

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

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

MILES LODGE, L.L.C.

DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter "Agreement") is entered into as of this 18th day of November, 2010 by and between the City of Indian Wells, a California municipal corporation and charter city (hereinafter "CITY"), and Miles Lodge L.L.C., a California 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, to the greatest extent permitted by law; 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, CITY and OWNER believe that 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 approving a mitigated negative declaration for the Project; and

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

WHEREAS, Section 21.33.040 (b) of the Indian Wells Development 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); and

WHEREAS, CITY and OWNER believe that 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 substantial benefits to CITY and will further important policies and goals of CITY; and



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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. Additional defined terms shall have meanings as indicated herein.

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.

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. For all purposes under this Agreement, the Project shall



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be deemed to be a condominium hotel project and shall, therefore, be deemed to be a commercial and not a residential use.

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 Approvals 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" means 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. Anything to the contrary herein, this Section 1.1.9 is specifically made subject and subordinate to Sections 3.3.4 and 3.21 hereof.

1.1.10 "Development Plan" means the plan for development of the Property as indicated herein and as set forth in Exhibit "C".



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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) both parties have signed this Agreement.

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. Subject to Sections 3.3.4 and 3.21 hereof, "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 1 of this Agreement, or OWNER's successors in interest (other than individual owners of Designated or Optional or Assisted Living Units as hereafter defined).

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, and is more specifically defined in Section 3.6 below.

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 3.3 of this Agreement.

1.1.18 "Specific Plan" means that certain Specific Plan for Planning Area Two of Indian Wells Crossing, dated July, 2010, which was submitted to the CITY by OWNER, and which has received final (second reading) Ordinance approval by the City Council, either prior to



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or concurrently with the Effective Date of this Agreement, and which relates to the Property and 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 "Unit" shall mean a condominium-hotel unit, as referenced in California Civil Code Section 1351(f), which in this Project shall be one of the following types: (a) "Assisted Living Units", as referenced in Sections 3.8 and 3.12, will be operated and used for assisted living purposes; such Assisted Living Units shall not have any obligation to pay Amenity Fee Taxes as referenced in Section 3.10, and shall not be entitled to receive Property Owner Identification Cards as referenced in Section 3.19. (b) "Designated Units", as referenced in Section 3.8 and 3.12, shall be operated and used solely and mandatorily for Condominium Hotel rental purposes to generate transient occupancy tax ("TOT" as referenced in said Sections 3.8 and 3.12); such Designated Units shall not have any obligation to pay Amenity Fee Taxes as referenced in Section 3.10, and shall not be entitled to receive Property Owner Identification Cards as referenced in Section 3.19. (c) "Optional Units", as referenced in Section 3.8 and 3.12, may be operated and/or used, at the option of the Unit owner, either (a) for Condominium Hotel rental purposes to generate TOT, or (b) for Personal Use and/or permanent residency or for rental for periods in excess of thirty (30) consecutive days, i.e., on a non-transient, longer term basis; to the extent such Optional Units are from time to time used for Condominium Hotel rental purposes, they shall, during such periods of use, be obligated to report and pay TOT to the CITY; to the extent such Optional Units are from time to time used for Personal Use, permanent residency or longer term rental, they shall, during such periods of use, not be obligated to report or pay TOT, and there shall be no obligation on the part of the on-site manager/operator or the Unit owner to collect or remit any TOT to the CITY; regardless of operation or use, Optional Units shall continuously be obligated to pay Amenity Fee Taxes as referenced in Section 3.10, and shall continuously be entitled to receive Property Owner Identification Cards as referenced in Section 3.19.

1.1.21 "Vested Right Period" shall mean the period of time commencing on the Effective Date and continuing as described in Section 3.20 below.

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.



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2. GENERAL PROVISIONS.

2.1 Binding Effect of Agreement. The Property is hereby made subject to this Agreement. Development (and subsequent operation and maintenance) of the Property and Project 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 legal title to the Property.

2.3. Intentionally Deleted.

2.4 Term. Subject to Sections 3.3.4 and 3.21 hereof, the term of this Agreement shall commence on the date which that certain City Ordinance approving this Development Agreement becomes effective (“DA Approval”), and continue for so long as CITY does not terminate this Agreement for failure to achieve performance pursuant to the schedule of performance requirements of Section 3.20 below (but in any event for a period not longer than 10.5 years from the commencement date), unless this Agreement is cancelled, terminated, modified or extended pursuant to other provisions of this Agreement or mutual agreement of the parties).

2.5. Assignment.

2.5.1 Right to Assign. Except as otherwise provided in any agreement entered into by OWNER, or its predecessor in interest, with the Indian Wells Redevelopment Agency pertaining to the Property, 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 Condo-Hotel Area as defined in Section 3.8 (as opposed to individual sales of Designated or Optional Units as defined in Section 3.8), 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, waivers of OWNER under this Agreement.



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(c) No sale, transfer or assignment of the entire Condo-Hotel Area as defined in Section 3.8 (as opposed to individual sales of Designated or Optional Units as defined in Section 3.8) 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 similar projects.

(d) Anything in this Agreement to the contrary notwithstanding, it is understood and agreed that OWNER shall have the right to sell and/or transfer legal title and ownership of the Condo-Hotel Area (as defined in Section 3.6 below) to any entity in which Denny Ryerson holds management control and, in such event, rights and obligations under this Agreement with respect to the Condo-Hotel Area shall be assigned to and assumed by such Ryerson controlled entity (by execution and delivery of an Assignment and Assumption Agreement as referenced above).

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.

2.5.4 Inapplicability to Condominium Hotel Unit Sales. The parties hereto acknowledge and agree the sales and/or assignments referenced in this Section 2.5 do not relate to individual sales of Designated and/or Optional Units as defined in Section 3.8 to public purchasers thereof (which will be regulated by the California Department of Real Estate as referenced below).

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.



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(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 or Project, or to continued use, operation and/or maintenance of portions of the Property or Project that have been developed pursuant to the terms hereof prior to the date of any such termination. Subject to Sections 3.3.4 and 3.21 hereof, 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.

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



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

If to OWNER:
The Ryerson Company
7250 North 16th Street
Phoenix, Arizona 85020-5264
Attn: Denny Ryerson
Telephone: (602) 216-9000
Facsimile: (602) 678-4444

Miles Lodge Land, LLC
1211 S. Michigan Avenue
Chicago, Illinois 60606
Attn: Gerald Fogelson
Telephone: (312) 986-6823
Facsimile: (312) 663-9366

Copy to:
Ealy, Hemphill & Blasdel, LLP
71780 San Jacinto Drive, Suite I-3
Rancho Mirage, California 92270-5518
Attn: W. Curt Ealy
Telephone: (760) 340-0666
Facsimile: (760) 340-4666

(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.

2.9 Termination of Existing Development Agreement. CITY and OWNER acknowledge and agree that this Agreement shall not be effective or binding unless and until an existing Development Agreement between the CITY and Jerson Investments, LLC, an Illinois corporation ("Jerson"), has been terminated by (a) execution (by CITY and Jerson) of a Termination Agreement which makes said existing Development Agreement void and of no further force or effect, and (b) recordation (with the Official Records of Riverside County, California) of said Termination Agreement (or a reasonably acceptable Notice of Termination document). It is expected that said termination will occur prior to or substantially concurrently with CITY approval of this Agreement.



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3. DEVELOPMENT OF PROPERTY – OPERATION/MAINTENANCE OF PROJECT.

3.1 Rights to Develop. Subject to Sections 3.3.4, 3.21 and 3.3 hereof, the following shall apply: OWNER shall, for and during the Vested Right Period, have the vested right to develop the Property and Project, 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. Subsequent to the Vested Right Period, the Property and Project shall be 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, 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.

