



Recorded at request of:
Clerk, City Council
City of Indian Wells

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When recorded return to:
City of Indian Wells
44-950 Eldorado Drive
Indian Wells, California 92210-7497
Attention: City Clerk

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DEVELOPMENT AGREEMENT

A DEVELOPMENT AGREEMENT BETWEEN

CITY OF INDIAN WELLS

and

JERSON INVESTMENTS, LLC

DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter "Agreement") is entered into as of this 18th day of May, 2006 by and between the City of Indian Wells, a California municipal corporation and charter city (hereinafter "CITY"), and Jerson Investments, an Illinois limited liability company (hereinafter "OWNER"):

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 Section 65864, et seq. of the Government Code; and

WHEREAS, OWNER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with the rules and regulations of CITY; and

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

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

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

WHEREAS, all of the procedures of the California Environmental Quality Act have been met with respect to the Agreement pursuant to a determination by the CITY that an Environmental Assessment No. 2005-01 and that a Mitigation Monitoring Program is adequate to meet the California Environmental Quality Act; and

WHEREAS, this Agreement and the Project are consistent with the Indian Wells General Plan and the Specific Plan Project No. 2006-01; and

WHEREAS, Section 21.33.040(b) of the Indian Wells Municipal Code authorizes a development agreement to provide, among other things, terms and conditions that are different from, or in addition to, the provisions and requirements of Chapter 21.33 (Condo Hotel Requirements).

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 Property in accordance with this Agreement will provide

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substantial benefits to CITY and will further 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 Section 65864, et seq. of the Government Code are intended; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

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 follows. In the event a term that is used in this Agreement is not expressly defined herein, the definitions contained in Chapter 21.33 of the Indian Wells Municipal Code shall govern.

1.1.1 "Agreement" means this Development Agreement.

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

1.1.3 "City Council" means the duly elected city council of the City of Indian Wells.

1.1.4 "Condo-Hotel Ordinance" shall mean Ordinance No. 584, adopted on February 16, 2006, adding Chapter 21.33 to the Indian Wells Municipal Code, as amended by Ordinance No. 585 adopted on April 4, 2006.

1.1.5 "Development" means the improvement of the Property for the purposes of completing 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" does not include the maintenance, repair, reconstruction or redevelopment of any building, structure, improvement or facility after the construction and completion thereof.

1.1.6 "Development Agreement Policies" means those policies governing the adoption and implementation of development agreements, as such policies may be amended from time to time.

1.1.7 "Development Approvals" means all permits and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

- (a) specific plans and specific plan amendments;
- (b) tentative and final subdivision and parcel maps;
- (c) conditional use permits, public use permits and plot plans;
- (d) zoning;
- (e) grading and building permits.

1.1.8 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.9 "Development Impact Fee" a monetary exaction other than a tax or special assessment, 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 development project, but does not include fees specified in Government Code Section 66477, fees for processing applications for governmental regulatory actions or approvals, 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 which 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). The term "Development Impact Fee" expressly includes any impact, public facilities or impact fee as set forth in Section 202 of the Development Agreement Policies.

1.1.10 "Development Plan" means the plan for development of the Property as set



forth in Exhibit "C".

1.1.11 "Effective Date" means the date on which both of the following have occurred: (1) the ordinance approving and authorizing this Agreement has become effective; and (2) OWNER has acquired fee title to the Property.

1.1.12 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, 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, and the design, improvement and construction standards and specifications applicable to the development of the Property. "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;
- (b) taxes and assessments;
- (c) the control and abatement of nuisances;
- (d) the granting of encroachment permits and the conveyance of rights and interests that provide for the use of or the entry upon public property;
- (e) the exercise of the power of eminent domain.

1.1.13 "OWNER" means the persons and entities listed as OWNER on page one of this Agreement and their successors in interest to all or any part of the Property.

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

1.1.15 "Project" means the development of the Property contemplated by the Development Plan as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.16 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

1.1.17 "Reservation of Rights" means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6 of this Agreement.

1.1.18 "Specific Plan" means the Specific Plan No. 2006-01 specific plan applicable



to the Project.

1.1.19 "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.

1.1.20 "Vested Right Period" shall mean the period of time commencing on the Effective Date and lasting until the date that is seven (7) years following such Effective Date.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" -- Legal Description of the Property.

Exhibit "B" -- Map showing Property and its location.

