENCE ALONG THE WEST LINE OF SAID PARCEL "C" THROUGH THE FOLLOWING COURSES:  
SOUTH 00°26'23" EAST 25.00 FEET;

THENCE SOUTH 45°00'00" EAST 35.69 FEET;

THENCE SOUTH 00°26'23" EAST 100.57 FEET;

THENCE LEAVING SAID WEST LINE OF PARCEL "C" SOUTH 89°33'37" WEST 87.64 FEET;

THENCE NORTH 57°10'17" WEST 46.03 FEET;

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THENCE NORTH 24°38'40" WEST 21.00 FEET TO THE BEGINNING OF A TANGENT CURVE  
CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 120.50 FEET

THENCE ALONG SAID CURVE NORTHWESTERLY 80.87 FEET THROUGH A CENTRAL ANGLE  
OF 38°17'01"

THENCE NON-TANGENT FORM SAID CURVE NORTH 00°26'23" WEST AND 48.97 FEET;

THENCE NORTH 89°33'37" EAST 164.25 FEET TO THE POINT OF BEGINNING

**HOTEL COMPONENT**

REAL PROPERTY IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF  
CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL 1:

PARCEL "C" OF LOT LINE ADJUSTMENT NO. 7-05-04, RECORDED MARCH 10, 2006 AS  
INSTRUMENT NO. 2006-0174897 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA  
MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE AFOREMENTIONED POINT "B" , AS DESCRIBED IN PARCEL "B", OF LOT  
LINE ADJUSTMENT NO. 7-05-04, RECORDED 3/10/2006 AS DST#2006-0174897

THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF MILES AVENUE, NORTH 89°33'37"  
EAST OF 63.51 FEET TO THE NORTHWEST CORNER OF LOT "D" AS SHOWN ON SAID PARCEL  
MAP NO. 28833;

THENCE ALONG THE WESTERLY LINE OF SAID LOT "D", SOUTH 00°09'06" EAST 150.00 FEET;

THENCE ALONG THE WESTERLY LINE OF SAID LOT "D", NORTH 89°33'37" EAST 150.00 FEET

THENCE ALONG THE EASTERLY LINE OF SAID LOT "D", NORTH 00°09'06" WEST 150.00 FEET  
TO THE SAID SOUTHERLY RIGHT-OF-WAY LINE OF MILES AVENUE;

THENCE LEAVING SAID EASTERLY LINE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE,  
NORTH 89°33'37" EAST 483.93 FEET TO A POINT ON THE SOUTHWESTERLY RIGHT-OF-WAY  
LINE OF WASHINGTON STREET AS SHOWN ON SAID PARCEL MAP NO. 28833;

THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF WASHINGTON STREET  
THROUGH THE FOLLOWING NINE (9) COURSES:  
SOUTH 64°55'18" EAST 18.08 FEET;

THENCE SOUTH 45°15'30" EAST 56.47 FEET TO THE BEGINNING OF A TANGENT CURVE  
CONCAVE SOUTH WESTERLY AND HAVING A RADIUS OF 36.00 FEET;

THENCE ALONG SAID CURVE SOUTHWESTERLY 19.28 FEET THROUGH A CENTRAL ANGLE OF

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30°41'00" TO A POINT OF HAVING A RADIUS OF 64.00 FEET. A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS NORTH 75°25'30" EAST.

THENCE ALONG SAID CURVE SOUTHEASTERLY 34.27 FEET THROUGH CENTRAL ANGLE OF 30°41'00".

THENCE TANGENT FROM SAID CURVE SOUTH 45°15'30" EAST 50.00 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 64.00 FEET;

THENCE ALONG SAID CURVE SOUTHEASTERLY 34.27 FEET THROUGH A CENTRAL ANGLE OF 30°41'00" TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 36.00 FEET. A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS SOUTH 14°03'30" WEST;

THENCE ALONG SAID CURVE SOUTHEASTERLY 19.28 FEET THROUGH CENTRAL ANGLE OF 30°41'00";

THENCE TANGENT FROM SAID CURVE SOUTH 45°15'30" EAST 152.24 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 1945.00 FEET;

THENCE ALONG SAID CURVE SOUTHEASTERLY 1511.28 FEET THROUGH A CENTRAL ANGLE OF 44°3V 09" TO A NON-TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 2000.00 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS SOUTH 20°21'24" WEST, SAID POINT ALSO BEING THE SOUTHEAST CORNER OF PARCEL 1 AS SHOWN ON SAID PARCEL MAP NO. 28833;