3.2 Intentionally Omitted.

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,



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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 (a) with respect to applications for Development Approvals submitted subsequent to the Vested Right Period, from acting on such applications in the same manner and to the same extent as it would otherwise be authorized to do absent this Agreement, or (b) with respect to applications for Development Approvals submitted during the Vested Right Period, 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 – except to the extent



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otherwise provided herein. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority that cannot legally be or is not by this Agreement's express terms so restricted. The foregoing (and anything in this Agreement to the contrary) notwithstanding, it is specifically understood and agreed as follows: With respect to any portions of the Property and/or Project that are developed in the manner contemplated herein during the Vested Right Period, Sections 3.8 through 3.13, inclusive, of this Agreement, and the rights and obligations of owners of Designated Units, Optional Units and Assisted Living Units, as set forth in said Sections, shall continue to be fully binding and enforceable, to the maximum extent permitted by law, subsequent to the Vested Right Period and thereafter for a period of ninety-nine (99) years from the Effective Date; and the term of this Agreement shall, with respect to said Sections and said rights and obligations, be deemed to remain in effect. It is understood that if uses on the Property and/or Project are discontinued and, as such, are phased out pursuant to legal and appropriate non-conforming use procedures, then, in such event, the foregoing rights and obligations of owners of Designated, Optional and Assisted Living Units, shall expire. It is also understood that if any such uses become irreparably in violation of state or federal law, they shall expire. It is also understood that any CITY ordinances, regulations, requirements and taxes, fees and assessments (other than those limited or waived as provided herein) applicable to properties within the CITY generally, or when adopted, shall continue to be applicable.

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 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.

3.6 Project Defined. The Project (as referenced in Section 1.1.15 above) includes three (3) lots as shown on Tentative Tract Map 34258. Lot 1 ("Condo-Hotel Area") is intended to be designated and constructed as a Condominium Project (as defined in California Civil Code ["CC"] Section 1351[f]), and thereafter be operated/used as a Condominium Hotel (as defined in Section 21.33.020[a] of the Condo-Hotel Ordinance), with development agreement modifications and flexibility as authorized by the Condo-Hotel Ordinance. Lot 2 ("Commercial/Office Area") is intended to be designated and constructed for commercial and/or office uses. Lot 3 ("Restaurant Area") is intended to be designated and constructed for restaurant use.

3.7 Developer Defined. As used herein, the term "Developer" shall refer to Miles Lodge, L.L.C., however, the parties acknowledge and agree that the intent (as indicated in Section 2.5.1[d] above) is for the Condo-Hotel Area (as defined in Section 3.6 above) to be sold



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and/or transferred, for development and subsequent operation/maintenance purposes, to an entity in which Denny Ryerson holds management control, pursuant to an enforceable written agreement under which he has authority to make all management decisions, except for decisions beyond the normal course of business which are customarily reserved for approval by members of a limited liability company, as per California Corporations Code Section 17051(c)(5).

3.8 Designated and Optional Units within Condo-Hotel Area. Upon completion, the Condo-Hotel Area is intended to contain approximately 325 Condominium-Hotel Units (consistent with the provisions of CC Section 1351[f]), and approximately 45 Assisted Living Units. Five (5) of said Condominium Units (“Designated Units”) will be operated mandatorily for Condominium Hotel rental purposes to generate transient occupancy tax (“TOT” as referenced in Section 3.12.190 of the TOT Ordinance as defined in Section 1.1.19 above), and the remaining (approximately 320) of said Condominium Units (“Optional Units”) will be operated optionally (at the discretion of the Condominium Unit owner) for Condominium Hotel rental purposes but, in any event, with obligations to pay Amenity Fee Taxes, and to comply with TOT requirements for actual rentals, even if the owner of such Optional Unit does not operate such Unit for condominium rental purposes, all as described below. All such 320 Optional Units shall be subject to payment of Amenity Fee Taxes as provided in Section 3.10 below. The Assisted Living Units will be operated with no obligation to pay Amenity Fee Taxes (or any “in lieu” amount or other fee unless imposed on properties within the City generally in addition to the Property) and, as is indicated in Section 3.19 below, no Property Owner Identification Card will be issued for any of the Assisted Living Units (or for any of the Designated Units). Note: The Developer has agreed that the 45 Assisted Living Units (to be located within Phase 3) may only be constructed if, prior thereto or concurrently therewith, the Developer constructs at least 300 of the planned 325 Condominium-Hotel Units.

3.9 Condo-Hotel Ordinance Flexibility. The Condo-Hotel Ordinance sets forth specific requirements pertaining to collection and payment of TOT, limitations on Personal Use and/or permanent residency, and mandates for Condo-Hotel rental and/or guest use, but allows for development agreement modification of such requirements. Thus, Section 21.33.040(b) of the Condo-Hotel Ordinance mandates use of a development agreement (as defined in Section 21.33.020[b]), and then authorizes such development agreement to set forth and implement superseding modifications to specific Condo-Hotel Ordinance requirements. Pursuant to such authority, the Condo-Hotel Area will be established with basic framework conditions for Condo-Hotel development and subsequent use, operation and management, with development agreement modifications to specific Condo-Hotel Ordinance requirements as indicated herein.

3.10 Amenity Fee Tax. Upon CITY’s issuance of a Certificate of Occupancy for an Optional Unit, OWNER shall, with respect to such Unit, be obligated to ensure payment of the Amenity Fee Tax to the CITY in accordance with the following: Effective as of the first day of the first month after the sale of each Optional Unit, the owner (buyer) thereof shall commence paying to the CITY an Amenity Fee Tax (as referenced in Section 21.33.130 of the Condo-Hotel Ordinance) in the sum of \$200 per month (payable in one lump sum annually in advance, with the understanding that the amount applicable from the date of sale until the end of that calendar year will be collected in advance by Developer and remitted to the CITY.) Said amount of \$200 per month (\$2,400 per year) shall be adjusted on July 1, 2014 and on each anniversary thereafter



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to reflect CPI (as referenced in Section 21.33.130 of the Condo-Hotel Ordinance) increases (but not decreases) occurring during the immediately prior twelve (12) month period; provided, however, in no event shall any such annual increase exceed 2% of the Amenity Fee Tax amount in effect for the immediately prior twelve (12) month period. The owner of each such Optional Unit (and each successor owner) shall continue to pay such Amenity Fee Tax as provided in Sections 3.3.4 and 3.21 hereof. (In the event that the OWNER, for whatever reason, leases any Optional Unit, then the OWNER shall pay to the CITY the Amenity Fee Tax effective as of the first day of such rental; provided that upon future sale of the Optional Unit the OWNER shall be solely responsible for obtaining reimbursement from the buyer, as applicable, of any amounts paid in advance to the CITY.) It is understood and agreed that the CITY, with full cooperation from the Developer, will initiate and complete all actions necessary, expedient or convenient to place the obligation for and the amount of the Amenity Fee Tax on the real property tax bill for each individual Optional Unit including, without limitation, any and all actions described in Condo-Hotel Ordinance Section 21.33.130. It is further understood and agreed that, prior to or concurrently with full execution of the Development Agreement, the CITY made specific findings, consistent with Condo-Hotel Ordinance Section 21.33.130 and incorporated herein by reference, that the foregoing Amenity Fee Tax provisions will result in sufficient production of revenues and/or other benefits to the CITY and/or its residents to justify permanently fixing the Amenity Fee Tax as provided above, and not, in the future, amending it in any way without formal written concurrence of the Developer (or any applicable successor to Developer such as a Condominium Association). Such findings include, without limitation, consideration and evaluation of (a) the size and/or number of Optional Units in the Condo-Hotel Area, (b) the quantity, quality and type of amenities that will be located within and/or be part of the Overall Project, (c) the likelihood that the Overall Project will produce other revenues and/or benefits to the CITY and/or its residents, and (d) other factors which, in the reasonable determination of CITY Council, mitigate against assessing any higher or different Amenity Fee Tax amount or arrangement.

3.11 Waiver of In Lieu Amount. It is understood and agreed that, prior to or concurrently with full execution of this Development Agreement, the CITY made specific findings, consistent with TOT Ordinance Section 3.12.180 and incorporated herein by reference, that the foregoing Amenity Fee Tax provisions, and other positive impacts to be realized from execution of this Development Agreement and development of the Overall Project, will result in sufficient production of revenues and/or other benefits to the CITY and/or its residents to justify waiving any requirement for the Developer or the Condo-Hotel Area (or Overall Project) to pay any In Lieu Amount, and not, in the future, rescinding or amending such waiver in any way without formal written concurrence of the Developer. Such findings include, without limitation, consideration and evaluation of (a) the size and/or number of Optional Units in the Condo-Hotel Area, (b) the quantity, quality and type of amenities that will be located within and/or be part of the Overall Project, (c) the likelihood that the Overall Project will produce other revenues and/or benefits to the CITY and/or its residents, and (d) other factors which, in the reasonable determination of City Council, mitigate against assessing any In Lieu amount.