Exhibit "C" -- Development Plan.

2. GENERAL PROVISIONS.

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

2.2 Interest in Property. OWNER represents and covenants that, as of the date of execution of this Agreement, OWNER has an equitable interest in the Property.

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

The Developer will include in all property development/sales documentation to ensure that any use by a Condo-Hotel Unit Owner for Personal Use of his/her Condo-Hotel Unit for more than sixty (60) days, in the aggregate, during any calendar year shall be deemed to be a "transient occupancy use" and shall be subject to the provisions of this Agreement, and all policies, rules, regulations and the like imposed by the Hotel upon occupancy of a Condo-Hotel Unit by a transient occupant for each day beyond said sixty (60) days. The Declaration



of Covenants, Conditions and Restrictions shall contain provisions, in a form and substance reasonably approved by the City, setting forth these requirements.

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

The Declaration of Covenants, Conditions and Restrictions shall contain provisions prohibiting pets in each and every Condo-Hotel Unit, whether or not such pets are owned by the Condo-Hotel Unit Owner, by transients, by hotel guests, by visitors or otherwise.

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

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

2.4 Term. The initial term of this Agreement shall commence on the Effective Date, and shall continue for a period of fifty-five (55) years thereafter unless this term is cancelled, terminated, modified or extended pursuant to the provisions of this Agreement.

2.5 Assignment.

2.5.1 Right to Assign. OWNER shall have the right to sell, transfer or assign the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.) to any person, partnership, joint venture, firm or corporation at any time during the Term of this Agreement; provided, however, that any such sale, transfer or assignment shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

(a) No sale, transfer or assignment of any right or interest under this Agreement shall be made unless made together with the sale, transfer or assignment of all or a part of the Property.



(b) Concurrent with any sale, transfer or assignment of the entire Condominium Hotel Project (as opposed to sales of individual Hotel Units), OWNER shall notify CITY, in writing, of such sale, transfer or assignment and shall provide CITY with an executed agreement (“Assignment and Assumption Agreement”), in a form reasonably acceptable to CITY, by the purchaser, transferee or assignee and providing therein that the purchaser, transferee or assignee expressly and unconditionally assumes all the duties, obligations, agreements, covenants and waivers of OWNER under this Agreement.

(c) No sale, transfer or assignment of the entire Condominium Hotel Project (as opposed to sales of individual Hotel Units) shall occur unless the prior written consent of the City Council shall have been obtained, which consent shall not unreasonably be withheld. In exercising its reasonable discretion, the City Council may consider factors such as the financial qualifications and the experience of the proposed transferee in owning and operating other Condominium Hotels.

Any sale, transfer or assignment not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any purchaser, transferee or assignee to execute the agreement required by Paragraph (b) of this Subsection 2.5.1, the burdens of this Agreement shall be binding upon such purchaser, transferee or assignee, but the benefits of this Agreement shall not inure to such purchaser, transferee or assignee until and unless such agreement is executed.

2.5.2 Release of Transferring Owner. Upon any sale, transfer or assignment made in compliance with this Section 2.4, a transferring OWNER shall not continue to be obligated under this Agreement with respect to the transferred Property or any transferred portion thereof.

2.5.3 Subsequent Assignment. Any subsequent sale, transfer or assignment after an initial sale, transfer or assignment shall be made only in accordance with and subject to the terms and conditions of this Section.

2.6 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. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement.

2.7 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 stated Term of this Agreement as set forth in Section 2.4.
- (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 overriding or repealing the ordinance approving this Agreement.

(d) Termination of this Agreement based on any default of OWNER and following the termination proceedings required by this Agreement.

Termination of this Agreement shall not constitute termination of any other Development Approvals or Land Use Regulations applicable to the Property. 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.