THENCE ALONG THE SOUTHERLY LINE OF SAID PARCEL 1 THROUGH THE FOLLOWING THREE (3) COURSES;

LEAVING SAID SOUTHWESTERLY RIGHT-OF-WAY LINE ALONG SAID CURVE WESTERLY 745.49 FEET THROUGH A CENTRAL ANGLE OF 21°21'24";

TANGENT FROM SAID CURVE SOUTH 88°59'50" WEST 263.21 FEET TO A POINT ON A TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 300.00 FEET;

THENCE ALONG SAID CURVE WESTERLY 55.96 FEET THROUGH A CENTRAL ANGLE OF 10°41'07";

THENCE LEAVING SAID SOUTHERLY LINE OF PARCEL 1 NON-TANGENT FROM SAID CURVE NORTH 00°26'23" WEST 565.10 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 547/05 FEET, A RADIAL LINE OF SAID CURVE FROM SAID POINT BEARS NORTH 19°49'04" EAST.

THENCE ALONG SAID CURVE NORTHWESTERLY AND NORTHERLY 709.83 FEET THROUGH A CENTRAL ANGLE OF 74°20'40";

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THENCE NON-TANGENT FROM SAID CURVE NORTH 00°26'23" WEST 200.44 FEET; THENCE NORTH 45°00'00" WEST 35.69 FEET;

THENCE NORTH 00°26'23" WEST 25.00 FEET TO THE TRUST POINT OF BEGINNING CONTAINING 33.526 ACRES, MORE OR LESS.

PARCEL 2:

LOT "D" OF PARCEL MAO NO. 28833, AS SHOWN ON PARCEL MAP ON FILE IN BOOK 195, PAGES 10 THROUGH 15, INCLUSIVE, OF PARCEL MALES, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

Exhibit "A"