3.12 TOT Requirements for Rentals of Designated and Optional Units. With respect to Designated Units, the following shall apply: It is understood and agreed that, effective as of the issuance of a Certificate of Occupancy for each Designated Unit, the owner thereof (and such



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owner's successors) shall have the obligation to continuously (except during repairs and/or maintenance) offer his Designated Unit for rental on a transient basis, i.e., for periods of not more than thirty (30) consecutive days; provided, however, each such rental shall, to the maximum extent permitted by law and subject to Section 5.1, be done through the on-site manager/operator (as referenced in Condo-Hotel Ordinance Sections 21.33.060[3], 21.33.060[6] and 21.33.090); and, provided further, that, with respect to each such rental, the on-site manager/operator shall collect and remit TOT to the CITY, in accordance with normal CITY requirements. With respect to Optional Units, the following shall apply: It is understood and agreed that, effective as of the first day of the first month after the sale of each Optional Unit, the owner (buyer) thereof (and such owner's successors) shall have the right (but not the obligation) to offer his Optional Unit for rental on a transient basis; provided, however, each such rental shall, to the maximum extent permitted by law and subject to Section 5.1, be done through the on-site manager/operator (as referenced in Condo-Hotel Ordinance Sections 21.33.060[3], 21.33.060[6] and 21.33.090); and, provided further, that, with respect to each such rental, the on-site manager/operator shall collect and remit TOT to the CITY, in accordance with normal CITY requirements. It is further understood and agreed that each owner of an Optional Unit (and such owner's successors) shall (subject to compliance with any applicable restrictions in the CC&Rs as referenced below) have the right to use his Optional Unit for Personal Use and/or permanent residency, and to rent his Optional Unit for periods in excess of thirty (30) consecutive days, i.e., on a non-transient, longer term basis, and, with respect to any such use or rental, there shall be no obligation on the part of the on-site manager/operator (or such owner) to collect or remit any TOT to the CITY. With respect to Assisted Living Units, the following shall apply: such Units shall be operated for assisted living purposes, with no obligations to pay Amenity Fee Taxes or collect or pay TOT. As is indicated in Section 3.19 below, no Property Owner Identification Card will be issued for any of the Assisted Living Units (or for any of the Designated Units).

3.13 Inconsistent Condo-Hotel Ordinance Requirements. It is understood and agreed, for this Project, the obligations of Designated Units to be rented for transient purposes and collect and pay TOT and the obligations of Optional Units to pay Amenity Fee Taxes and to collect and pay TOT for actual rentals shall (collectively) be deemed to satisfy any and all requirements in the Condo-Hotel Ordinance (and any other ordinances and codes) relating to collection and payment of TOT, limitations on Personal Use and/or permanent residency, and mandates for Condo-Hotel rental and/or guest use, and no other such requirements (inconsistent with the terms hereof) shall be placed on the Project, owners of Optional Units, the Condominium Association (as defined in CC Section 1351[a]), or any on-site manager/operator.

3.14 Consistent Condo-Hotel Ordinance Requirements. Except as otherwise provided and/or indicated by this Development Agreement, the Developer (as applicable in connection with development) and the on-site manager/operator (as applicable in connection with on-going management/operation subsequent to development), shall comply with the following requirements of the Condo-Hotel Ordinance (to the extent indicated below and as set forth in the approved Project Specific Plan): Section 21.33.060(1) relating to provision of recreational facilities; Section 21.33.060(2) relating to the provision of services to the following extent only: dining, transportation and housekeeping will be available to (a) members of the Ryerson Club (based on payment of initiation and monthly fees), and (b) to non-members of the Ryerson Club and guests of the Designated Units on a charge per use basis (in the discretion of the



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manager/operator); Section 21.33.060(3) relating to maintenance and provision of rental records to the CITY by the on-site manager/operator (with the understanding that no such obligation shall accrue to any Optional Unit owner except for periods during which such owner rents his Unit on a transient basis); Section 21.33.060(4) relating to condominium insurance; Section 21.33.060(6) relating to provision of an on-site management Unit; Section 21.33.060(7) relating to condominium furnishings but only for the Designated Units; Section 21.33.060(8) relating to the provision of front desk and lobby areas; Section 21.33.060(9) relating to consistency with the Project Specific Plan; Section 21.33.060(10) relating to the on-site manager/operator maintaining and providing access to the CITY, during normal business hours, of all rental records, tax receipts and any other documents relating to TOT collected in connection with mandatory transient rentals of Designated Units and optional transient rentals of Optional Units; Section 21.33.060(11) relating to owners of Designated Units not being qualified to receive golf benefits; Section 21.33.060(12) relating to mandatory condominium Association membership and prohibitions against timeshare and/or fractional ownership use; Section 21.33.060(13) relating to the provision of facilities equivalent to that of a first of a First Class Hotel (approval of which shall be deemed satisfied so long as development and management/operation are consistent with the Project Specific Plan); Section 21.33.060(14) relating to the provision of ancillary and accessory uses and supervision services (approval of which shall be deemed satisfied so long as development and operation/maintenance are consistent with the Project Specific Plan); Section 21.33.080 relating to maintenance and provision of rental records to the CITY by the on-site manager/operator (with the understanding that no such obligation shall accrue to any Optional Unit owner except for periods during which such owner rents his Unit on a transient basis); Section 21.22.090 relating to the Condominium Association engaging and contracting with competent management to operate Association Common Areas (as defined in CC Section 1351[b]); Section 21.33.100 relating to required qualifications of management; and Section 21.33.100(a) relating to the provision of an Association budget by the Developer of the Project, which budget shall initially be approved by the California Department of Real Estate ("DRE").

3.15 CC&Rs. The Declaration (as defined in CC Section 1351[h]) and referred to in the Condo-Hotel Ordinance as "CC&Rs") shall be written so as to comply with requirements of the Condo-Hotel Ordinance, as modified by this Development Agreement. The CC&Rs shall (a) require reasonable approval by the CITY, (b) provide that once so approved they may not be amended without further reasonable approval by the CITY. It is understood and agreed that it would be unreasonable for the CITY to withhold approval of any amendment necessitated by any law, regulation or requirement of the DRE, unless such amendment would materially and adversely impact benefits reasonably expected by the CITY under this Development Agreement.

3.16 Further Clarification of Manager/Operator. As used herein, any reference to "manager/operator" or to "on-site manager/operator" or to "management/operations", or the like, shall be further clarified as follows: The term "manager" shall refer to the manager or management agent of the Condominium Association, that has responsibility to manage, operate and maintain Common Areas as reflected by the CC&Rs and/or the Condominium Diagrammatic Plan (as defined in CC Section 1351[e]). The term "operator" shall refer to the operator of non-Common Areas, not owned or controlled by the Association, that Developer (or its affiliate or successor) has responsibility to operate, manage and maintain, as reflected by the CC&Rs and/or the Condominium Diagrammatic Plan. In general, it is expected that most exterior and interior



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areas will be owned or controlled by the Association (and managed by its manager), with the exception of interior areas and amenities owned or controlled by the Developer (and operated by its operator) in connection with the Ryerson Club. It is understood and agreed that the operator will maintain all rental records, tax receipts and any other documents relating to TOT collected in connection with mandatory transient rentals of Designated Units and optional transient rentals of Optional Units.

3.17 Approval of Developer for Management and Operation. All parties to this Development Agreement acknowledge and agree that, with respect to the Condo-Hotel Area, any entity in which Denny Ryerson has management control (as further described in Section 3.7) shall be deemed qualified to provide management of Common Areas for the Association (subject to DRE requirements), and operational services for non-Common Areas, all as contemplated by Condo-Hotel Ordinance Sections 21.33.060(2), 21.33.060(3), 21.33.060(8), 21.33.0090, 21.33.100, 21.33.100(a), 21.33.100(b), 21.33.100(c) and 21.33.110.

3.18 Promotional Materials and On-Going Information. The Developer (in connection with development and sales) shall make reasonable efforts to ensure that all promotional/marketing/advertising materials, sales contracts and the like shall contain information/disclosures sufficient to inform prospective purchasers of the requirements of the Condo-Hotel Ordinance, as modified by this Development Agreement. The on-site manager/operator and the Association (in connection with on-going management/operation) shall make reasonable efforts to ensure that Unit owners (and prospective buyers from them), are informed of the requirements of the Condo-Hotel Ordinance, as modified by this Development Agreement.

