

DOC # 2011-0033227

01/21/2011 09:56A Fee:NC

Page 1 of 39

Recorded in Official Records

County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder

PLEASE COMPLETE THIS INFORMATION
RECORDING REQUESTED BY:

City of Indian Wells

AND WHEN RECORDED MAIL TO:

Chief Deputy City Clerk
City of Indian Wells
44950 Eldorado Drive
Indian Wells, CA 92210



S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
/			39						
M	A	L	465	426	PCOR	NCOR	SMF	NCHG	EXAM 809
NCHG CC									

C
809

Space above this line for recorder's use only

TRA: DISPOSITION AND DEVELOPMENT AGREEMENT BY AND BETWEEN THE
OTT: INDIAN WELLS REDEVELOPMENT AGENCY AND MILES LODGE, L.L.C.

Title of Document

The undersigned declares that this document is recorded at the request of and for the benefit of the City of Indian Wells and is therefore exempt from the payment of the recording fee pursuant to Government Code Section §6103 and 27383 and from payment of the documentary transfer tax pursuant to California Revenue and Taxation Code Section §119922.

THIS AREA FOR
RECORDER'S
USE ONLY

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(\$3:00 Additional Recording Fee Applies)

DISPOSITION AND DEVELOPMENT AGREEMENT

by and between the

INDIAN WELLS REDEVELOPMENT AGENCY

and

MILES LODGE, L.L.C.



DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the **INDIAN WELLS REDEVELOPMENT AGENCY**, a public body, corporate and politic (the "Agency"), and MILES LODGE, LLC, a California limited liability company (the "Developer").

RECITALS

The following recitals are a substantive part of this Agreement:

A. The Agency is the fee simple owner of that certain real property in the City of Indian Wells (the "Agency Infill Parcel"), which is illustrated in **Attachment No. 1** and legally described in **Attachment No. 2**, both of which are attached hereto and incorporated herein. Developer is the fee simple owner of that certain real property which is illustrated in Attachment No. 1 ("Existing Developer Property"). (The Agency Infill Parcel and the Existing Developer Property are hereinafter sometimes referred to collectively as the "Site").

B. This Agreement contemplates acquisition of the Agency Infill Parcel and development of the Site by the Developer.

NOW, THEREFORE, the Agency and the Developer hereby agree as follows:

100. DEFINITIONS

"Actual Knowledge" is defined in Sections 206.2 and 208.1 hereof.

"Agency" means the Indian Wells Redevelopment Agency, a public body, corporate and politic, established pursuant to the Community Redevelopment Law of the State of California, California Health and Safety Code Sections 33000, et seq.

"Agency Infill Parcel" means the parcel referenced in recital A above.

"Agency's Conditions Precedent" means the conditions precedent to the Closing for the benefit of the Agency, as set forth in Section 205.1 hereof.

"Agreement" means this Disposition and Development Agreement between the Agency and the Developer.

"Association" means a non-profit corporation created for the purpose of managing a common interest development, as referenced in California Civil Code Section 1351(a), as referenced in Section 403 hereof..

"City" means the City of Indian Wells, a California municipal corporation and chartered city.

"Closing" means the close of Escrow for the conveyance of the Agency Infill Parcel



2011-0033227
01/21/2011 09:56A
3 of 39

from the Agency to the Developer, as set forth in Section 200 hereof.

"Closing Date" means the date of the Closing, as set forth in Section 202.4 hereof.

"Condition of Title" is defined in Section 203 hereof.

"Conditional Sales Agreement" is defined in Section 312.

"County" means the County of Riverside, California.

"Declaration" has the meaning indicated in California Civil Code Section 1351(h), and in Section 403 hereof..

"Default" means the failure of a Party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 501 hereof.

"Deposit" is defined in Section 201.1 hereof.

"Developer" means Miles Lodge, L.L.C., a California limited liability company.

"Developer Improvements" means the new improvements to be constructed by the Developer pursuant to Section 301 herein.

"Developer's Conditions Precedent" means the conditions precedent to the Closing to the benefit of the Developer, as set forth in Section 205.2.

"Development Agreement" means an agreement, authorized by Section 65864, et seq., of the California Government Code, relating to development of the Site, that will be entered into concurrently herewith by and between the Developer and the City.

"Due Diligence Period" is defined in Section 208.2 hereof.

"Effective Date of Agreement" means the date upon which this Agreement is executed by the Agency.

"Environmental Consultant" means the environmental consultant to be employed by the Developer pursuant to Section 208.2 hereof.

"Environmental Laws" means any and all federal, State or local laws, statutes, ordinances or regulations pertaining to environmental regulation, contamination or cleanup of any Hazardous Materials, including, without limitation, (i) Sections 25115, 25117, 25122.7 or 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) Article 9 or Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (vi) Section 311 of the Clean Water Act (33 U.S.C. §1317), (vii) Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903), (viii) Section 101 of the

2011-0933227
01/21/2011 09:56A
4 of 39



Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 *et seq.*, or (ix) any State or federal lien or "superlien" law, any environmental cleanup statute or regulation, or any permit, approval, authorization, license, variance or permission required by any governmental authority having jurisdiction.

"Escrow" is defined in Section 202 hereof.

"Escrow Agent" is defined in Section 202 hereof.

"Exceptions" is defined in Section 203 hereof.

"Exclusive Negotiation Fee" is defined in Section 201.1 hereof.

"Existing Developer Property" means the property referenced in recital A above.

"Governmental Requirements" means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the City, or any other political subdivision in which the Site is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Agency, the Developer or the Site.

"Grant Deed" means the grant deed for the conveyance of the Site from the Agency to the Developer.

"Hazardous Materials" means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law), (ii) defined as a "hazardous substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Administrative Code, Division 4, Chapter 20, (ix) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (x) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.* (42 U.S.C. §6903) or (xi) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §9601 *et seq.*

"Land Use Approvals" means the approvals contemplated by the Development Agreement to be executed concurrently herewith.

"Notice" shall mean a notice in the form prescribed by Section 601 hereof.

"Opening of Escrow" is defined in Section 202 hereof.



"Outside Date" shall mean the last date the Closing shall occur, as set forth in Section 202.4 hereof.

"Owner" shall mean the Developer and any and all successors in interest who own any parcel within the Site.

"Party" shall mean either the "Agency" or the "Developer," depending on the context in which the term is used.

"Parties" shall mean both the Agency and the Developer.

"Purchase Price" means the price to be paid by the Developer to the Agency in consideration for the conveyance of fee title to the Site.

"Redevelopment Plan" means the Redevelopment Plan for the Consolidated Whitewater Redevelopment Project Area, adopted on July 8, 1982, as amended on August 5, 1987.

"Remaining Purchase Price" means the Purchase Price, less the Deposit.

"Report" means the preliminary title report, as described in Section 203 hereof.

"Site" means, collectively, the Agency Infill Parcel and the Existing Developer Property.

"Site Map" means the map of the Site which is attached hereto as **Attachment No. 1** and incorporated herein.

"State" means State of California.

"Studies" is defined in Section 207 hereof.

"Successor Owner" shall mean any successor in interest to the Developer who acquires fee title to the Site and assumes Developer obligations under this Agreement.

"Title Company" is defined in Section 203 hereof.

"Title Policy" is defined in Section 204 hereof.

200. CONVEYANCE OF THE AGENCY INFILL PARCEL

201. Purchase and Sale of Agency Infill Parcel. Subject to all of the terms and conditions of this Agreement, Agency shall sell the Agency Infill Parcel to the Developer, and the Developer shall purchase the Agency Infill Parcel from the Agency, for an amount equal to the appraised value of the Agency Infill Parcel, as determined by normal Agency procedures (the "Purchase Price").

201.1 Good Faith Deposit. The Developer shall concurrently with the Opening of Escrow deliver to the Agency (and not into Escrow) a good faith deposit (the "Deposit") in the amount of One Thousand Dollars (\$1,000), in the form of either cash or certified check. The Agency shall be under no obligation to pay or earn interest on the Deposit.



Upon the termination of this Agreement by the Developer pursuant to Section 503 of this Agreement, the Deposit shall be returned to the Developer. Upon the termination of this Agreement by the Agency pursuant to Section 504 of this Agreement, due to the Developer's Default, the entire Deposit shall be retained by the Agency as its sole and exclusive property. Upon the termination of this Agreement by the Agency pursuant to Section 504, but not due to the Developer's Default, the Deposit shall be returned to the Developer. Upon the Closing, the Deposit shall be tendered by the Agency into the Escrow and shall be applied to and be part of the Purchase Price for the Agency Infill Parcel.