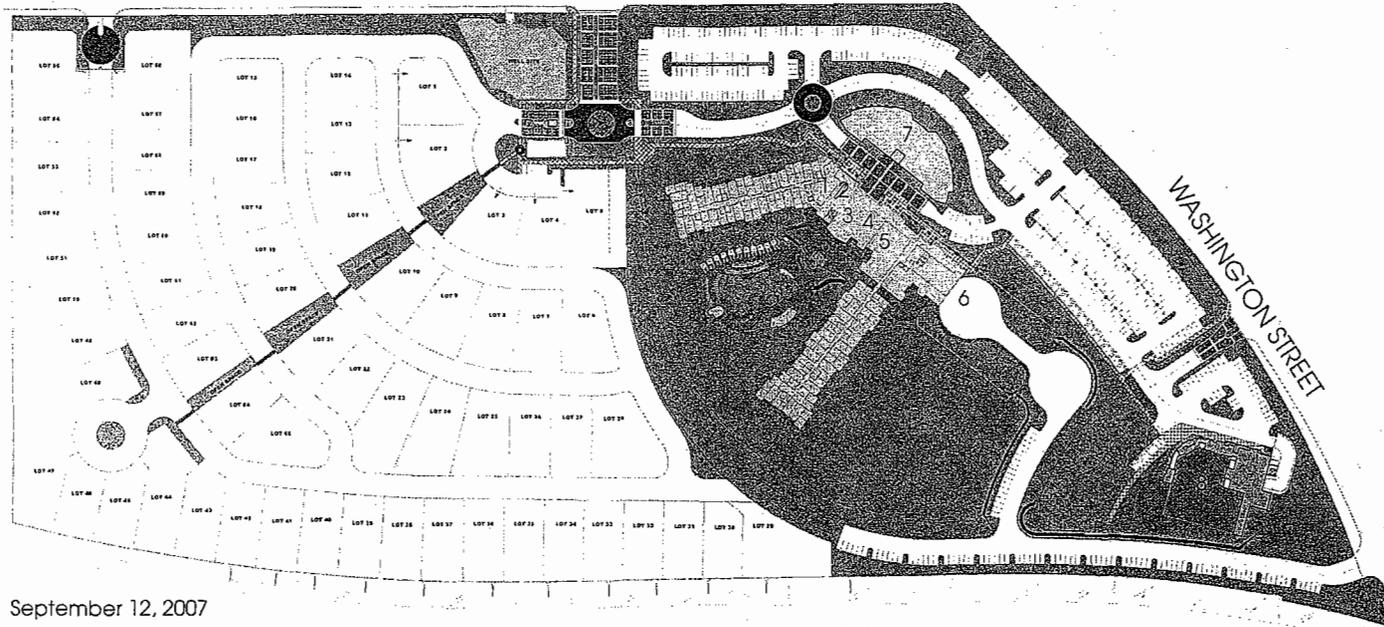


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# INDIAN WELLS TOWN CENTER

MILES AVENUE

Site Plan Hotel Phase I With Residential Component Adjacent



September 12, 2007

RESORT RESIDENTIAL  
65 LOTS

PHASE ONE  
RESORT HOTEL & SPA

1. FRONT OFFICE
2. FRONT DESK
3. LOBBY
4. LOUNGE
5. RESTAURANT
6. PHASE ONE LOWER LEVEL DELIVERY
7. SPA - 2 STORY
8. BALLROOM/RESTAURANT

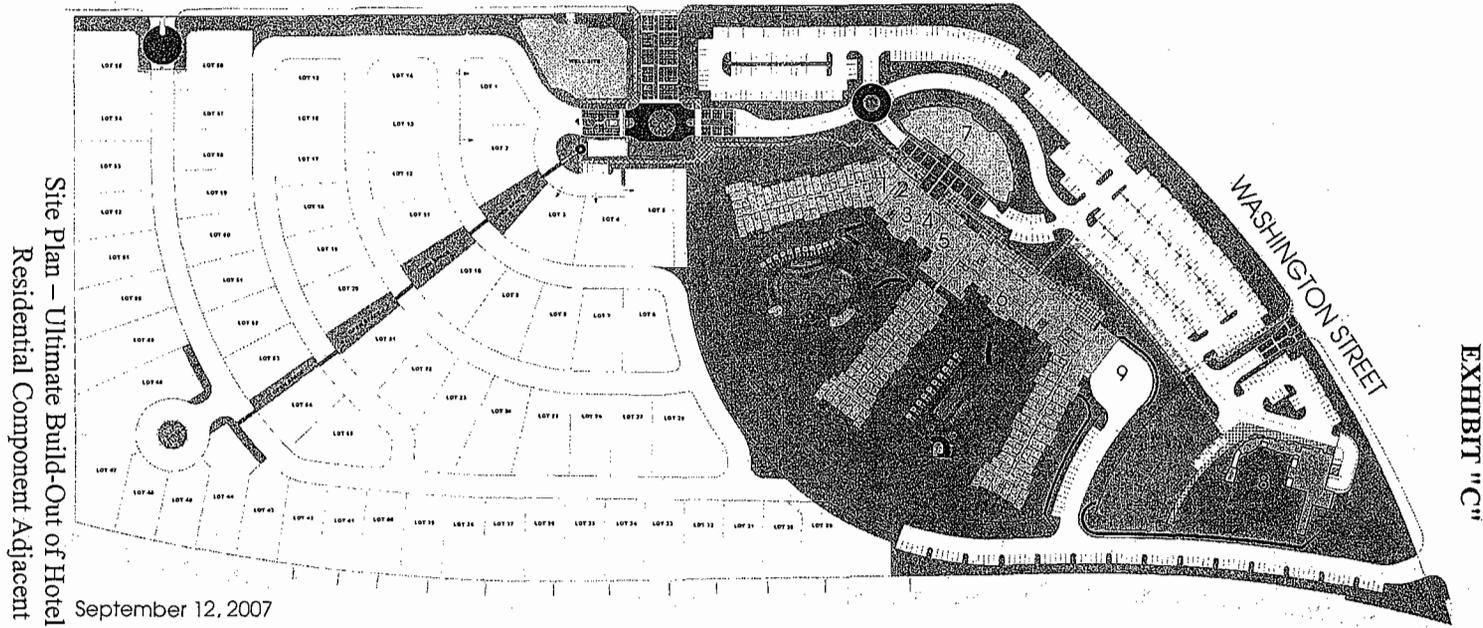
EXHIBIT "B"