3.19 Benefits for Optional Units. Section 21.33.060(11) of the Condo-Hotel Ordinance provides that Unit owners in a Condominium Hotel shall not be qualified to receive golf benefits unless, pursuant to a development agreement, Unit owners receive a condo-hotel resort benefit identification card for benefits in exchange for an additional amenity fee or other consideration to be provided to the CITY. It is understood and agreed that the benefits to be provided to the CITY and/or its residents in connection with this DA are deemed to be and shall constitute other consideration sufficient to justify provision of golf benefits to owners of Optional Units and, therefore, all owners of Optional Units shall at all times be entitled to receive (and the CITY shall take all steps necessary to issue) a Property Owner Identification Card, as referenced in Paragraphs 1 and 10 of City Resolution No. 2007-44, as amended from time to time. It is further understood and agreed that no Property Owner Identification Card will be issued for any of the Designated Units, or for any of the Assisted Living Units.

3.20 Schedule of Performance – Commencement from DA Approval. CITY and the Developer have agreed to a schedule of performance that shall commence and be measured from DA Approval (as defined in Section 2.4 above) in accordance with the following:

(a) Within three (3) months of DA Approval, the Developer shall pay applicable fees and submit to the CITY an application for preliminary architectural approval (to ensure conformity with the Specific Plan) for all three phases of the Condo-Hotel Area. (The parties acknowledge that it shall be a mutual objective to complete such preliminary architectural



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approval process within six months after DA Approval, and agree to exert reasonably diligent and expeditious efforts to accomplish same.)

(b) Within thirty (30) months of DA Approval, the Developer shall pay applicable fees and submit to the CITY (for plan check) construction drawings for Phase 1 of the Condo-Hotel Area.

(c) Within forty-two (42) months of DA Approval, the Developer shall pay applicable fees and pull building permits for (at a minimum) mass grading of the Overall Project and foundations for buildings to be constructed within Phase 1 of the Condo-Hotel Area.

(d) Within fifty-four (54) months of DA Approval, the Developer shall break ground and commence grading and construction pursuant to issued permits as referenced immediately above.

(e) Within ninety (90) months of DA Approval, the Developer shall commence and substantially complete construction of all improvements contemplated for Phase 1 of the Condo-Hotel Area. As used in this Section 3.20 (including this subsection [e] and subsection [f] immediately below), "substantially complete" shall mean when the last certificate of occupancy has been issued by the CITY for the last structure to be built.

(f) Within one hundred twenty-six (126) months of DA Approval, the Developer shall substantially complete construction of all improvements contemplated for Phases 2 and 3 of the Condo-Hotel Area, and the Commercial/Office Area, and the Restaurant Area, all as referenced in Section 3.6 above. (With respect to such areas, Developer agrees that, at all times during which they have been graded but are not in process of vertical construction, they shall be kept in a neat, clean, attractive and well maintained condition.)

In the event the Developer fails to timely satisfy any of the Schedule of Performance requirements of Sections 3.20(a) through (f) above, then the CITY shall have the right to terminate this Agreement, but the CITY shall first be required to provide OWNER with notice pursuant to Section 7.3 of this Agreement and a hearing in accordance with the procedures set forth in Section 6.3 and, if applicable, 6.4 of this Agreement.

Anything in this Agreement to the contrary notwithstanding, the parties agree that the filing of any voluntary or involuntary bankruptcy by or against Developer shall not in any way serve to extend any of the time periods for Developer performance as set forth in this Section 3.20.

3.21 Continued Enforceability After Vested Right Period. Anything in this Agreement to the contrary notwithstanding, it is specifically understood and agreed as follows: With respect to any portions of the Property and/or Project that are developed in the manner contemplated herein during the Vested Right Period, Sections 3.8 through 3.13, inclusive, of this Agreement, and the rights and obligations of owners of Designated Units, Optional Units and Assisted Living Units, as set forth in said Sections, shall continue to be fully binding and enforceable, to the maximum extent permitted by law, subsequent to the Vested Right Period and thereafter for a



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period of ninety-nine (99) years from the Effective Date; and the term of this Agreement shall, with respect to said Sections and said rights and obligations, be deemed to remain in effect.

3.22 Temporary Sign. The parties agree that OWNER shall, during the Vested Right Period, have the right to erect and maintain along Highway 111 a sign advertising pendency/arrival/development/sales of the contemplated Project, which sign may be 10 feet high and 16 feet long, but shall otherwise be in conformity with the dimensions, colors and the like as approved by CITY's Architecture Landscape Committee.

4. PUBLIC BENEFITS.

4.1 Intent. The parties acknowledge and agree that development of the Property will result in substantial public benefits and the satisfaction of substantial public needs that would not otherwise occur without the execution and performance of this Agreement

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. Subject to Sections 3.3.4 and 3.21 hereof, 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. Subject to Sections 3.3.4 and 3.21 hereof, 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.

5. PRIVATE BENEFITS.

5.1 Independent Agency. 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 Condominium Units and shall not be required to utilize the rental or reservation system otherwise required by the Condo-Hotel Ordinance.

5.2 Intentionally Deleted.

5.3 Intentionally Deleted.



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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 continued development, use, operation and/or management 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 Intentionally Deleted.

6. REVIEW FOR COMPLIANCE.

6.1 Periodic Review. During the Vested Rights Period, 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 a reasonable 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;
- (b) 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.

(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.



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(d) If the Planning Commission finds and determines on the basis of clear and convincing 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. If the CITY Council finds, based upon clear and convincing evidence, that OWNER has not complied in good faith with the terms or conditions of the Agreement, the City Council may, subject to satisfaction of requirements in Section 7.3 hereof, 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.



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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, including, without limitation, provisions of Section 3.10, and, with respect to provisions of such Section, OWNER agrees to indemnify and defend CITY to the extent contemplated by Section 8 hereof, as if Section 8 applied to such suit for damages or claim.

7.2 Specific Performance and Injunctive Relief. The parties acknowledge that money damages and remedies at law generally are inadequate and specific performance, injunctive relief 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 30 days after the effective date of such notice or, in the event that such default cannot be cured within such 30 day period but can be cured within a longer time, has



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failed to commence the actions necessary to cure such default within such 30 day period and to diligently, fully and continuously 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 Comprehensive 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



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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.

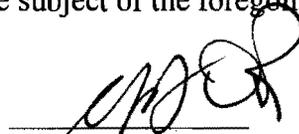
8.4 Reservation of Rights. With respect to Section 8.1 herein, Owner reserves, and with respect to Sections 8.2 and 8.3 herein, CITY reserves, the right to either (1) approve the attorney(s) that the indemnifying party selects, hires or otherwise engages to defend the indemnified party hereunder, which 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 therefor.

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.



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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, delay or condition its consent to any such requested interpretation or modification provided such interpretation or modification is reasonably 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. Anything in this Agreement to the contrary notwithstanding, the Mortgagee shall have the right, but not the obligation, to notify the CITY that the Mortgagee has elected to cure the default, and, in such event, the Mortgagee shall thereafter have all the rights of OWNER including, without limitation, the right to cure any such default; provided, however, the Mortgagee shall have an additional thirty (30) days (beyond the cure period of OWNER) to cure the default, or, if such default cannot be cured within that time, then such additional time as may be reasonably necessary to cure such default if, within such additional thirty (30) day period, the Mortgagee has commenced and is diligently, fully and continuously pursuing remedies necessary to cure the default (including, without limitation, commencement of foreclosure proceedings against OWNER), in which event and while such remedies are being diligently, fully and continuously pursued by Mortgagee, CITY shall not continue with proceedings to terminate or modify 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,



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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 Public 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.



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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 benefitted thereby of the covenants to be performed hereunder by such benefitted 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.



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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 venturer 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).



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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.



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

MILES LODGE, L.L.C., a California limited liability company

By: [Signature]

Title: Manager

Dated: 12/8/10

By: [Signature]

Title: Manager

Dated: 12/8/10

CITY OF INDIAN WELLS

By: [Signature]
Greg Johnson, City Manager

Dated: 12/20/10



ATTEST:

[Signature], Chief Deputy
City Clerk

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP

[Signature]
City Attorney



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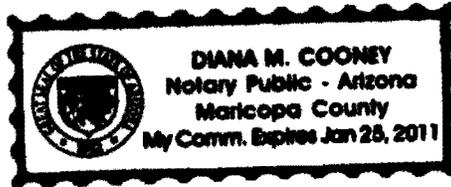
ACKNOWLEDGEMENT

State of Arizona)
) ss.
County of Maricopa)

On December 8, 2010 before me, Diana M. Cooney, Notary Public personally appeared Denny Ryerson who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity.