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 of delivery shown in the records of the telegraph company after transmission by telegraph to the recipient named below. In light of the potentially numerous Unit Owners contemplated by the Project, OWNER (and not CITY) shall remain responsible for providing Unit Owners with notices required to be provided by CITY and provided by CITY to OWNER 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 OWNER:

Jerson Investments, LLC
1455 S. Michigan Avenue, Suite 100
Chicago, IL 60605
Attn: Paul Angler
Telephone: (312) 986-6823
Facsimile: (312) 986-6826

Copy to:

Michael Kiner Associates
70177 Highway 111, Suite 200
Rancho Mirage, CA 92270
Attn: Michel Kiner
Telephone: (760) 324-3360
Facsimile: (760) 324-3367

(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, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by the change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservation of Rights, OWNER shall, for a period lasting seven (7) years following the Effective Date ("Vested Right Period"), have the vested right to develop the Property in accordance with, and to the extent of, this Agreement and the Land Use Regulations and Development Impact Fees as those items exist and are in effect as of the Effective Date. Thereafter, the Project shall remain subject to all Land Use Regulations and Development Approvals, whether in effect on the Effective Date or subsequently adopted, amended or otherwise altered, that are required to complete the Project as contemplated by the Development Plan. In addition, except as provided in Section 3.3 hereof, following the Vested Right Period, the Project shall remain subject to any Development Impact Fees that are required to complete the Project as contemplated by the Development Plan, whether in effect as of the Effective Date or subsequently adopted, amended or otherwise altered. Except as otherwise provided in this Agreement, and pursuant to the authority of the CITY to limit the future exercise of its police powers pursuant to Government Code section 65866, during the Vested Right Period, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land for public purposes, and provisions for the design, improvement and construction standards and specifications applicable to development of the Property, shall be those set forth in the Land Use Regulations and Development Approvals, in effect on the Effective Date. In connection with any subsequently imposed Development Approvals, and except as specifically provided otherwise herein, CITY may exercise its discretion in accordance with the Land Use Regulations then in effect, as provided by this Agreement, including, but not



limited to, the Reservation of Rights. CITY shall accept for processing, review and action all applications for subsequent Development Approvals, and such applications shall be processed in the same manner and the CITY shall exercise its discretion, when required or authorized to do so, to the same extent it would otherwise be entitled in the absence of this Agreement.

3.3 Reservation of Rights.

3.3.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following regulations shall apply to the development of the Property.

(a) Processing fees and charges of every kind and nature imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(c) Regulations, policies and rules 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) Regulations 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) Regulations that are not in material conflict with this Agreement or the Development Plan. 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 Development Plan and shall therefore not be applicable to the development of the Property.

(f) Regulations that are in material conflict with the Development Plan; provided OWNER has given written consent to the application of such regulations to development of that Property in which the OWNER has a legal or equitable interest.

(g) Regulations that impose, levy, alter or amend fees, charges or Land Use Regulations relating to consumers or end users, including, without limitation, trash can placement, service charges and limitations on vehicle parking.



3.3.2 Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on subsequent Development Approvals and to the same extent it would otherwise be authorized to do so absent this Agreement, from applying subsequently adopted or amended Land Use Regulations that do not materially conflict with this Agreement.

3.3.3 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.

3.3.4 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 be, or are not expressly, so limited. This Agreement is intended to limit the City's authority to adopt, amend or otherwise alter any Land Use Regulation or Development Impact Fee during the Vested Right Period, but not thereafter. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority that cannot be or is not by this Agreement's express terms so restricted.

3.4 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 or jointly with CITY and 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 imposed by any other non-City public agency, but collected by the CITY.

3.5 Senate Bill 221. To the extent the Development Plan includes one or more tentative maps for a subdivision as the term "subdivision" is defined in Government Code Section 66473.7(a) and to the extent the Project, or any part thereof, is not exempt under Government Code Section 66473.7(i), each such tentative map shall comply with the provisions of Government Code Section 66473.7.

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 Plan 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.

4.2 Development Impact Fees.

4.2.1 Amount of Fees. During the Vested Right Period, the CITY shall not impose on the Project any new or increased Development Impact Fee. Following the Vested Right Period, the Development Impact Fees currently charged by CITY, or as subsequently adopted, amended or otherwise altered, shall be charged to the Project at the rate in effect at of the time of payment as set forth in Land Use Regulations then in effect.

4.2.2 Time of Payment. All Development Impact Fees shall be paid to CITY in accordance with the applicable time frames set forth in Land Use Regulations then in effect.

4.2.3 Future Fees. CITY and OWNER hereby agree that, following the Vested Right Period, but not during the Vested Right Period, the Project shall be subject to any Development Impact Fee that CITY may enact, amend, alter, adopt or impose before or after the Effective Date.