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# INDIAN WELLS TOWN CENTER

MILES AVENUE



Site Plan - Ultimate Build-Out of Hotel With  
Residential Component Adjacent

September 12, 2007

RESORT RESIDENTIAL  
65 LOTS

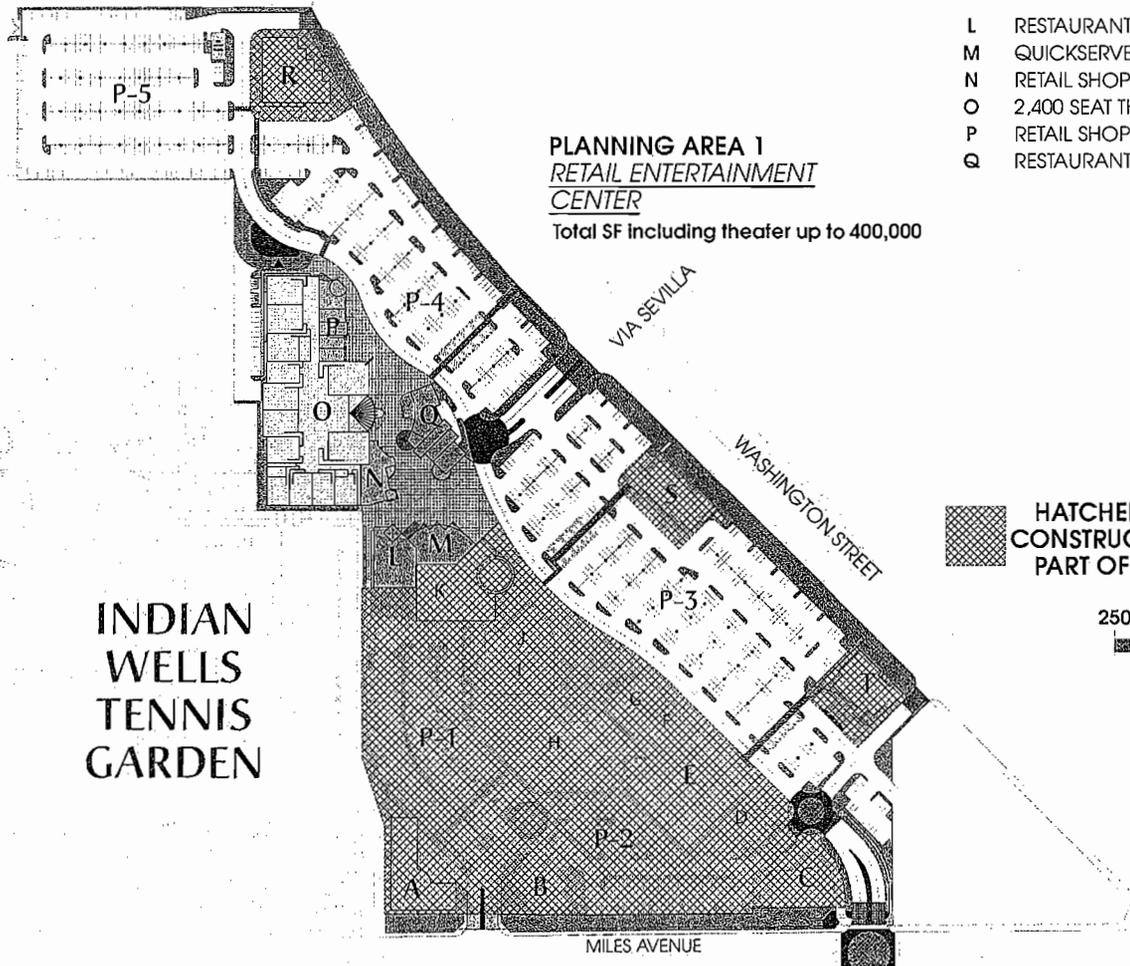
RESORT HOTEL & SPA

1. FRONT OFFICE
2. FRONT DESK
3. LOBBY
4. LOUNGE
5. RESTAURANT
6. RESTAURANT
7. SPA - 2 STORY
8. BALLROOM/RESTAURANT
9. LOWER LEVEL DELIVERY

EXHIBIT "C"

# INDIAN WELLS TOWN CENTER

PHASE ONE		FUTURE PHASES	
BLDG	USE	BLDG	USE
L	RESTAURANT/RETAIL	A	2 AND 3 STORY OFFICE
M	QUICKSERVE FOOD	B	RESTAURANT
N	RETAIL SHOPS	C	RETAIL
O	2,400 SEAT THEATER	D	RETAIL SHOPS
P	RETAIL SHOPS	E	MAJOR RETAILER
Q	RESTAURANTS	F	RETAIL SHOPS
		G	RESTAURANT
		H	RETAIL
		I	MAJOR RETAILER
		J	RETAIL
		K	MAJOR RETAILER
		R	2 AND 3 STORY OFFICE
		S	RESTAURANT
		T	RESTAURANT
		U	2ND FLOOR RETAIL/OFFICE



31 OCTOBER 2006

**EXHIBIT "D"**  
Site Plan  
Retail Component Depicting Phase I

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