I certify under Penalty of Perjury under the laws of the State of Arizona that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature: *Diana M. Cooney*
Notary Public



ACKNOWLEDGMENT

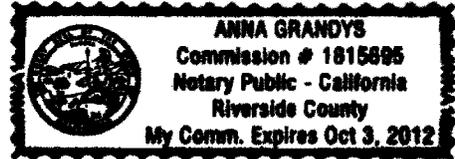
State of California
County of Riverside)

On December 8, 2010 before me, Anna Grandys, Notary Public
(insert name and title of the officer)

personally appeared Gerald Fogelson
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  (Seal)



ACKNOWLEDGMENT

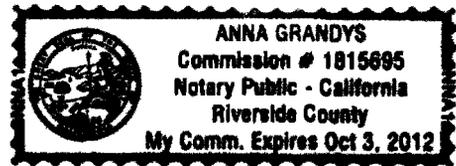
State of California
County of Riverside)

On December 20, 2010 before me, Anna Grandys, Notary Public
(insert name and title of the officer)

personally appeared Greg Johnson, City Manager
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  (Seal)



EXHIBIT "A"

(Legal Description of the Property)



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EXHIBIT "A"
LEGAL DESCRIPTION

PORTION OF APN 633-150-073:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 23;

THENCE NORTH 00°01'57" WEST ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 446.98 FEET TO THE SOUTHERLY LINE OF THAT CERTAIN EASEMENT CONVEYED TO THE COACHELLA VALLEY COUNTY WATER DISTRICT BY DEED RECORDED MAY 19, 1965 AS INSTRUMENT NO. 57945 OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY, AND THE TRUE POINT OF BEGINNING;

THENCE NORTH 76°23'40" WEST ALONG SAID SOUTHERLY LINE OF THE EASEMENT A DISTANCE OF 214.50 FEET;

THENCE NORTH 02°32'33" EAST A DISTANCE OF 62.67 FEET;

THENCE SOUTH 87°27'27" EAST A DISTANCE OF 205.85 FEET TO SAID EAST LINE OF THE NORTHEAST QUARTER OF SECTION 23;

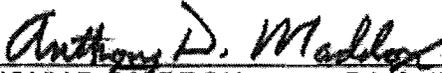
THENCE SOUTH 00°01'57" EAST ALONG SAID EAST LINE A DISTANCE OF 103.94 FEET TO THE TRUE POINT OF BEGINNING.

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

CONTAINING 17,283 SQUARE FEET OR 0.397 ACRES, MORE OR LESS.

EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY OR UNDER THE DIRECTION OF:


ANTHONY D. MADDOX P.L.S. 5476
EXP. 09/30/2012

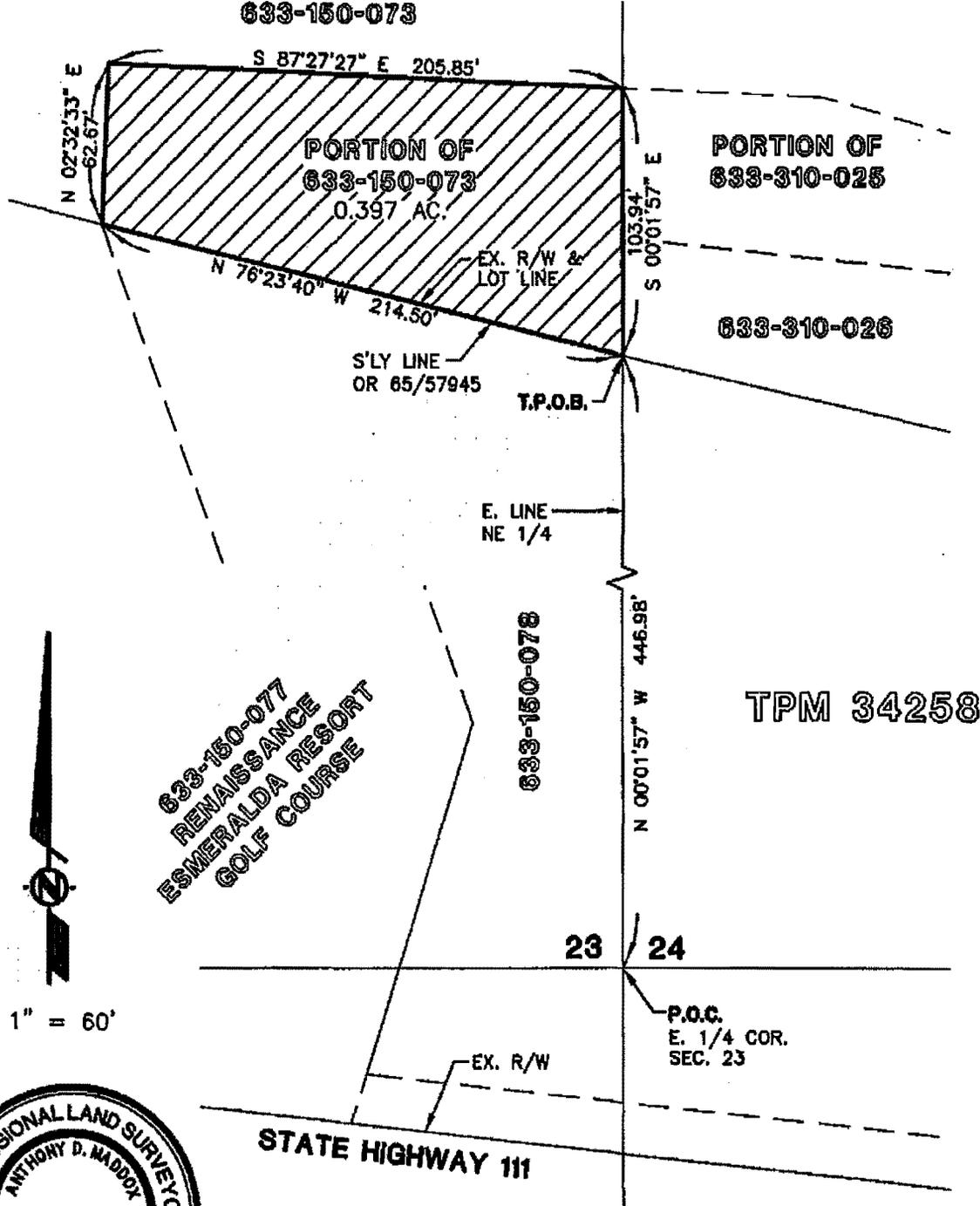
DATED: 10/13/2010



EXHIBIT "B"

PORTION OF APN 633-150-073 IN
THE NORTHEAST QUARTER OF
SEC. 23, T.5S., R.6E., S.B.M.

633-150-073



MSA CONSULTING, INC.
PLANNING ■ CIVIL ENGINEERING ■ LAND SURVEYING

34200 BON HOPE DRIVE ■ RANCHO MIRAGE ■ CA 92270
TELEPHONE (760) 320-9811 ■ FAX (760) 323-7893



EXHIBIT A

EXHIBIT A TO GRANT DEED

(Site Legal Description)

PARCEL 1

[APN'S 633-310-004 & 633-310-009]

THAT PORTION OF THE SOUTHWEST ¼ OF THE NORTHWEST ¼ AND THAT PORTION OF THE NORTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST ¼ OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, SAID POINT BEING ON THE TRUE POINT OF BEGINNING; THENCE SOUTHERLY ALONG THE WEST LINE OF THE SOUTHWEST ¼ OF SAID SECTION 24, SOUTH 0° 02' EAST, A DISTANCE OF 72.55 FEET TO THE NORTH RIGHT OF WAY LINE OF STATE HIGHWAY 111; THENCE EASTERLY ALONG SAID RIGHT OF WAY LINE SOUTH 84° 03' 15" EAST, A DISTANCE OF 1,074.82 FEET TO THE WESTERLY RIGHT OF WAY OF MILES AVENUE; THENCE NORTHERLY ALONG SAID RIGHT OF LINE NORTH 5° 56' 45" EAST, A DISTANCE OF 210.00 FEET; THENCE ALONG A TANGENT CURVE CONCAVE TO THE SOUTHEAST DESCRIBED AS HAVING A CENTRAL ANGLE OF 27° 56' 38" A RADIUS OF 650.00 FEET, AND AN ARC DISTANCE OF 317.01 FEET, TO A POINT ON SAID CURVE HAVING A RADIAL BEARING 56° .06' 37" WEST; THENCE NORTH 73° 49' WEST, A DISTANCE OF 1,247.58 FEET, TO A POINT ON THE WEST LINE OF THE NORTHWEST ¼ OF SAID SECTION 24; THENCE SOUTH 0° 02' EAST, A DISTANCE OF 677.70 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPTING THEREFROM THE FOLLOWING:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST ¼ OF SAID SECTION 24; THENCE SOUTHERLY ALONG THE WEST LINE OF THE SOUTHWEST ¼ OF SAID SECTION 24, SOUTH 0° 02' EAST, 72.55 FEET, MORE OR LESS, TO THE NORTH RIGHT OF WAY LINE OF STATE HIGHWAY 111, AS NOW LOCATED; THENCE EASTERLY ALONG SAID RIGHT OF WAY LINE, SOUTH 84° 03' 15" EAST, 1,074.82 FEET, TO THE WESTERLY RIGHT OF WAY LINE OF MILES AVENUE, FOR THE POINT OF BEGINNING; THENCE NORTHERLY ALONG SAID RIGHT OF WAY LINE, NORTH 5° 56' 45" EAST, 210.0 FEET; THENCE ALONG A TANGENT CURVE CONCAVE TO THE SOUTHEAST, DESCRIBED AS HAVING A CENTRAL ANGLE OF 0° 52' 54" A RADIUS OF 650.00 FEET, AND AN ARC DISTANCE OF 10 FEET; THENCE NORTH 84° 03' 15" WEST, 200.08 FEET; THENCE SOUTH 5° 56' 45" WEST, 220 FEET TO SAID NORTH RIGHT OF WAY LINE OF STATE HIGHWAY 111; THENCE EASTERLY ALONG SAID RIGHT OF WAY LINE SOUTH 84° 03' 15" EAST, 200 FEET TO THE POINT OF BEGINNING.