202. Escrow. Within five (5) business days after the Effective Date of Agreement, the Parties shall open an escrow for the conveyance of the Agency Infill Parcel ("Escrow") with the Escrow Department of First American Title Insurance Company, or another escrow company mutually satisfactory to both Parties (the "Escrow Agent"). For purposes of this Agreement, the Escrow shall be deemed open (the "Opening of Escrow") on the date the Escrow Agent shall have received a fully executed original or originally executed counterparts of this Agreement.

202.1 Costs of Escrow. The Developer shall pay the premium for the Title Policy as set forth in Section 204 hereof. The Developer shall also pay for the documentary transfer taxes, if any, due with respect to the conveyance of the Agency Infill Parcel, and the Developer shall pay all other usual fees, charges, and costs which arise from the Escrow, including without limitation any Escrow cancellation charges in the event this Agreement is terminated by either Party prior to Closing.

202.2 Escrow Instructions. This Agreement constitutes the joint escrow instructions of the Developer and the Agency, and the Escrow Agent to whom these instructions are delivered is hereby empowered to act under this Agreement. The Parties agree to perform all acts reasonably necessary to close the Escrow expeditiously in accordance with the terms hereof. All funds received in the Escrow shall be deposited with other escrow funds in a general escrow trust account(s) and may be transferred to any other such escrow trust account in any State or National Bank doing business in the State of California. All disbursements shall be made by check or wire transfer from such account.

If in the opinion of either Party, it is necessary or convenient to accomplish the Closing of this transaction in accordance with the provisions, intents and purposes hereof, either Party may require that the Parties sign supplemental escrow instructions; provided that if there is any inconsistency between this Agreement and the supplemental escrow instructions, then the provisions of this Agreement shall control. The Parties agree to execute such other and further documents as may be reasonably necessary, helpful or appropriate to effectuate the provisions of this Agreement. The Closing shall take place when both the Agency's Conditions Precedent as set forth in Section 205.1 and the Developer's Conditions Precedent as set forth in Section 205.2 have been satisfied. The Escrow Agent is instructed to release the Agency's escrow closing statement and the Developer's escrow closing statement to the respective applicable Party.

202.3 Authority of Escrow Agent. The Escrow Agent is authorized to and shall:

a. Pay and charge the Developer for any premium of the Title Policy, endorsements, additional coverage and any other costs associated with the Title Policy as set forth in Section 204 of this Agreement.



b. Pay and charge the Developer for any escrow fees, charges, and costs payable under Section 202.1 of this Agreement.

c. Disburse funds and deliver and record the Grant Deed when both the Developer's Conditions Precedent and the Agency's Conditions Precedent have been fulfilled or waived by the Developer and the Agency, as applicable.

d. Do such other actions as necessary, including obtaining the Title Policy, to fulfill its obligations under this Agreement.

e. Direct the Agency and the Developer to execute and deliver any instrument, affidavit, and statement, and to perform any act reasonably necessary to comply with the provisions of the Foreign Investment in Real Property Act ("FIRPTA") and any similar State act and regulation promulgated thereunder. The Agency agrees to execute a Certificate of Non-Foreign Status by individual transferor and/or a Certification of Compliance with Real Estate Reporting Requirement of the 1986 Tax Reform Act as may be required by the Escrow Agent on the form to be supplied by the Escrow Agent.

f. Prepare and file with all appropriate governmental or taxing authorities a uniform settlement statement, closing statement, tax withholding forms including an IRS 1099-S form, and be responsible for withholding taxes, if any such forms are provided for or required by law.

202.4 Closing. This transaction shall close ("Closing") within thirty (30) days following the last to occur of (i) the expiration of the Due Diligence Period, as defined in Section 208.2, and (ii) the satisfaction of all of the Agency's Conditions Precedent and the Developer's Conditions Precedent to Closing as set forth in Section 205 hereof; provided, however in no event shall the Closing occur later than April 29, 2011 (the "Outside Date"). The Closing shall occur at a location within Riverside County at a time and place reasonably agreed on by the Parties. The "Closing" shall mean the time and day the Grant Deed is filed for recording with the Riverside County Recorder. The "Closing Date" shall mean the day on which the Closing occurs.

The Outside Date is subject to extension as provided by force majeure, as described in Section 602 hereof. Separate and apart from any extension of the Outside Date due to force majeure, the Parties may (but shall not be obligated to) extend the Outside Date by mutual written agreement. As a condition to its entry into any such agreement extending the Outside Date, the Agency reserves the right to renegotiate the Purchase Price, Escrow terms, and any other terms and conditions of this Agreement.

202.5 Termination. If the Escrow is not in condition to close by the Outside Date, (subject to any extension of the Outside Date due to force majeure) then either Party which has fully performed under this Agreement may, in writing, demand the return of money, documents or property and, as provided below, terminate this Agreement. If either Party makes a written demand for return of money, documents or property, this Agreement shall not terminate until five (5) business days after the Escrow Agent shall have delivered copies of such demand to the other Party at the other Party's address as shown in Section 601 of this Agreement. If any objections are raised within said five (5) day period, the Escrow Agent is authorized to hold all money, documents and property until instructed by a court of competent jurisdiction or by mutual written instructions of the Parties. If termination is not due to any Default pursuant to Sections 503 or 504, termination of this Agreement shall be without prejudice, cost, expense or liability to either Party and each Party shall be entitled to a return of all funds, documents and property

2011-0033227
01/21/2011 09:56A
8 of 39



deposited by that Party into the Escrow. If the Developer terminates this Agreement or fails to close the Escrow for any reason (except for the Default of the Agency pursuant to Section 503) then the Developer shall, at no cost to the Agency, deliver to the Agency all maps, surveys, tests, plans, reports and/or studies created by or at the request of the Developer, and the same shall become the property of the Agency. If no demands are made, the Escrow Agent shall proceed with the Closing as soon as possible.

202.6 Closing Procedure. The Escrow Agent shall close the Escrow for the Agency Infill Parcel as follows:

- a. Record the Grant Deed with instructions for the Recorder of Riverside County, California, to deliver the Grant Deed to the Developer;
- b. Instruct the Title Company to deliver the Title Policy to the Developer;
- c. File any informational reports required by Internal Revenue Code Section 6045(e), as amended, and any other applicable requirements;
- d. Deliver the FIRPTA Certificate, if any, to the Developer;
- e. Pay to the Agency the Purchase Price; and
- f. Forward to both the Developer and the Agency, a separate accounting of all funds received and disbursed for each Party and copies of all executed and recorded or filed documents deposited into Escrow, with such recording and filing date and information endorsed thereon.

203. Review of Title. The Agency has caused First American Title Insurance Company (the "Title Company"), to prepare and the Agency has delivered to the Developer, a standard preliminary title report (the "Report") with respect to the title to the Agency Infill Parcel, together with legible copies of the documents underlying the exceptions ("Exceptions") set forth in the Report. The Developer shall have the right to reasonably approve or disapprove the Exceptions; provided, however, that the Developer herein approves the following Exceptions:

- a. The Redevelopment Plan;
- b. Matters affecting the condition of title created by or with the consent of the Developer;
- c. All matters which would be shown by an accurate survey of the Agency Infill Parcel or by a physical inspection of the Agency Infill Parcel;
- d. All applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) affecting the development, use, occupancy or enjoyment of the Agency Infill Parcel.

The Developer shall have sixty (60) days from the date of its receipt of the Report or the Effective Date of Agreement, whichever occurs later, to give written notice to the Agency and the Escrow Agent of the Developer's approval or disapproval of any of such Exceptions. The Developer's failure to give written disapproval of the Report within such time limit shall be deemed approval of the Report. If the Developer notifies the Agency of its disapproval of any



Exception in the Report, the Agency shall have the right, but not the obligation, to remove any and all disapproved Exceptions within sixty (60) days after receiving written notice of the Developer's disapproval or provide assurances satisfactory to the Developer that such Exception(s) will be removed on or before the Closing. If the Agency cannot or does not elect to remove any of the disapproved Exceptions within that period, the Developer shall have ten (10) business days to either give the Agency written notice that the Developer elects to proceed with the purchase of the Agency Infill Parcel subject to the disapproved Exceptions or to give the Agency written notice that the Developer elects to terminate this Agreement. The Exceptions to title approved by the Developer as provided herein shall hereinafter be referred to as the "Condition of Title." The Developer shall have the right to approve or disapprove any Exceptions reported by the Title Company after the Developer has approved the Condition of Title for the Agency Infill Parcel if such exceptions were not created by the Developer and of which the Developer had no notice prior to its approval of the Condition of Title. The Agency shall not voluntarily create any new exceptions to title following the Effective Date of Agreement.