4.3 Transient Occupancy Tax. Notwithstanding any provision contained in the Condo Hotel Ordinance or the TOT Ordinance, as such ordinances may exist now or, with respect to the TOT Ordinance, in the future, in the event any Unit Owner occupies a Condo-Unit, as those terms are defined in the Condo-Hotel Ordinance, for more than sixty (60) days, whether consecutive or cumulatively, within any calendar year, such Unit Owner shall pay to the CITY an amount equal to fifteen dollars (\$15.00) per day over such sixty (60) days that are so occupied ("Transient Occupancy Payment"). The Transient Occupancy Payment shall, for days covered by such payment, be in lieu of any obligation to pay transient occupancy tax, and shall constitute a debt by the Condo-Hotel-Unit Owner and a charge against that Condo-Hotel Unit Owner's Unit, and OWNER shall be jointly and severally liable for such debt. In addition to any other remedies that CITY may have against the Unit Owner or the OWNER, the CITY shall be entitled to impose on the applicable Housing Unit a lien for the amount of the Transient Occupancy Payment unpaid. OWNER shall maintain, and make available to CITY upon request, records that demonstrate occupancy of individual Housing Units, including the identity of such occupants.

4.3.1 Increase in Transient Occupancy Payment. From and after the first day of the first calendar year after issuance of the first certificate of occupancy for the first Unit in the Condo-Hotel ("Initial Fee Period"), the Transient Occupancy Payment shall be increased by an amount equal to the increase in the CPI (defined below) during the prior five (5) year period, subject to the following: the amount of the increase at the expiration of each five (5) year period shall be based on compounding each annual rate of increase during the five (5) year period, but in no event shall any such five (5) year increase exceed twenty-five percent (25%). The CPI to be used shall be the Consumer Price Index for All Urban Consumers in the Los Angeles-Anaheim-Riverside area (or any successor index or other comparable index selected by the City) for each twelve (12) month period, commencing two (2) months prior to the expiration of the Initial Fee Period (provided that any CPI



adjustment shall be rounded up to the nearest full dollar).

4.3.2 Release of OWNER. The entity listed as OWNER on page one (1) of this agreement shall be relieved of all responsibility under this Section 4.3 upon the assumption of such responsibility by the Condominium Hotel's association or the Condominium Hotel management.

4.4 Amenity Fee. In addition to any other payments required of the entity listed as OWNER on page one (1) of this agreement, including, without limitation, the Transient Occupancy Payment required by Section 4.3 hereof, OWNER shall be required to collect pay the Resort Amenity Fee pursuant to that certain Modification No. 4 to Disposition and Development Agreement regardless of any inability by the OWNER to collect payments of the Resort Amenity Fee from third parties. OWNER on page one (1) of this agreement shall be relieved of all responsibility under this Section 4.4 upon the assumption of such responsibility by the Condominium Hotel's association and the Condominium Hotel management.

5. PRIVATE BENEFITS.

5.1 Exclusion from Rental Program. Notwithstanding any provision contained in the Condo-Hotel Ordinance, including, without limitation, Sections 21.33.060 (3), 21.33.100(b), 21.33.100 (c), or 21.33.100 (d) of the Condo-Hotel Ordinance, any Unit Owner may utilize the services of any licensed real estate agent or broker to reserve the rental or occupancy of Housing Units and shall not be required to utilize the rental or reservation system otherwise required by the Condo-Hotel Ordinance.

5.2 No Foreclosure by CITY. Notwithstanding any provision contained in the Condo-Hotel Ordinance, including, without limitation, Section 21.33.070(3), the CITY hereby waives any right to foreclose on any lien that the CITY acquires by reason of the obligation of Unit Owners to pay the per diem amounts due pursuant to Section 21.33.060(10) of the Condo-Hotel Ordinance.

5.3 No Conditional Use Requirement. Notwithstanding any provision contained in the Condo-Hotel Ordinance, including, without limitation, Sections 21.33.030 or 21.33.0404(g) the Project shall not be subject to any conditional use permit by reason of the Condominium Hotel characteristics of the Project; provided however, that nothing contained in this Section 5.3 shall prevent the application of any other provision of the Indian Wells Municipal Code requiring a conditional use permit for any aspect of the Project other than the Condominium Hotel itself.

5.4 Notice and Opportunity to Cure. Notwithstanding any provision contained in the Condo-Hotel Ordinance, including, without limitation, Section 21.33.060(15), prior to instituting any action or proceeding to prohibit the continued operation of the Condominium Hotel portion of the Project as the result of the failure or alleged failure of the Condominium Hotel to continue qualifying as a First Class Hotel, the CITY shall first be required to provide OWNER with notice pursuant to Section 7.3 of this Agreement and a hearing pursuant to Section 6.3 and, if applicable, 6.4 of this



Agreement.