EXHIBIT A
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PARCEL 2
[APN 633-31-013]

THAT PORTION OF THE SOUTHWEST ¼ OF THE NORTHWEST ¼ AND THAT PORTION OF THE NORTHWEST ¼ OF THE SOUTHWEST ¼ OF SECTION 24, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, AS SHOWN BY THE UNITED STATES GOVERNMENT SURVEY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST ¼ OF SAID SECTION 24; THENCE SOUTHERLY ALONG THE WEST LINE OF SOUTHWEST ¼ OF SAID SECTION 24, SOUTH 0° 02' EAST 72.55 FEET, MORE OR LESS, TO THE NORTH RIGHT OF WAY LINE OF STATE HIGHWAY 111 AS NOW LOCATED;
THENCE EASTERLY ALONG SAID RIGHT OF WAY LINE, SOUTH 64° 03' 15" EAST, 1,74.82 FEET, TO THE WESTERLY RIGHT OF WAY LINE OF MILES AVENUE, FOR THE POINT OF BEGINNING; THENCE NORTHERLY, ALONG SAID RIGHT OF WAY LINE, NORTH 8° 56' 45" EAST 210 FEET; THENCE ALONG A TANGENT CURVE CONCAVE TO THE SOUTHEAST DESCRIBED AS HAVING A CENTRAL ANGLE OF 0° 52' 54" A RADIUS OF 650 FEET, AND AN ARC DISTANCE OF 106 FEET; THENCE NORTH 84° 03' 15" WEST, 200.08 FEET;
THENCE SOUTH 5° 56' 45" WEST, 220 FEET TO SAID NORTH RIGHT OF WAY LINE OF STATE HIGHWAY 111;
THENCE EASTERLY ALONG SAID RIGHT OF WAY LINE SOUTH 84° 03' 15" EAST, 200 FEET TO THE POINT OF BEGINNING.

EXCEPT THAT PORTION THEREOF CONVEYED TO THE COUNTY OF RIVERSIDE BY DEED RECORDED JULY 12, 1966 AS INSTRUMENT NO. 71356 OF OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

PARCEL 3
[PORTION APN 633-150-011]

SEE EXHIBIT A-1 ATTACHED HERETO AND INCORPORATED HEREIN BY REFERENCE.

EXHIBIT A
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PARCEL 3
[PORTION APN 633-150-011]

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

BEGINNING AT THE EAST QUARTER CORNER OF SAID SECTION 23;

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

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

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

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

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

THENCE SOUTH 00°01'57" EAST ALONG SAID EAST LINE, A DISTANCE OF 448.98 FEET TO THE POINT OF BEGINNING.

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

CONTAINING 82,578 SQUARE FEET OR 1.437 ACRES, MORE OR LESS.

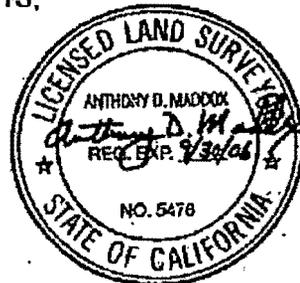
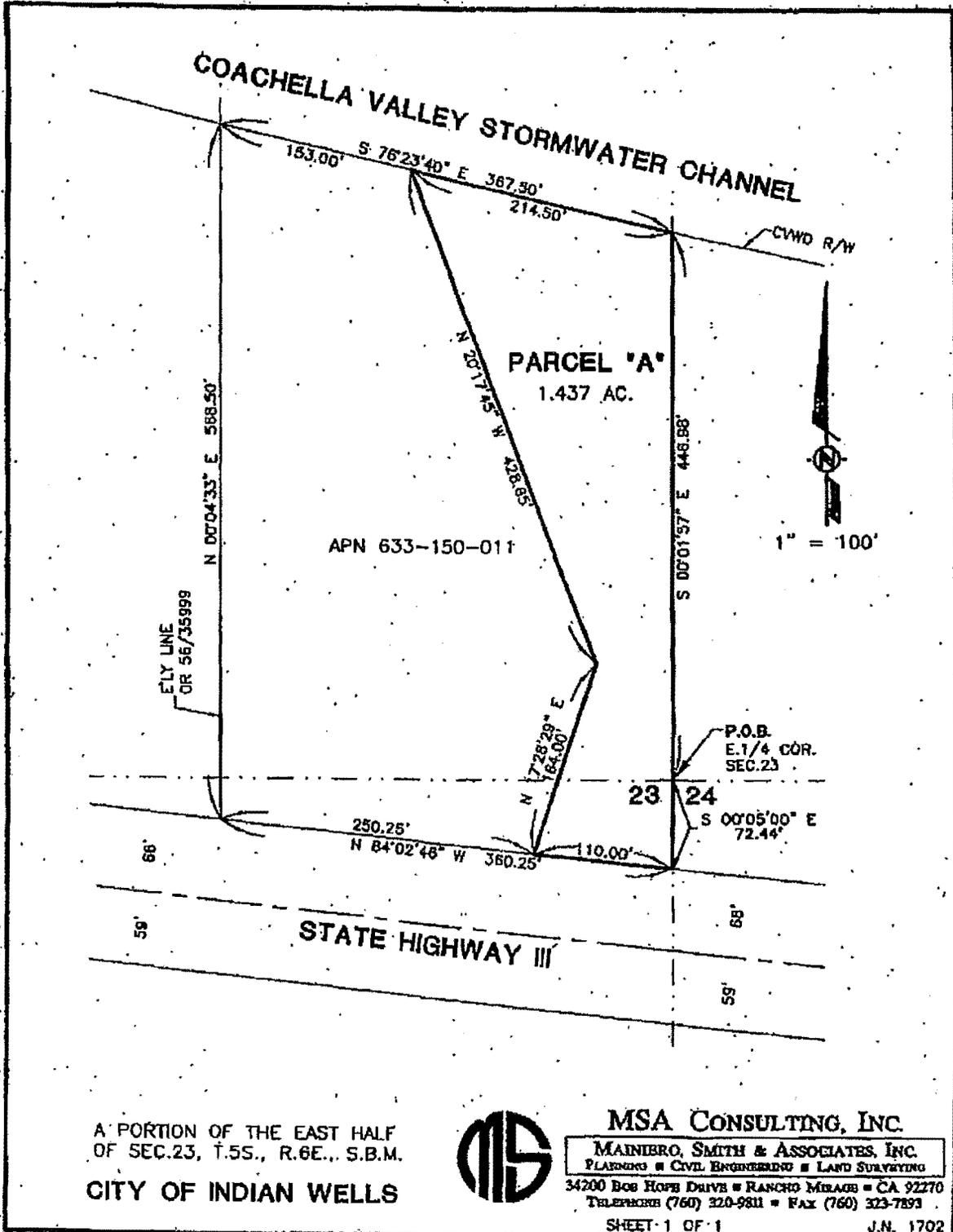


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A PORTION OF THE EAST HALF
OF SEC. 23, T.5S., R.6E., S.B.M.
CITY OF INDIAN WELLS