204. Title Insurance. Concurrently with the Closing, there shall be issued to the Developer a CLTA owner's policy of title insurance (the "Title Policy"), together with such endorsements as are reasonably requested by the Developer, issued by First American Title Insurance Company, insuring that the title to the Agency Infill Parcel is vested in the Developer in the condition required by Section 203 of this Agreement. First American Title Insurance Company shall provide the Agency with a copy of the Title Policy. The Title Policy shall be for the amount of the Purchase Price. The Developer shall pay the premium for the Title Policy including, without limitation, the cost of an ALTA policy, if requested by the Developer, a higher policy amount and any endorsements requested by the Developer.

205. Conditions of Closing. The Closing is conditioned upon the satisfaction of the following terms and conditions within the times designated below:

205.1 Agency's Conditions of Closing. The Agency's obligation to proceed with the Closing for the sale of the Agency Infill Parcel is subject to the fulfillment, or waiver by the Agency, of each and all of the conditions precedent (a) through (g), inclusive, described below ("Agency's Conditions Precedent"), which are solely for the benefit of the Agency, and which shall be fulfilled or waived by the time periods provided for herein:

a. **No Default.** At the time of Closing, the Developer is not in Default of any of its obligations under the terms of this Agreement and all representations and warranties of the Developer contained herein shall be true and correct in all material respects.

b. **Execution of Documents.** The Developer shall have executed the Grant Deed and executed any other documents required hereunder and delivered such documents into the Escrow. The Grant Deed shall be drafted to comply with the substantive terms of this Agreement.

c. **Payment of Closing Costs.** Prior to the Close of Escrow, the Developer has paid all costs of Closing into the Escrow in accordance with Section 202 hereof.

d. **Consistency Finding.** The Planning Commission of the City shall have made a consistency finding in accordance with Government Code Section 65402.

e. There shall be no litigation or other challenge pending or of which the Agency has notice, either existing or threatened against the Agency or the City, or any of their officials,

2011-0033227
01/21/2011 09:56A
16 of 39



officers, employees or agents, which the Agency determines, in its sole and absolute discretion, may affect this Agreement or the ability of the Agency or the City to fulfill their obligations or functions under or as described in this Agreement; provided, however, that the parties understand and agree that any such litigation shall be deemed to constitute force majeure.

205.2 Developer's Conditions of Closing. The Developer's obligation to proceed with the Closing for purchase of the Agency Infill Parcel is subject to the fulfillment, or waiver by the Developer, of each and all of the conditions precedent (a) through (g), inclusive, described below ("Developer's Conditions Precedent"), which are solely for the benefit of the Developer, and which shall be fulfilled or waived by the time periods provided for herein:

a. No Default. At the time of Closing, the Agency is not in Default of any of its obligations under the terms of this Agreement and all representations and warranties of the Agency contained herein shall be true and correct in all material respects.

b. Execution of Documents. The Agency shall have executed the Grant Deed and any other documents required hereunder, and delivered such documents into the Escrow. The Grant Deed shall be drafted to comply with the substantive terms of this Agreement.

c. Review and Approval of Title. The Developer shall have reviewed and approved the Condition of Title of the Agency Infill Parcel, as provided in Section 203 hereof.

d. Title Policy. The Title Company shall, upon payment of Title Company's regularly scheduled premium, be committed to issue the Title Policy for the Agency Infill Parcel upon the Close of Escrow, in accordance with Section 204 hereof.

e. Due Diligence. The Developer shall have approved or be deemed to have approved the environmental condition of the Agency Infill Parcel, shall have approved or be deemed to have approved that the Agency Infill Parcel is suitable for the Developer's intended use, and shall not have elected to cancel the Escrow and terminate this Agreement pursuant to Section 208.2 hereof.

f. The Agency shall have removed or released any deeds of trust or other non-statutory monetary liens upon the Agency Infill Parcel.

206. Representations and Warranties.

206.1 Agency Representations. "Actual knowledge," as used herein and elsewhere in this Agreement with respect to the Agency, shall not impose a duty of investigation, and shall be limited to the actual knowledge of the Executive Director of the Agency. The Agency represents and warrants to the Developer, to the best of the Agency's actual knowledge, as of the Effective Date of Agreement (except insofar as the Agency may not have acquired fee title to the City Parcels as of the Effective Date of Agreement) and as of the Closing Date as follows:

a. Authority. The Agency owns (as of the Closing Date) the Agency Infill Parcel subject to the Exceptions, has full right, power and lawful authority to grant, sell and convey (as of the Closing Date) the Agency Infill Parcel as provided herein and the execution, performance and delivery of this Agreement by the Agency has been fully authorized by all requisite actions on the part of the Agency. In addition, the individual(s) executing this Agreement on behalf of the Agency has the full power and authority to take such action on behalf of the Agency.

2011-0633227
61/21/2011 09:56A
11 of 38



b. FIRPTA. The Agency is not a "foreign person" within the parameters of FIRPTA or any similar State statute, or is exempt from the provisions of FIRPTA or any similar State statute, or that the Agency has complied and will comply with all the requirements under FIRPTA or any similar State statute.

c. No Conflict. The Agency's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Agency is a party or by which it is bound and there are no pending lawsuits or other actions or proceedings which would prevent, impair or delay the timely performance of the Agency's obligations under this Agreement.

d. The Agency's entry into this Agreement and/or the performance of its obligations under this Agreement does not constitute a violation of any State or federal statute or judicial decision to which the Agency is subject.

Until the Closing, the Agency shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.1 not to be true as of Closing, immediately give written notice of such fact or condition to the Developer. Such exception(s) to a representation and warranty shall not be deemed a breach by the Agency hereunder, but shall constitute an exception which the Developer shall have a right to approve or disapprove if such exception would have an effect on the value, use, development and/or operation of the Site. If the Developer elects to close the Escrow following disclosure of such information, the Agency's representations and warranties contained herein shall be deemed to have been made as of the Closing, and to include such exception(s). If, following the disclosure of such information, the Developer elects to not close the Escrow, then this Agreement and the Escrow shall automatically terminate, and neither Party shall have any further rights, obligations or liabilities hereunder, except as provided in Sections 201.1 and 202.5 above. The representations and warranties set forth in this Section 206.1 shall survive the Closing.

206.2 Developer's Representations. "Actual knowledge," as used herein and elsewhere in this Agreement with respect to Developer, shall not impose a duty of investigation, and shall be limited to the actual knowledge of Denny Ryerson, the Developer's Managing Member. The Developer represents and warrants to the Agency, to the best of the Developer's actual knowledge, as of the Effective Date of Agreement and as of the Closing Date as follows:

a. Authority. The Developer is a duly organized limited liability company incorporated within and in good standing under the laws of the State of Illinois. The copies of the documents evidencing the organization of the Developer which have been delivered to the Agency are true and complete copies of the originals, as amended to the Effective Date of Agreement. The Developer has full right, power and lawful authority to purchase and accept the conveyance of the Agency Infill Parcel and undertake all obligations as provided herein and the execution, performance and delivery of this Agreement by the Developer have been fully authorized by all requisite actions on the part of the Developer. In addition, the individual(s) executing this Agreement on behalf of the Developer has the full power and authority to take such action on behalf of the Developer.

b. No Conflict. The Developer's execution, delivery and performance of its obligations under this Agreement will not constitute a default or a breach under any contract, agreement or order to which the Developer is a party or by which it is bound and there are no pending lawsuits or other actions or proceedings which would prevent, impair or delay the timely performance of the Developer's obligations under this Agreement.