5.5 Access to Records. Notwithstanding any provision contained in the Condo-Hotel Ordinance, including, without limitation, 21.33.100, no Unit Owner shall be required to maintain or make available to the City Manager or designee records, information or access regarding such Unit Owner's compliance or noncompliance with the Condo-Hotel Ordinance, the Project's conditions of approval, this Development Agreement, or the CC&R's. Nothing contained in this Agreement, including, without limitation, this Section, shall be construed as preventing or otherwise limiting the right and power of the CITY or its employees or agents access to inspect or otherwise correct violations of any other law or regulation that the CITY is authorized to enforce, including, without limitation, any building, housing or health and safety codes.

5.6 Exemption from Personal Use Limitation. Notwithstanding any provision contained in the Condo-Hotel Ordinance, but subject to Section 5.7 of this Agreement, with respect to the Property and Project covered by this Agreement, the following shall apply: (i) Notwithstanding Section 21.33.060(5) of the Condo-Hotel Ordinance, each Hotel Unit may be used and occupied by the Unit Owner for Personal Use (as defined in Section 21.33.020(g) of the Condo Hotel Ordinance); and (ii) Notwithstanding Section 21.33.070(1) of the Condo-Hotel Ordinance, the CC&Rs shall not stipulate or require that one hundred percent of the Units must be made available as rental units for hotel guests when not being used by the Unit Owner for the Unit Owner's Personal Use.

5.7 Transient Occupancy Payment. To the extent Personal Use by any Unit Owner exceeds more than sixty (60) days, whether consecutive or cumulatively, within any calendar year, such Unit Owner shall be obligated to pay the Transient Occupancy Payment as provided in Section 4.3 of this Agreement.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic Review. The CITY shall review this Agreement annually, on or before the anniversary of the Effective Date, in order to ascertain the good faith compliance by OWNER with the terms of the Agreement. OWNER shall submit an Annual Monitoring Report, in a form acceptable to the City Manager, within ten (10) days after written notice from the City Manager. The Annual Monitoring Report shall be accompanied by an annual review and administration fee sufficient to defray the estimated costs of review and administration of the Agreement during the succeeding year. The amount of the annual review and administration fee shall be set annually by resolution of the City Council.

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;



(c) Affirmative vote of the City Council.

6.3 Procedure.

(a) During either a periodic review or a special review, OWNER shall be required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on OWNER.

(b) Upon completion of a periodic review or a special review, the Community Development Director shall submit a report to the Planning Commission setting forth the evidence concerning good faith compliance by OWNER with the terms of this Agreement and his or her recommended finding on that issue. The Planning Commission shall consider such report at a public hearing. The City Manager shall provide notice to OWNER at least ten (10) days prior to the hearing by the Planning Commission.

(c) If the Planning Commission finds and determines on the basis of substantial evidence that OWNER has complied in good faith with the terms and conditions of this Agreement, the review shall be concluded.

(d) If the Planning Commission finds and determines on the basis of substantial evidence that OWNER has not complied in good faith with the terms and conditions of this Agreement, the Commission may recommend to the City Council to modify or terminate this Agreement. OWNER may appeal a Planning Commission determination pursuant to this Section 6.3(d) pursuant to CITY's rules for consideration of appeals in zoning matters then in effect. Notice of default as provided under Section 7.4 of this Agreement shall be given to OWNER prior to or concurrent with proceedings under Section 6.4 and Section 6.5, including, without limitation, by Planning staff prior to a Special Review pursuant to Section 6.2(a).

6.4 Proceedings Upon Modification or Termination. If, upon a finding under Section 6.3, CITY determines to proceed with modification or termination of this Agreement, CITY shall give written notice to OWNER of its intention so to do. The notice shall be given at least ten calendar days prior to the scheduled hearing and shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not CITY proposes to terminate or to modify the Agreement; and,

(c) Such other information that the City considers necessary to inform OWNER of the nature of the proceeding.