MSA CONSULTING, INC.
MAINIBRO, SMITH & ASSOCIATES, INC.
 PLANNING ■ CIVIL ENGINEERING ■ LAND SURVEYING
 34200 BOB HOPE DRIVE ■ RANCHO MIRAGE ■ CA 92270
 TELEPHONE (760) 320-9811 ■ FAX (760) 323-7893
 SHEET 1 OF 1 J.N. 1702

Exhibit A-1 Page 2 of 2



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EXHIBIT "A"
LEGAL DESCRIPTION

PORTION OF APN 633-150-073:

THAT PORTION OF THE NORTHEAST QUARTER OF SECTION 23, TOWNSHIP 5 SOUTH, RANGE 6 EAST, SAN BERNARDINO BASE AND MERIDIAN, ACCORDING TO THE OFFICIAL PLAT THEREOF, IN THE CITY OF INDIAN WELLS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 23;

THENCE NORTH 00°01'57" WEST ALONG THE EAST LINE OF SAID NORTHEAST QUARTER, A DISTANCE OF 446.98 FEET TO THE SOUTHERLY LINE OF THAT CERTAIN EASEMENT CONVEYED TO THE COACHELLA VALLEY COUNTY WATER DISTRICT BY DEED RECORDED MAY 19, 1965 AS INSTRUMENT NO. 57945 OF OFFICIAL RECORDS OF SAID RIVERSIDE COUNTY, AND THE **TRUE POINT OF BEGINNING**;

THENCE NORTH 76°23'40" WEST ALONG SAID SOUTHERLY LINE OF THE EASEMENT A DISTANCE OF 214.50 FEET;

THENCE NORTH 02°32'33" EAST A DISTANCE OF 62.67 FEET;

THENCE SOUTH 87°27'27" EAST A DISTANCE OF 205.85 FEET TO SAID EAST LINE OF THE NORTHEAST QUARTER OF SECTION 23;

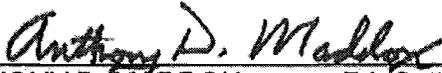
THENCE SOUTH 00°01'57" EAST ALONG SAID EAST LINE A DISTANCE OF 103.94 FEET TO THE **TRUE POINT OF BEGINNING**.

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

CONTAINING 17,283 SQUARE FEET OR 0.397 ACRES, MORE OR LESS.

EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

PREPARED BY OR UNDER THE DIRECTION OF:

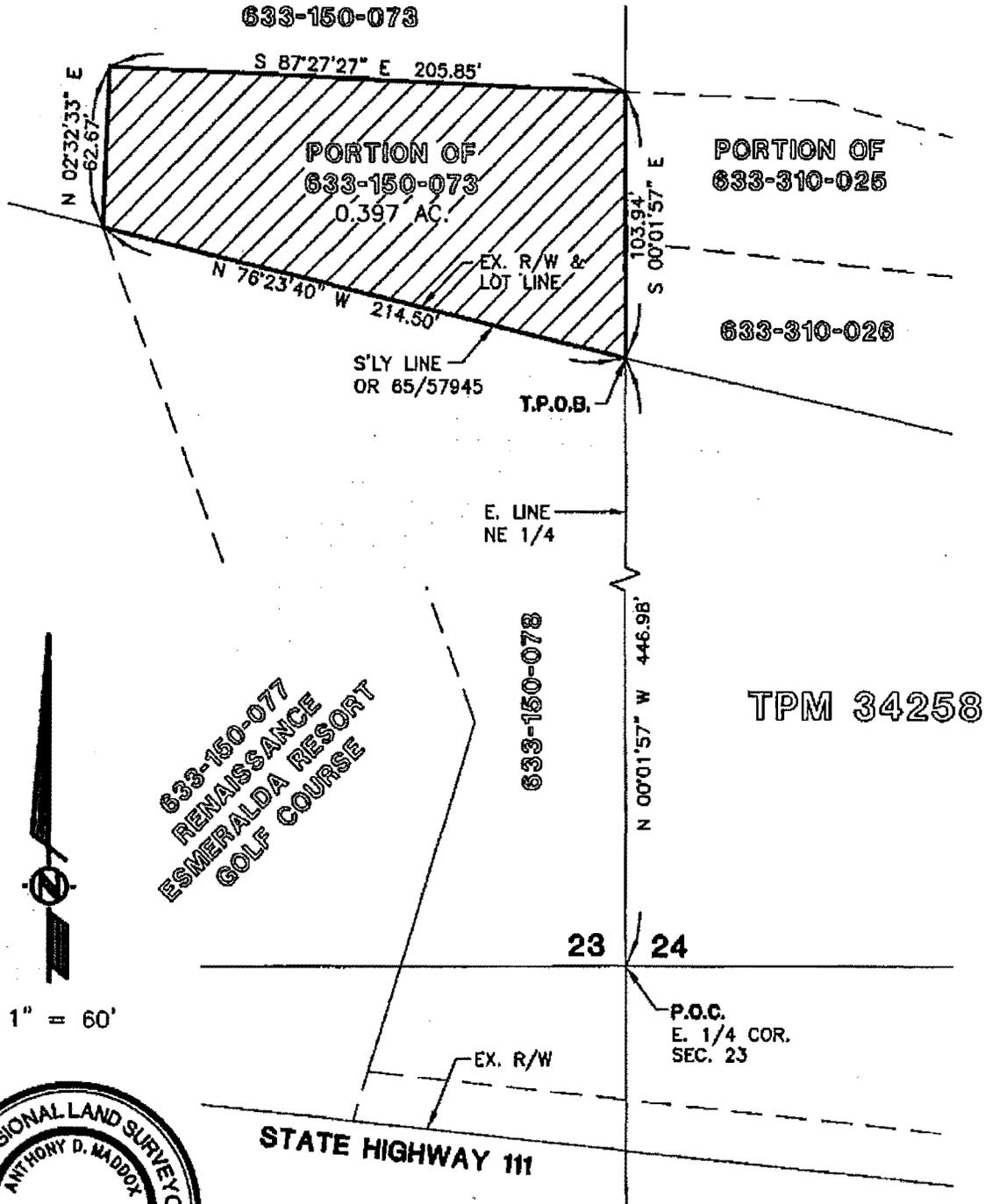

ANTHONY D. MADDOX P.L.S. 5476
EXP. 09/30/2012

DATED: 10/13/2010



EXHIBIT "B"

PORTION OF APN 633-150-073 IN
THE NORTHEAST QUARTER OF
SEC. 23, T.5S., R.6E., S.B.M.