2011-0033227
01/21/2011 09:56A
12 of 39



c. The Developer's entry into this Agreement and/or the performance of its obligations under this Agreement does not constitute a violation of any state or federal statute or judicial decision to which the Developer is subject.

d. No Developer Bankruptcy. The Developer is not the subject of a voluntary or involuntary bankruptcy proceeding.

Until the Closing, the Developer shall, upon learning of any fact or condition which would cause any of the warranties and representations in this Section 206.2 not to be true as of Closing, immediately give written notice of such fact or condition to the Agency. Such exception(s) to a representation and warranty shall not be deemed a breach by the Developer hereunder, but shall constitute an exception which the Agency shall have a right to approve or disapprove if such exception would have an effect on the value, use, development and/or operation of the Site or the redevelopment purposes for which the Agency has entered into this Agreement. If the Agency elects to close the Escrow following disclosure of such information, the Developer's representations and warranties contained herein shall be deemed to have been made as of the Closing, subject to such exception(s). If, following the disclosure of such information, the Agency elects to not close the Escrow, then this Agreement and the Escrow shall automatically terminate, and neither Party shall have any further rights, obligations or liabilities hereunder, except as provided in Sections 201.1 and 202.5 above. The representations and warranties set forth in this Section 206.2 shall survive the Closing.

207. Studies and Reports. After the Opening of Escrow, representatives of the Developer shall have the reasonable right of access to all portions of the Agency Infill Parcel during normal business hours, following at least three (3) days advance Notice in writing to the Agency, for the purpose of obtaining data and making surveys and tests necessary to carry out this Agreement (the "Studies"), to conduct its due diligence review of the Agency Infill Parcel to determine the Agency Infill Parcel's environmental condition and its suitability for the Developer's intended use, pursuant to Section 208 below. Any preliminary work undertaken on the Agency Infill Parcel by the Developer prior to the Closing shall be done at the expense solely of the Developer. Copies of data, surveys and tests obtained or made by the Developer pursuant to this Section shall be provided to the Agency within fifteen (15) days after receipt by the Developer. Any preliminary work shall be undertaken only after securing any necessary permits from the appropriate governmental agencies. Following the completion of any and all access to, tests, work or surveys on the Agency Infill Parcel, the Developer shall cause the Agency Infill Parcel to be restored to the condition that preexisted such access, tests, work or surveys.

The Developer shall protect, indemnify, defend (with counsel reasonably acceptable to the Agency) and hold the Agency Infill Parcel, and the City and the Agency and their officials, officers, employees, agents and attorneys, free and harmless from and against any and all claims, damages, liens, stop notices, liabilities, losses, costs and expenses, including, without limitation, reasonable attorney's fees and court costs and expenses (all of the foregoing, collectively "Liabilities"), related to or resulting from the Developer's access, work, surveys, inspection and testing of the Agency Infill Parcel, including, without limitation, repairing any and all damages to any portion of the Agency Infill Parcel, arising out of or related (directly or indirectly) to the Developer's conducting such access, inspections, surveys, tests, and studies, except to the extent that the Liabilities are attributable to the negligence or willful misconduct of the City and the Agency and their officials, officers, employees, agents, and attorneys. The Developer's protection, indemnification and defense obligations set forth herein shall survive the Close of Escrow, shall not be merged with the Grant Deed and shall survive any termination of this Agreement and the Escrow prior to the Close of Escrow.

2011-0033227
01/21/2011 09:56A
13 of 39



208. Due Diligence Review; Environmental Condition and Suitability of Agency Infill Parcel for Developer's Use.

208.1 Environmental Disclosure. The Agency hereby represents and warrants to the Developer that it has no actual knowledge, and has not received any notice or communication from any government entity having jurisdiction over the Agency Infill Parcel informing it of the presence of surface or subsurface zone Hazardous Materials in, on, or under the Agency Infill Parcel, or any portion thereof. "Actual knowledge," as used herein and elsewhere in this Agreement with regard to the Agency, shall not impose a duty of investigation and shall be limited to the actual knowledge of Greg Johnson, Executive Director of the Agency

208.2 Due Diligence Investigation of Agency Infill Parcel. The Developer shall have the right, solely at its cost and expense, to engage an environmental consultant (the "Environmental Consultant") and such other agents, consultants and employees as it may retain to make such due diligence investigations as the Developer deems necessary, including any "Phase 1" and/or "Phase 2" investigations of the Agency Infill Parcel, and the Agency shall promptly be provided a copy of all reports and test results provided by the Environmental Consultant and the Developer's other agents and employees.

From the Opening of Escrow until December 31, 2010, (the "Due Diligence Period") the Developer shall have the right to evaluate the environmental condition of the Agency Infill Parcel. By no later than the expiration of the Due Diligence Period, the Developer shall reasonably approve or disapprove of the environmental condition of the Agency Infill Parcel. The Developer's failure to give written notice of disapproval of the environmental condition of the Agency Infill Parcel shall be deemed the Developer's approval of the environmental condition of the Agency Infill Parcel. The Developer's approval or deemed approval of the environmental condition of the Agency Infill Parcel shall be a Developer's Condition Precedent to the Closing, as set forth in Section 205 hereof. If the Developer reasonably disapproves the environmental condition of the Agency Infill Parcel during the Due Diligence Period, then the Developer may terminate this Agreement by written Notice to the Agency.

During the Due Diligence Period, the Developer shall also have the right to evaluate, at its sole cost and expense, whether the Agency Infill Parcel is suitable for the Developer's intended use. By no later than the expiration of the Due Diligence Period, the Developer shall reasonably determine and, within the Due Diligence Period, give the Agency written Notice of whether it is dissatisfied with any aspects of the Agency Infill Parcel and/or its condition or suitability for the Developer's intended use. The Developer's failure to give written notice of disapproval of the suitability of the Agency Infill Parcel shall be deemed to constitute the Developer's approval of the Agency Infill Parcel. The Developer's approval or deemed approval of the suitability of the Agency Infill Parcel shall be a Developer's Condition Precedent to the Closing, as set forth in Section 205 hereof. If the Developer reasonably finds during the Due Diligence Period that the Agency Infill Parcel is not suitable for the Developer's intended use, then the Developer may terminate this Agreement by written Notice to the Agency.

208.3 Review of Documents and Materials. During the Due Diligence Period, the Agency agrees to make available to the Developer documents and materials, if any, pertaining to the environmental condition of the Agency Infill Parcel (collectively, "Documents and Materials"), provided (i) such Documents and Materials have been prepared by or for the benefit of the Agency and are in the Agency's possession and control or are reasonably available to the Agency, and (ii) the Agency does not represent, warrant or certify the accuracy,

2011-06030227
61/21/2011 09:58A
14 of 35



adequacy or completeness of the Documents and Materials. The failure of the Developer to disapprove in writing any of the Documents and Materials on or before the expiration of the Due Diligence Period shall be deemed to constitute the Developer's approval of all Documents and Materials. The Developer shall keep all information contained in the Documents and Materials confidential, as provided below.

The Developer acknowledges that:

- (i) The Documents and Materials are being furnished to it solely for review by the Developer, its agents, employees and consultants in connection with this Agreement and the Developer's possible purchase of the Agency Infill Parcel;
- (ii) The Developer is using the Documents and Materials and relying on any information or conclusions contained in the Documents and Materials at the Developer's own risk, and the Agency and the City shall have no liability for any inaccuracies, omissions, errors or other matters which appear in the Documents and Materials; and
- (iii) The Developer will use the Documents and Materials solely in connection with the Developer's examination of the Agency Infill Parcel and for no other purpose whatsoever.

208.4 No Further Warranties as to Agency Infill Parcel. Except as otherwise provided herein, the physical condition, possession or title of the Agency Infill Parcel is and shall be delivered from the Agency to the Developer in an "as-is" condition, with no warranty expressed or implied by the Agency, including without limitation, regarding the presence of Hazardous Materials or the condition of the soil, its geology, the presence of known or unknown seismic faults, or the suitability of the Agency Infill Parcel for the development purposes intended hereunder.