6.5 Hearing on Modification or Termination. At the time and place set for the hearing on



modification or termination, OWNER shall be given an opportunity to be heard. OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on OWNER. If the City Council finds, based upon substantial evidence, that OWNER has not complied in good faith with the terms or conditions of the Agreement, the City Council may terminate this Agreement or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.6 Certificate of Agreement Compliance. If, at the conclusion of a Periodic or Special Review, OWNER is found to be in compliance with this Agreement, CITY shall, upon request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to 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) 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. It is acknowledged by the parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof. Each of the parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

- (a) For any breach of this Agreement or for any cause of action that arises out of this Agreement; or
- (b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or
- (c) Arising out of or connected with any dispute, controversy or issue regarding the application or interpretation or effect of the provisions 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 relief are particularly



appropriate remedies for the enforcement of this Agreement and should be available to all parties for the following reasons:

(a) Money damages are unavailable against CITY as provided in Section 7.1 above.

(b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of this Agreement, and it is not possible to determine the sum of money that would adequately compensate OWNER for such efforts.

7.3 Termination or Modification of Agreement for Default of OWNER. CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

7.4 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 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 General Plan and the Specific Plan (hereinafter the "Plans") and that the Plans meets all requirements of law. CITY shall defend, at its expense, including attorneys' fees, indemnify, and hold harmless OWNER, its agents, officers and employees from any claim, action or proceeding against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement, the adoption of the Specific Plan or the adequacy of the General Plan. OWNER



shall promptly notify CITY of any such claim, action or proceeding, and OWNER shall cooperate in the defense. If OWNER fails to promptly notify CITY of any such claim, action or proceeding, or if OWNER fails to cooperate in the defense, CITY shall not thereafter be responsible to defend, indemnify, or hold harmless OWNER. OWNER may in its discretion participate in the defense of any such claim, action or proceeding.

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 against CITY, its agents, officers, or employees to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit or entitlement granted pursuant to this Agreement. CITY shall promptly notify OWNER 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 OWNER of any such claim, action, proceeding or determination, or if CITY fails to cooperate in the defense, OWNER 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 Environment 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 OWNER, 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 either (1) 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, or (2) conduct its own defense; provided, however, that the indemnifying party shall reimburse the indemnified party forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefore.

8.5 Challenge to Development Approvals. 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 Development Approval affecting the Property and in effect as of the Effective Date. 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. OWNER hereby expressly waives, on behalf of itself and its successors in



interest, any claim or challenge to any Land Use Regulation or Development Approval affecting the Property and in effect as of the Effective Date.

OWNER hereby acknowledges that it has read and is familiar with the provisions of California Civil Code Section 1542, which is set forth below:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

By initialing below, OWNER hereby waives the provisions of Section 1542 in connection with the matters that are the subject of the foregoing waivers and releases.



Owner's Initials

8.6 Survival. The provisions of Sections 8.1 through 8.6, inclusive, shall survive the termination of this Agreement.

9. MORTGAGEE PROTECTION.

The parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders 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 lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold 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 of the Property 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) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, 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, or deed in lieu of such foreclosure, 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 provision of the Benefits set forth in Sections 4 and 5 of this Agreement, including the payment of the Development Impact Fees set forth therein, 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 Joint and Several Obligations. If at any time during the Term of this Agreement the Property is owned, in whole or in part, by more than one OWNER, all obligations of such OWNERS under this Agreement shall be joint and several, and the default of any such OWNER shall be the default of all such OWNERS. Notwithstanding the foregoing, no OWNER of a single lot that has been finally subdivided and sold to such OWNER as a member of the general public or otherwise as an ultimate user shall have any obligation under this Agreement except as expressly provided for herein.

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

10.9 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.

10.10 No 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.

10.11 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 may be extended by the written agreement of the parties 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.

10.12 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.

10.13 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 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 and each successor in interest during ownership of the Property or any portion thereof.

10.14 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.

10.15 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.

10.16 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 development, 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.

10.17 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.

10.18 Eminent Domain. No provision of this Agreement shall be construed to limit or



restrict the exercise by CITY of its power of eminent domain.

10.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venture resident of the State of California, or it is a foreign corporation, then in any such event, OWNER 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 OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this County and such service shall constitute valid service upon OWNER. OWNER 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. OWNER 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).