MSA CONSULTING, INC.
PLANNING ■ CIVIL ENGINEERING ■ LAND SURVEYING

34200 BOB HOPE DRIVE ■ RANCHO MIRAOSO ■ CA 92270
TELEPHONE (760) 320-9811 ■ FAX (760) 323-7893

J.N. 1702

10/13/2010

SHEET 1 OF 1

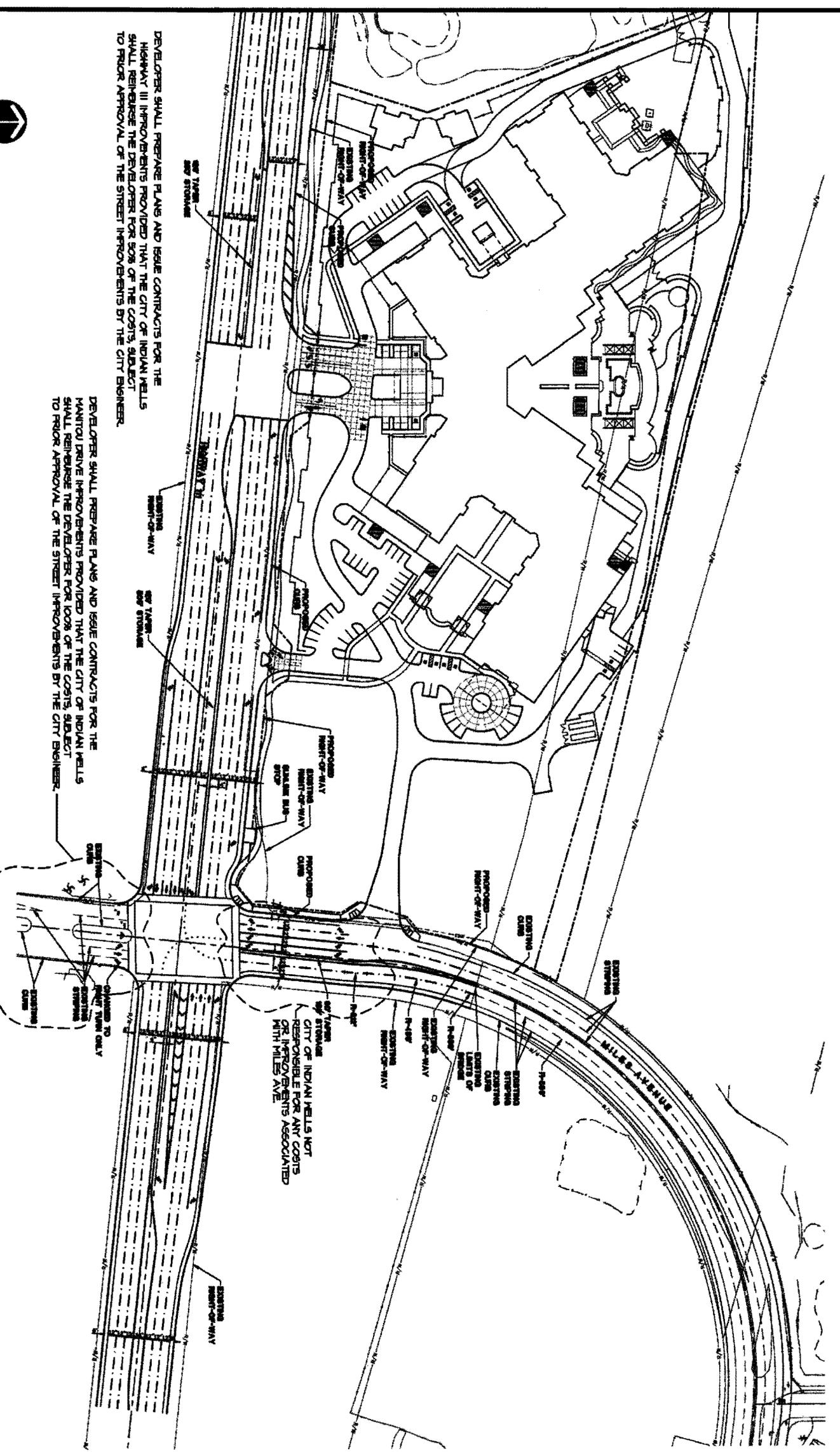


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EXHIBIT "B"

(Map of the Property)





DEVELOPER SHALL PREPARE PLANS AND ISSUE CONTRACTS FOR THE HIGHWAY III IMPROVEMENTS PROVIDED THAT THE CITY OF INDIAN WELLS SHALL REIMBURSE THE DEVELOPER FOR 50% OF THE COSTS, SUBJECT TO PRIOR APPROVAL OF THE STREET IMPROVEMENTS BY THE CITY ENGINEER.

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

CITY OF INDIAN WELLS NOT RESPONSIBLE FOR ANY COSTS OR IMPROVEMENTS ASSOCIATED WITH HILLS AVE.



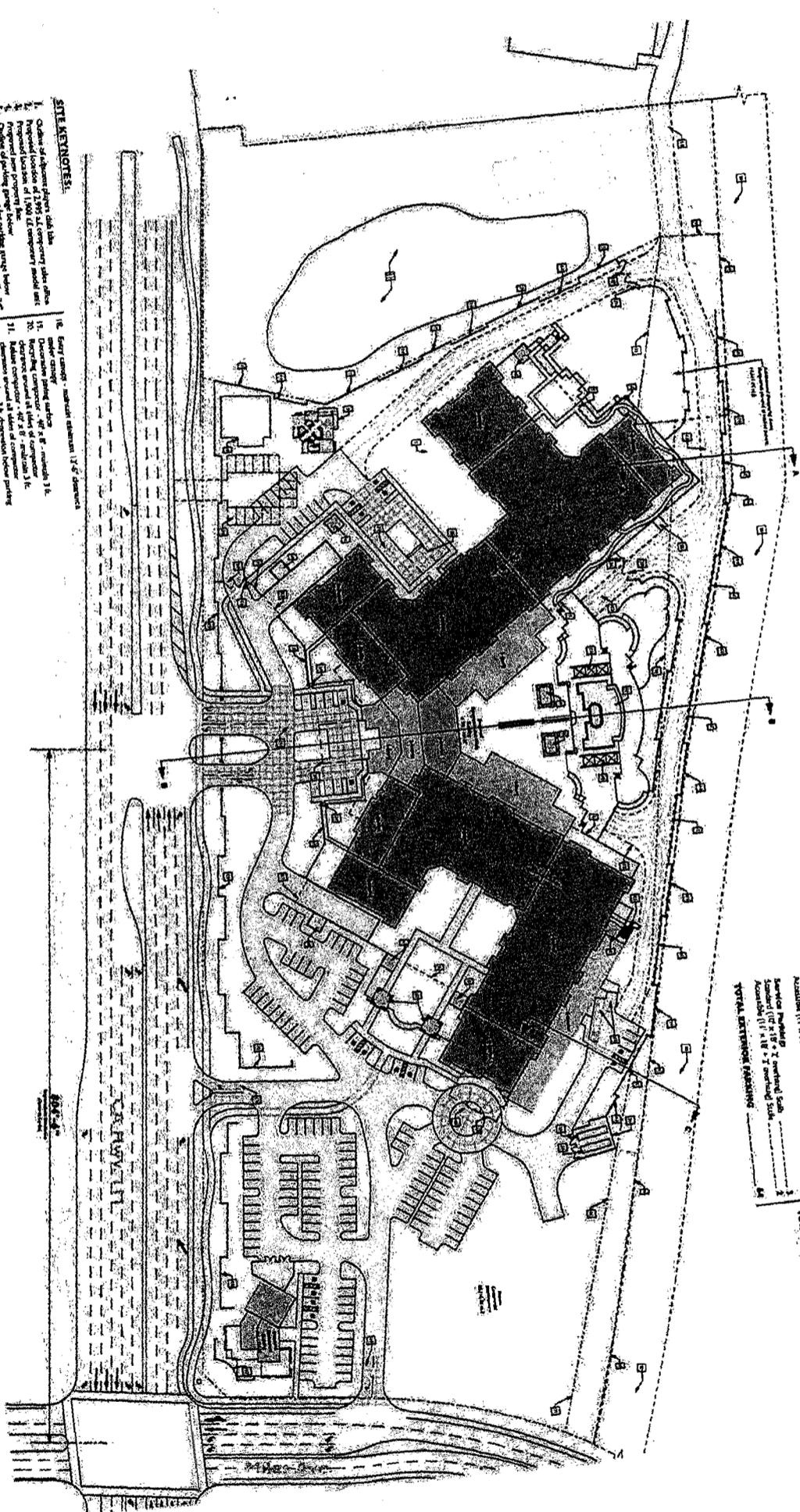
**RYERSON - PRELIMINARY HIGHWAY III
 AND MILES AVENUE GEOMETRY REVISED 10-21-2010**


 OCTOBER 21, 2010
M&A CONSULTING, INC.
 10000 N. 100th Street, Suite 1000, Redmond, WA 98073
 TEL: (206) 881-1100 FAX: (206) 881-1101
 WWW: www.m-a-c.com

EXHIBIT "C"

(Development Plan)





- SITE KEYNOTES:**
1. Outline of adjacent property lots.
 2. Proposed location of 1,000 sq. ft. temporary site office.
 3. Proposed location of 1,000 sq. ft. temporary site office.
 4. Proposed location of 1,000 sq. ft. temporary site office.
 5. Proposed location of 1,000 sq. ft. temporary site office.
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 28. Proposed location of 1,000 sq. ft. temporary site office.
 29. Proposed location of 1,000 sq. ft. temporary site office.
 30. Proposed location of 1,000 sq. ft. temporary site office.
 31. Proposed location of 1,000 sq. ft. temporary site office.
 32. Proposed location of 1,000 sq. ft. temporary site office.

THE RYERSON EXTERIOR PARKING:

Visitor/Client Parking	10
Service (10' x 18' x 2' covered) Spots	10
Academy (11' x 18' x 2' covered) Spots	10
TOTAL EXTERIOR PARKING	30

RESTAURANT PARKING:

Restaurant Parking	1
Service (10' x 18' x 2' covered) Spots	1
Academy (11' x 18' x 2' covered) Spots	1
TOTAL EXTERIOR PARKING	3

arcute|winslow

ARCUTE|WINSLOW



THE RYERSON INDIAN WELLS CROSSING

A-100
Architectural Site Plan
Date: September 15th, 2010



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