300. DEVELOPMENT OF THE SITE

301. Development of the Site. As used herein, "Developer Improvements" shall consist of (1) private improvements (and underground public utility lines) to be constructed on the Site pursuant to the Development Agreement (including any and all subdivision, zoning and land use approvals obtained by the Developer from the City and any conditions imposed thereon by the City), (2) landscape improvements as referenced in Section 403 hereof, and (3) public street and highway improvements to be constructed within right of way areas. The street and highway improvements intended to be developed in connection with the Site are generally described and/or depicted on **Attachment No. 3** hereto and incorporated herein by reference. With respect to street improvements, Developer will be responsible for, at Developer's sole cost, design and construction (subject to City approval) of curb, gutter, pavement and utility improvements to Miles Avenue adjacent to and east of the Site. (To the extent that development of the Site precedes development of the proposed commercial project on the north-east corner of Miles Avenue and Highway 111, Developer shall have joint and several responsibility and obligation to complete street improvements for the entire width of Miles Avenue, and Developer shall complete such improvements at its cost and expense, provided, however, that Developer may enter into a reimbursement agreement with the owner/developer of said proposed commercial project.) With respect to Highway 111 improvements, Developer shall be responsible for, on a fifty percent (50%) each shared cost basis with the Agency as indicated below, design and construction (subject to City approval) of (a) improvements to Highway 111 abutting the south side of the Site and improvements at the intersection of Highway 111 and

2011-0033227
01/21/2011 09:56A
15 of 39



Miles Avenue. In connection with the design and construction of such Highway 111 improvements, the following shall apply:

A. The developer shall comply with all applicable requirements of the California Public Contract Code relating to bidding and payment of prevailing wages.

B. Intentionally Deleted.

C. All design and construction costs for such improvements shall be shared 50% by the Agency and 50% by the developer.

D. The Agency and the developer shall set up a joint escrow account into which 100% of the estimated costs of the improvements shall be deposited and from which design and construction costs shall be paid; and the parties shall sign any documents reasonably necessary to establish and effectuate such funding procedure, and, in addition, Developer shall provide surety bonds, cash or other security reasonably approved by the City or Agency in an amount equal to Developer's obligations to fund the improvements, as estimated by the City Public Works Director. It is also understood and agreed that the Developer shall execute a subdivision improvement deferment agreement prior to recordation of a final subdivision map, in accordance with normal requirements of the City.

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

F. It is understood that the intent of the parties is that such Highway 111 improvements and Miles Avenue improvements will be scheduled so as to be complete and operational on or before issuance of the first certificate of occupancy for a condo-hotel unit on the Site.

302. Site Improvements and Schedule of Performance. The schedule of performance for commencement and completion of Developer Improvements shall be as indicated in the Development Agreement to be executed concurrently herewith, and as follows:

A. Developer Improvements on the Site are expected to include 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.

B. Developer has agreed to a schedule of performance that shall commence on the date which that certain City Ordinance approving a Development Agreement to be executed concurrently herewith becomes effective ("DA Approval") and be in accordance with the following:



(1) 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.

(2) 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.

(3) 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.

(4) 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.

(5) 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 herein, "substantially complete" shall refer to a situation in which the last certificate of occupancy has been issued by the CITY for the last structure to be built.

(6) 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.

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 302.B.

303. Land Use and California Environmental Quality Act Approvals. Land use and California Environmental Quality Act approvals shall be as contemplated by the Development Agreement to be executed concurrently herewith.

THE DEVELOPER EXPRESSLY ACKNOWLEDGES THAT NEITHER THE EXECUTION OF THIS AGREEMENT NOR THE GRANTING OF CONTRACT ADMINISTRATION OR ANY OTHER APPROVAL (OTHER THAN ULTIMATELY ISSUED LAND USE APPROVALS) CONSTITUTES THE GRANTING OF OR AN IMPLIED COMMITMENT TO GRANT ANY LAND USE APPROVALS. THE DEVELOPER UNDERSTANDS THAT THE LAND USE APPROVALS ARE LEGISLATIVE ACTS BY THE CITY AND THAT THE CITY HAS THE DISCRETION TO DENY APPROVALS WHERE APPLICABLE LAWS, ORDINANCES, REGULATIONS OR STANDARDS VEST SUCH DISCRETION WITH THE CITY. NOTWITHSTANDING ANY COVENANT OR OBLIGATION, WHETHER EXPRESS OR IMPLIED, OF THE AGENCY OR THE CITY AND/OR THEIR OFFICIALS, OFFICERS, EMPLOYEES AND AGENTS TO EXERCISE GOOD FAITH IN DEALING WITH THE DEVELOPER AND THE MATTERS SET FORTH IN THIS AGREEMENT, THE DEVELOPER UNDERSTANDS AND AGREES THAT THE APPROVAL OF THE SITE PLAN BY THE AGENCY SHALL BE IN ITS SOLE AND ABSOLUTE DISCRETION, AND THAT THE CITY'S REVIEW AND APPROVAL, CONDITIONAL

2011-0033227
01/21/2011 09:58A
17 of 39



APPROVAL OR DISAPPROVAL OF LAND USE APPLICATIONS SHALL REMAIN IN THE CITY'S DISCRETION AS PERMITTED BY LAW.

304. Cost of Construction. Except as otherwise noted herein, all of the cost of planning, designing, developing and constructing all of the Developer Improvements, demolition of any existing improvements, site preparation and grading shall be borne solely by the Developer.

305. Construction Schedule. The schedule of construction for commencement and completion of Developer Improvement's shall be as indicated in the Development Agreement to be executed concurrently herewith.

306. Indemnity.

306.1 Developer's Indemnity. The Developer shall defend, indemnify, assume all responsibility for, and hold the City and the Agency, and their representatives, volunteers, officials, officers, employees and agents, harmless from, all claims, demands, damages, defense costs (including attorneys' fees and costs) and liability of any kind or nature relating to the subject matter of this Agreement and/or the implementation hereof and for any damages to property and/or injuries to persons, including without limitation accidental death, which may be caused by any acts or omissions of the Developer under this Agreement, whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer shall not be liable for property damage or bodily injury to the extent caused by the negligence of the City or the Agency or their agents, employees, officers, officials, volunteers or representatives. Notwithstanding the foregoing, the Parties understand and agree that the Developer's indemnity set forth in this Section 306.1 shall not extend to or include indemnification for any actions or omissions of the Agency prior to the Effective Date of Agreement.

306.2 Agency's Indemnity. The Agency shall defend, indemnify, assume all responsibility for, and hold the Developer, and its representatives, volunteers, officials, officers, employees and agents, harmless from, all claims, demands, damages, defense costs (including without limitation attorneys' fees and costs) and liability of any kind or nature relating to the subject matter of this Agreement and/or the implementation hereof and for any damages to property and/or injuries to persons, including without limitation accidental death, which may be caused by any acts or omissions of the Agency under this Agreement, whether such activities or performance thereof be by the Agency or by anyone directly or indirectly employed or contracted with by the Agency and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Agency shall not be liable for property damage or bodily injury to the extent caused by the negligence of the Developer or its agents, employees, officers, officials, volunteers or representatives.

307. Compliance with Laws. The Developer shall carry out the design and construction of the Developer Improvements in conformity with all applicable laws and governmental requirements, including all applicable State labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City of Indian Wells Municipal Code and all applicable disabled and handicapped access requirements, including, without limitation the Americans With Disabilities

2011-0033227
01/21/2011 09:56A
18 of 39



Act, 42 U.S.C. Section 12101, *et seq.*, Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Section 51, *et seq.*

308. [Reserved]

309. [Reserved]

310. Right of Access. For the purpose of assuring compliance with this Agreement, at any time prior to the Developer's completion of the Developer Improvements, representatives of the City and the Agency shall have reasonable right of access to the Site without charge, during normal business hours and after not less than twenty-four (24) hours prior written Notice. The Agency will use good faith efforts to minimize any interference that the City's and the Agency's entry may have upon the Developer's operations. The Agency will comply with all reasonable requests of the Developer to meet or ensure safety requirements and concerns.

311. Insurance. Prior to the commencement of any construction or other work on the Developer Improvements, the Developer shall furnish or cause to be furnished to the City and the Agency duplicate originals and appropriate endorsements to the Developer's commercial general liability and automobile insurance policies in the amounts set forth below, naming the City and the Agency, and their officials, officers, employees and agents, as additional insureds:

- (a) \$2,000,000 for any one person; and
- (b) \$2,000,000 for any one occurrence; and
- (c) \$2,000,000 for any property damage; and
- (d) \$3,000,000 in the aggregate.