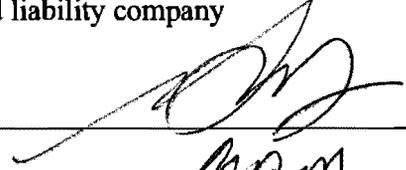
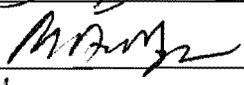
10.20 Authority to Execute. The person or persons executing this Agreement on behalf of OWNER warrants and represents that he or she/they have the authority to execute this Agreement on behalf of his or her/their corporation, partnership or business entity and warrants and represents that he or she/they has/have the authority to bind OWNER to the performance of its obligations hereunder.



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

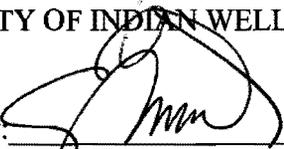
OWNER

JERSON INVESTMENTS, LLC, an Illinois limited liability company

By:  GERALD W. FOGELSON
Title:  MANAGER
Dated: 3/29/06

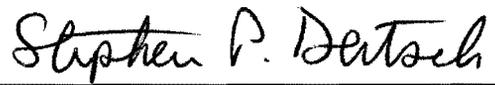
CITY

CITY OF INDIAN WELLS

By: 
Name: Ed Monarch
Title: Mayor
Dated: 6/20/06

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP,


City Attorney

[Signature Page to Development Agreement]



THE STATE OF ILLINOIS

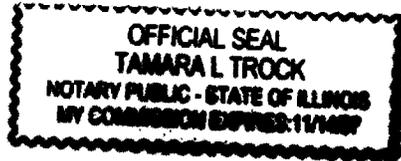
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COUNTY OF COOK

This instrument was acknowledged before me on March 29, 2006, by Gerald W. Fogelson, Manager of Jerrin Investments LLC, an Illinois

Tamara L. Trock
Notary Public, State of Illinois

My Commission Expires: 11-14-07



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: TAMARA L. TROCK

Commission #: NONE

Place of Execution: COOK COUNTY ILLINOIS

Date Commission Expires: NOVEMBER 14, 2007

Date: 7/10/04

Signature: 

Print Name: SERGIO E. MADERA



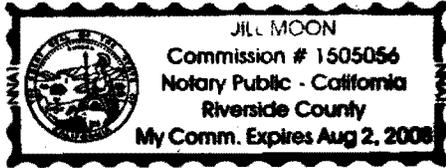
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Riverside } ss.

On July 7, 2006 before me, Jill Moon, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Ed Monarch

Name(s) of Signer(s)
 personally known to me
 proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.



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

OPTIONAL

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

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

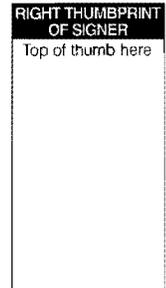
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer

Signer's Name: _____

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

Signer Is Representing: _____



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: JILL MOON

Commission #: 1505056

Place of Execution: RIVERSIDE COUNTY, CA

Date Commission Expires: AUGUST 2, 2008

Date: 7/10/06

Signature: 

Print Name: SERGIO E. MADERA



EXHIBIT "A"

LEGAL DESCRIPTION

IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, THOSE PORTIONS OF SECTION 24 AND THE EAST HALF OF SECTION 23, BOTH OF TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 23 AND THE NORTHERLY LINE OF THE ULTIMATE RIGHT-OF-WAY OF STATE HIGHWAY 111, SAID NORTHERLY LINE BEING 85.00 FEET NORTHERLY OF THE CENTER LINE OF SAID STATE HIGHWAY 111;

THENCE NORTH 84°02'46" WEST ALONG SAID ULTIMATE NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 104.12 FEET;

THENCE NORTH 17°28'29" EAST, A DISTANCE OF 144.61 FEET;

THENCE NORTH 20°17'45" WEST, A DISTANCE OF 428.65 FEET TO A POINT ON THE ULTIMATE SOUTHERLY RIGHT-OF-WAY LINE OF THE COACHELLA VALLEY STORMWATER CHANNEL;

THENCE SOUTH 81°42'22" EAST ALONG SAID ULTIMATE SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 210.68 FEET TO A POINT ON THE WEST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 24;

THENCE CONTINUING SOUTH 81°42'22" EAST ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 609.98 FEET;

THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE SOUTH 73°53'47" EAST, A DISTANCE OF 560.75 FEET TO A POINT ON A NON-TANGENT CURVE, CONCAVE EASTERLY, HAVING A RADIUS OF 651.00 FEET, A RADIAL LINE PASSING THROUGH SAID POINT BEARS NORTH 65°56'20" WEST, SAID POINT ALSO BEING ON THE ULTIMATE WESTERLY RIGHT-OF-WAY LINE OF MILES AVENUE AND DISTANT 51.00 FEET WESTERLY OF THE CENTER LINE OF SAID MILES AVENUE;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE AND ALONG SAID ULTIMATE WESTERLY RIGHT-OF-WAY LINE, THROUGH A CENTRAL ANGLE OF 18°07'46", AN ARC DISTANCE OF 205.99 FEET;



THENCE TANGENT TO SAID CURVE AND CONTINUING ALONG SAID WESTERLY RIGHT-OF-WAY LINE SOUTH 05°55'54" WEST, A DISTANCE OF 161.00 FEET;

THENCE SOUTH 50°56'34" WEST, A DISTANCE OF 42.76 FEET TO A POINT ON THE AFOREMENTIONED ULTIMATE NORTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 111;

THENCE NORTH 84°02'46" WEST ALONG SAID NORTHERLY RIGHT-OF-WAY LINE, A DISTANCE OF 1,044.72 FEET TO THE **POINT OF BEGINNING**.

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

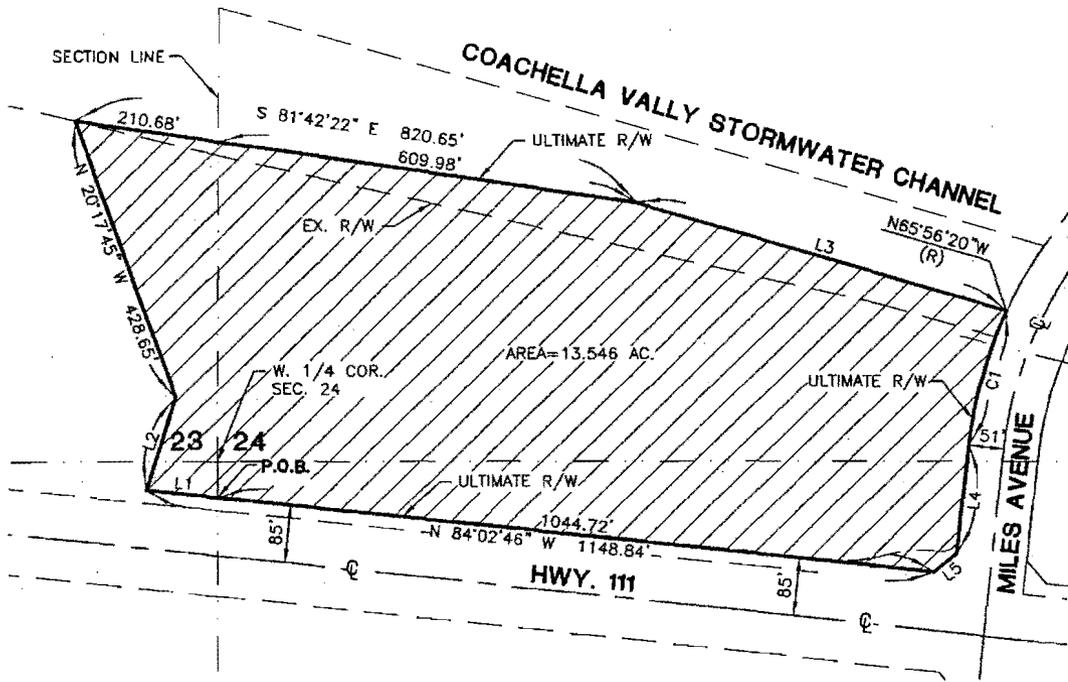
CONTAINING 590,084 SQUARE FEET OR 13.546 ACRES, MORE OR LESS.





2006-0501167
07/19/2006 08:09R
32 of 33

EXHIBIT



CURVE DATA

NO.	DELTA	RADIUS	LENGTH	TANGENT
C1	18°07'46"	651.00'	205.99'	103.86'

LINE DATA

NO.	BEARING	LENGTH
L1	N 84°02'46" W	104.12'
L2	N 17°28'29" E	144.61'
L3	S 73°53'47" E	560.75'
L4	S 05°55'54" W	161.00'
L5	S 50°56'34" W	42.76'

J.N. 1702

SHEET 1 OF 1

EXHIBIT "B"