Notwithstanding the foregoing, the Developer may satisfy the requirements for minimum insurance by obtaining and maintaining an excess/umbrella liability insurance policy in the minimum amount of \$10,000,000 for any one occurrence, and \$10,000,000 in the aggregate; provided that all other requirements of this Section 311 shall be satisfied with respect to such excess/umbrella liability policy.

The policies shall be "occurrence," not "claims made," policies and shall be primary and non-contributing to any insurance that the City and/or the Agency may elect to obtain. Such policies shall contain a full waiver of subrogation clause. The policies shall be issued, and maintained during the term of construction of the Developer Improvements, by a carrier licensed to do business in California, with a Best's rating of A:VIII or better. Said policies shall provide that they shall not be canceled or reduced in types of coverage or amount of coverage without at least thirty (30) days' prior written notice to the Agency and that such reduction or cancellation shall become effective until at least twenty (20) days after receipt by the Agency of the written notice thereof. The policy amounts set forth above shall not limit or define the extent of the Developer's indemnity liability pursuant to Section 306.1 or any other provision of this Agreement, or arising as a matter of law or at equity.

The Developer shall also furnish or cause to be furnished to the Agency evidence satisfactory to the City and the Agency that any contractor with whom it has contracted for the performance of work on the Developer Improvements carries workers' compensation insurance as required by law.

The Developer shall also maintain, or cause its contractors to maintain, all-risk course of construction insurance, insuring the Developer, the City and the Agency against all risk



(including earthquake or flood) of loss or damage to the Site or Developer Improvements. The obligations set forth in this Section shall remain in effect until a Certificate of Occupancy has been issued for the Developer Improvements.

312. [Reserved]

313. Certificates of Completion. Upon completion of all public and private improvements pertaining to an individual lot or parcel and within thirty (30) calendar days following the request therefor by the Owner of such lot or parcel, the Agency shall record against that lot or parcel in the Riverside County Recorder's Office a certificate of completion evidencing the Agency's agreement that with respect to that lot or parcel, the Owner of such lot or parcel has fulfilled its obligations to complete the Developer Improvements thereon and, as applicable, private improvements thereon.

400. COVENANTS AND RESTRICTIONS

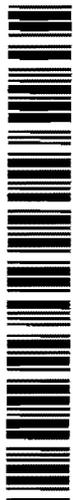
401. Time Share Prohibited. All forms of time share use or sales on the Site are prohibited, and a covenant to this effect in a form and substance approved by the City shall be recorded against the Site in the Riverside County Recorder's Office. Nothing herein shall be construed to prohibit condominium hotel ownership.

402. No Discrimination. The Developer, for itself and its successors and assigns, agrees that the Owner will not discriminate against any employee or applicant for employment because of sex, marital status, race, color, religion, creed, national origin, or ancestry, and that the Developer will comply with all applicable local, state and federal fair employment laws and regulations.

The Developer covenants and agrees for itself, its successors, its assigns and every successor in interest to the Site, or any part thereof, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, ancestry or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, nor shall the Developer itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use of occupancy of tenants, lessees, subtenants, sublessee or vendees of the Site. The foregoing covenant shall be recorded against the Site in the Riverside County Recorder's Office and run with the land and shall remain in effect in perpetuity.

403. Repair and Maintenance of Landscaping. The Developer agrees for itself, its successors, its assigns and every successor in interest to the Site, that it shall be responsible for the installation, operation, maintenance, repair and replacement of those certain landscaping improvements required by City as part of Land Use Approvals, including without limitation, those certain grass, shrubs, trees and other landscaping materials, sidewalks and paved surfaces, walls, artificial lighting, irrigation and drainage systems, and such other landscaping improvements now or hereafter installed within the Site. The Developer shall remove all trash and debris placed upon the Site and otherwise keep in good condition and repair the landscaping, reasonable wear and tear excepted, at the Developer's sole cost and expense. The Parties agree that the Developer shall prepare and record against the Site in the Riverside County Recorder's Office the Declaration (as hereinafter defined), pursuant to which an owner's

2011-0033227
01/21/2011 09:56A
28 of 39



Association within the Site shall be required to undertake and complete the foregoing obligations, in lieu of the Developer.

In the event that the Developer fails to operate and maintain the landscaping as described herein, the City, in addition to the Agency pursuing any other rights and remedies of the Agency provided herein, shall have the right to enter upon the Site to repair and maintain the landscaping and may charge the Developer for the City's costs of repair and maintenance. Developer shall, within thirty (30) days following its receipt of written notice thereof, pay for those costs incurred by the City under this paragraph. In the event that the Developer does not pay the City for its costs within the time frame above, said costs shall become a lien upon the Site for such nonpayment and the City shall have, in addition to any other rights and remedies provided herein, the right and remedy of foreclosure against said lien for nonpayment in accordance with California law. The foregoing covenant shall run with the land and shall remain in effect for the term of the Declaration or until terminated by the City, whichever occurs later.

Notwithstanding any term or provision herein to the contrary, the Agency and the Developer agree that the City and/or the Agency shall form an assessment district and the Developer shall fully cooperate with the City and/or the Agency to accomplish this purpose, pursuant to the Landscape and Lighting Act of 1972 (the "Act") for purposes of meeting the foregoing obligations of the Developer and its successors and assigns and every successor in interest to the Site. Said assessment district shall be formed and completed to the satisfaction of the City and/or the Agency prior to the first to occur of the following: (a) the sale, i.e., closing, of any condominium-hotel unit within the Site, or (b) the obtaining a certificate of occupancy for any structure (including a condominium-hotel unit) within the Site (other than a structure that is part of the proposed sales and marketing center). In addition (but presumably as an alternative), the City and/or the Agency may require the Developer to prepare and record against the Site in the Riverside County Recorder's Office, in a form and substance which are approved by the City and/or the Agency, a declaration of covenants, conditions and restrictions ("Declaration") which requires, among other matters, that an association of all property owners ("Association") who are each an Owner of all or any portion of the Site shall be obligated to install, operate, maintain, repair and replace all of the above described landscaping improvements within the Site, at the cost and expense solely of such Association. The Declaration shall provide, among other matters, that said Association shall impose payment obligations for the foregoing obligations upon each and all of the Owners and shall maintain the above described landscaping improvements to a standard deemed acceptable by the City and/or the Agency, in their sole and absolute discretion. The Declaration shall further provide that the City has the right to demand that each and every Owner and any such Association shall meet their obligations under this Section 403 and the Declaration, with right of enforcement to be held by the City for its exercise in its sole and absolute discretion; and the Declaration shall further provide that the Declaration cannot be amended or modified with respect to the obligations of each Owner and the Association under this Section 403 and the Declaration with regard to landscaping improvements without the prior written consent of the City.

500. DEFAULTS AND REMEDIES

501. Default Remedies. Failure by either Party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A Party claiming a Default shall give written notice of Default to the other Party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute

2011-0033227
01/21/2011 09:56A
21 of 39



any proceeding against any other Party, and the other Party shall not be in Default if such Party within thirty (30) days from receipt of such notice immediately, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or remedy with diligence.

502. Institution of Legal Actions. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either Party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement.

503. Termination by the Developer Prior to Closing. Subject to Force Majeure, in the event that the Developer is not in Default under this Agreement and:

a. The Agency does not tender title to the Agency Infill Parcel pursuant to the Grant Deed in the manner and condition and by the date provided in this Agreement; or

b. One or more of the Developer's Conditions Precedent to the Closing are not fulfilled on or before the Outside Date and such failure is not caused by the Developer,

then this Agreement may, at the option of the Developer, be terminated by written Notice thereof to the Agency. From the date of the written Notice of termination of this Agreement by the Developer to the Agency and thereafter this Agreement shall be deemed terminated and there shall be no further rights or obligations between the Parties except the return of the Deposit as provided in Section 201.1.

503.5 Termination by Developer Subsequent to Closing. Subject to Force Majeure, in the event that the Developer is not in Default under this Agreement subsequent to Closing and the Agency is in Default, or in the event of any Default of the Agency prior to the Closing which is not cured within the time set forth in Section 501 hereof, and any such failure is not cured within the applicable time period after written demand by the Developer, the Developer shall have those rights and remedies against the Agency available at law and equity.

504. Termination by the Agency Prior to Closing. Subject to Force Majeure, in the event that the Agency is not in Default under this Agreement and prior to the Close of Escrow:

a. One or more of the Agency's Conditions Precedent to the Closing are not fulfilled on or before the Outside Date and such failure (other than the denial of Land Use or Design Development Drawings Approvals) is not caused by the Agency; or

b. The Developer is otherwise in Default of this Agreement and fails to cure such Default within the time set forth in Section 501 hereof; or

c. The Developer (or any successor in interest) assigns or attempts to assign the Agreement or any rights therein or in the Site in violation of the provisions of Section 603 of this Agreement,

then this Agreement and any rights of the Developer with respect to or arising out of the Agreement or the Site, shall, at the option of the Agency, be terminated by the Agency by written Notice thereof to the Developer. From the date of the written Notice of termination of this Agreement by the Agency to the Developer and thereafter this Agreement shall be deemed

2011-0033227
01/21/2011 09:56A
22 of 39

terminated and there shall be no further rights or obligations between the Parties. In the event of termination pursuant to this Section 504, due to the Default of the Developer, the Deposit set forth in Section 201.1 of this Agreement shall be retained by the Agency as liquidated damages without any deduction, offset, or recoupment whatsoever. The Agency and the Developer agree that it would be impractical or extremely difficult to fix actual damages in case of the Developer's Default prior to the conveyance of title to the Agency Infill Parcel, that the amount of said Deposit is a reasonable estimate of the damages which the Agency will suffer, and neither the Developer (or the assignee or transferee) nor the Agency shall have any further rights against or liability to the other under this Agreement. The right of termination pursuant to this Section 504 and the retention of the Deposit as liquidated damages, shall be the Agency's sole and exclusive remedy against the Developer in the event of the Developer's Default or failure as provided in said subparagraphs prior to conveyance of title to the Agency Infill Parcel.

505. Termination by Agency Subsequent to Closing. Subject to Force Majeure, in the event that the Agency is not in Default under this Agreement subsequent to Closing and the Developer is in Default, the Agency shall have those rights and remedies against the Developer available at law and equity.

506. Acceptance of Service of Process. In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Executive Director of the Agency or in such other manner as may be provided by law. In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon the President or other chief operating officer of the Developer or in such other manner as may be provided by law.

507. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same Default or any other Default by the other Party.

508. Inaction Not a Waiver of Default. Any failures or delays by either Party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

509. Applicable Law. The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

600. GENERAL PROVISIONS

601. Notices, Demands and Communications Between the Parties. Any approval, disapproval, demand, document or other notice ("Notice") required or permitted to be given under the terms of this Agreement shall be in writing and shall be deemed delivered when received, if personally delivered, upon receipt of a facsimile, upon the fifth (5th) day from the postmarked date if sent via certified or registered mail, or one (1) business day after delivery thereof to a nationally recognized overnight delivery service which provides a receipt of service, addressed to the parties as follows:

2011-0033227
01/21/2011 09:56A
23 of 38

To the Agency: Indian Wells Redevelopment Agency
44-950 Eldorado Drive
Indian Wells, CA 92210
Attention: Executive Director

To the Developer: The Ryerson Company
7250 North 16th Street
Phoenix, Arizona 85020-5264
ATTN: Denny Ryerson

Jerson Investments, LLC
1211 S. Michigan Avenue
Chicago, Illinois 60605
ATTN: Gerald Fogelson

or such other address as shall be specified by like Notice.

601.1. Demand for Assurance. Each Party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either Party, the other Party may in writing demand adequate assurance of due performance and until they receive such assurance may, if commercially reasonable, suspend any performance for which the agreed return has not been received. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding ten (10) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service, or payment does not prejudice the aggrieved Party's right to demand adequate assurance of future performance.

602. Enforced Delay; Extension of Times of Performance. In addition to specific provisions of this Agreement, performance by either Party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended (except for the Outside Date), where delays or Defaults are due to: war, insurrection, strikes, lockouts, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplier, acts or omissions of the other Party, acts or failures to act of the City, the Agency or any other public or governmental agency or entity (other than the acts or failures to act of the Agency which shall not excuse performance by the Agency), or any other causes beyond the control or without the fault of the Party claiming an extension of time to perform, provided, however, that the financial inability of either Party to perform its respective obligations hereunder shall not be considered a cause beyond either Party's control. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if Notice by the Party claiming such extension is sent to the other Party within thirty (30) days of the commencement of the cause. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Improvements shall not constitute grounds of enforced delay pursuant to this Section 602.

2011-0033227
01/21/2011 08:56A
24 of 39



Separate and apart from force majeure, times of performance under this Agreement may also be extended in writing by the mutual agreement of the Agency and the Developer. As a condition to its entry into any agreement extending the Outside Date, the Agency reserves the right to renegotiate the Purchase Price, Escrow terms, and any other terms and conditions of this Agreement.

603. Transfers of Interest in Site or Agreement.

603.1 Prohibition. The qualifications and identity of the Developer are of particular concern to the Agency. The Developer represents and warrants that Denny Ryerson owns a controlling and majority interest in the Developer or has management authority on behalf of the Developer. The Agency particularly deems the identity and qualifications of Denny Ryerson to be unique and of utmost importance and the primary reason for the Agency to choose the Developer as the party with whom to enter into an Agreement for the development of the Site. It is because of those qualifications and identity that the Agency has entered into this Agreement with the Developer and the Parties understand and agree that the Agency would not have entered into this Agreement but for the covenants by the Developer that Denny Ryerson, as controlling and majority owner of the Developer or as one who has management authority on behalf of the Developer, will have supervision and authority for the undertaking and completion of the Developer's obligations under this Agreement.

For the period commencing upon the date of this Agreement and until the completion of the Developer Improvements, no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, nor shall the Developer make any total or partial sale, transfer, conveyance, assignment, subdivision, or lease of the whole or any part of the Site or the Improvements thereon without prior written approval of the Agency (which shall not be unreasonably withheld), except as expressly set forth herein. Any proposed total or partial sale, transfer, conveyance, assignment, subdivision, refinancing or lease of the whole or any part of the Site or the improvements thereon will entitle the Agency to pursue those rights and remedies provided for in Section 505 hereof. The Agency shall have the right to approve (which shall not be unreasonably withheld) the qualifications and reputation of any lender that provides construction or permanent financing or refinancing for the Developer Improvements.

Notwithstanding any provision to the contrary in this Section 603.1, with respect to the Commercial/Office Areas and the Restaurant Areas, as defined in the Development Agreement and Section 302 hereof, the Developer shall, subject to receipt of prior approval from Agency or City, which approval may not be unreasonably withheld, be permitted to convey legal parcels within such Commercial/Office and/or Restaurant Areas to successor owners for purposes of completion of the private improvements thereon, if such successor owners first execute an assumption agreement satisfactory to the City, in its sole and absolute discretion.

Notwithstanding any term or provision in this Agreement to the contrary, in the event that Denny Ryerson predeceases the completion of the Developer Improvements, the Developer shall continue to fulfill all of its obligations under this Agreement.

603.2 Permitted Transfers. Notwithstanding any other provision of this Agreement to the contrary, Agency approval of an assignment of this Agreement or conveyance of the Site or Developer Improvements, or any part thereof, shall not be required in connection with any of the following:

2011-0033227
01/21/2011 09:56A
25 of 39



a. Any transfers to an entity or entities in which the Developer retains a minimum of fifty-one percent (51%) of the ownership or beneficial interest or retains management and control of the transferee entity or entities.

b. The conveyance or dedication of any portion of the Site to the Agency, the City or other appropriate governmental entity, or the granting of easements or permits to facilitate construction of the Developer Improvements (as defined herein).

c. Any requested assignment for financing purposes, including the grant of a deed of trust to secure the funds necessary for land acquisition, construction financing of the Developer Improvements.

In the event of an assignment by the Developer under subparagraphs (a) through (c), inclusive, above not requiring the Agency's prior approval, the Developer nevertheless agrees that at least thirty (30) days prior to such assignment it shall give written Notice to the Agency of such assignment and satisfactory evidence that the assignee has assumed jointly with the Developer the obligations of this Agreement.

603.3 Agency Consideration of Requested Transfer. The Agency agrees that it will not unreasonably withhold approval of a request made pursuant to this Section 603, provided the Developer delivers written Notice to the Agency requesting such approval. Such Notice shall be accompanied by sufficient evidence regarding the proposed assignee's or purchaser's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 603 and as reasonably determined by the Agency. The Agency shall evaluate each proposed transferee or assignee on the basis of its development and/or qualifications and experience in the operation of facilities similar to the proposed development of the Site, and its financial commitments and resources, and may reasonably disapprove any proposed transferee or assignee, during the period for which this Section 603 applies, which the Agency determines does not possess equal or better qualifications than the Developer. An assignment and assumption agreement in form satisfactory to the Agency's legal counsel shall also be required for all proposed assignments. Within thirty (30) days after the receipt of the Developer's written Notice requesting Agency approval of an assignment or transfer pursuant to this Section 603, the Agency shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the Agency reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to the Agency such further information as may be reasonably requested.

603.4 Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon the Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided, but shall not include purchasers of individual lots or parcels who have executed Assumption Agreements approved and executed by the Agency.

604. Non-Liability of Officials and Employees of the City, the Agency and the Developer. No member, official, officer or employee of the Agency shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the City or the Agency of any obligation under or function described in this Agreement, or for any amount

2011-0033227
01/21/2011 09:56A
26 of 39



which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

605. Relationship Between Agency and Developer. It is hereby acknowledged that the relationship between the Agency and the Developer is not that of a partnership or joint venture and that the Agency and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Developer Improvements. The Developer agrees to indemnify, hold harmless and defend the Agency and its officials, officers, employees and agents from any claim made against the Agency or its officials, officers, employees and agents, arising from a claimed relationship of partnership or joint venture between the Agency and the Developer with respect to the development, operation, maintenance or management of the Site.

606. Agency Approvals and Actions. Whenever a reference is made herein to an action or approval to be undertaken by the Agency, the Executive Director of the Agency or his or her designee is authorized to act on behalf of the Agency unless specifically provided otherwise in this Agreement or the context should require otherwise.

607. Counterparts. This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in two (2) originals, each of which is deemed to be an original.

608. Integration and Incorporation of Recitals. This Agreement contains the entire understanding between the Parties relating to the transaction contemplated by this Agreement. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each Party is entering this Agreement based solely upon the representations set forth herein and upon each Party's own independent investigation of any and all facts such Party deems material. This Agreement includes pages 1 through 28 and Attachment Nos. 1 through 3 which constitute the entire understanding and agreement of the Parties, notwithstanding any previous negotiations or agreements between the Parties or their predecessors in interest with respect to all or any part of the subject matter hereof. The Recitals hereinabove set forth are a material part of this Agreement, are deemed by the Parties to be true and correct and are incorporated into and made a part of this Agreement.

609. Real Estate Brokerage Commission. The Agency and the Developer each represent and warrant to the other that no broker or finder is entitled to any commission or finder's fee in connection with the Developer's acquisition of the Agency Infill Parcel from the Agency. Each Party agrees to defend and hold harmless the other Party from any claim to any such commission or fee from any broker, agent or finder with respect to this Agreement which is payable by such Party.

610. Attorneys' Fees Applicable Law and Forum. In the event either Party brings an action or proceeding arising out of the other's performance under this Agreement or to establish the right or remedy of either Party, the prevailing Party shall be entitled to recover reasonable attorney fees and costs as part of such action or proceeding. This Agreement shall be construed and interpreted according to California law, and any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in the Superior Court of County of Riverside, Indio Branch.

2011-0033227
01/21/2011 09:56A
27 of 39



611. Titles and Captions. Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

612. Interpretation. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both Parties.

613. No Waiver. A waiver by either Party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other Party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

614. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each Party.

615. Severability. If any term, provision, condition or covenant of this Agreement or its application to any Party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the fullest extent permitted by law.

616. Computation of Time. The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

617. Legal Advice. Each Party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other Party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

618. Time of Essence. Time is expressly made of the essence with respect to the performance by the Parties of each and every obligation and condition of this Agreement.

619. Cooperation. Each Party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

2011-0033227
01/21/2011 09:56A
28 of 39



620. Conflicts of Interest. No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his or her personal interests or the interests of any corporation, partnership or association in which they are directly or indirectly interested.

621. Time for Acceptance of Agreement by Agency. This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency on or before thirty (30) days after signing and delivery of this Agreement by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

622. Effective Date of Agreement. The Effective Date of Agreement shall be the date when it shall have been executed by the Agency as set forth herein below.

623. Corporate Authority. The person(s) executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver the Agreement on behalf of said Party, (iii) by so executing the Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into the Agreement does not violate any provision of any other agreement to which said Party is bound.

624. Prevailing Wages. The Developer acknowledges that California Labor Code Section 1720, et seq. requires developers of certain publicly funded development projects to pay not less than the prevailing rate of per diem wages. If Section 1720, et seq. is applicable to the Developer Improvements or development of the Site, the Developer shall comply, at its cost and expense, with the provisions of California Labor Code Section 1720, et seq.

The Developer shall defend, indemnify and hold the City and the Agency, and their officers, officials, employees, agents, servants and contractors harmless from and against any and all costs, expenses, liabilities, fines, penalties, judgments, and amounts paid in settlement, including, without implied limitation, reasonable attorneys' fees and expert witness costs, suffered by the City and/or the Agency and/or their officers, officials, employees, agents, servants and contractors, as a result of the Developer's, or its officials', officers', employees', agents', contractors' and servants', actual or alleged breach of the obligations set forth in this Section 624.

625. City as Third Party Beneficiary. The Developer and the Agency agree that although the City is not a party to this Agreement, the City shall be deemed to be a third party beneficiary of each and every covenant and obligation of the Developer and any Owner hereunder, including without limitation the obligations of the Developer to obtain City permits and approvals for the Land Use Approvals and the obligations of the Developer and each Owner under Section 403 of this Agreement.

626. Good Faith and Fair Dealing. The Developer and the Agency agree that in undertaking their obligations and in seeking and granting approvals under this Agreement, the Parties shall comply with standards of good faith and fair dealing and reasonably cooperate in order to achieve the purposes of this Agreement; provided, however, that nothing herein shall be deemed to require the Agency and/or the City to approve any particular land use, project, land use application, permit or other request of the Developer to the extent that the City and the

2011-0033227
01/21/2011 09:58A
29 of 39



Agency are afforded by law the right and opportunity to grant discretionary approval, conditional approval or disapproval of such matter.

IN WITNESS WHEREOF, the Agency and the Developer have signed this Agreement on the respective dates set forth below.

INDIAN WELLS REDEVELOPMENT AGENCY

Dated: 12-20, 2010

By: [Signature]
Chairman

ATTEST:

[Signature], Chief Deputy
Secretary



APPROVED AS TO FORM:

Stephen P. Deutsch
Agency Counsel

DEVELOPER

Miles Lodge, LLC,
a California limited liability company

Dated: 12/8, 2010

By: [Signature]
Title: Manager

Dated: 12/8, 2010

By: [Signature]
Title: MANAGER

2011-0033227
01/21/2011 09:56A
38 of 39



ACKNOWLEDGMENT

State of California
County of Riverside)

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

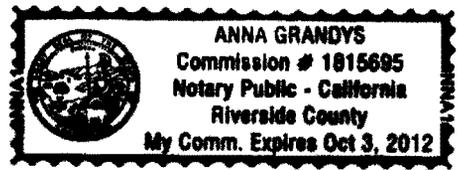
personally appeared Ed Monarch, Chairman
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) 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)



ACKNOWLEDGEMENT

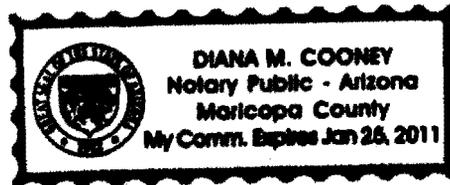
State of Arizona)
) ss.
County of Maricopa)

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)

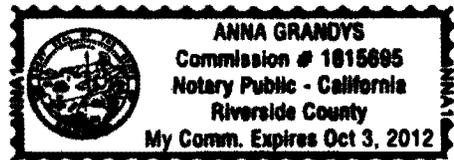
On December 8, 2010 before me, Anna Grandys, Notary Public
(insert name and title of the officer)

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)



ATTACHMENTS

- No. 1 Site Map (to be provided)
- No. 2 Legal Description of Agency Infill Parcel (to be provided)
- No. 3 Street and Highway Improvements to be Developed with Site (to be provided)



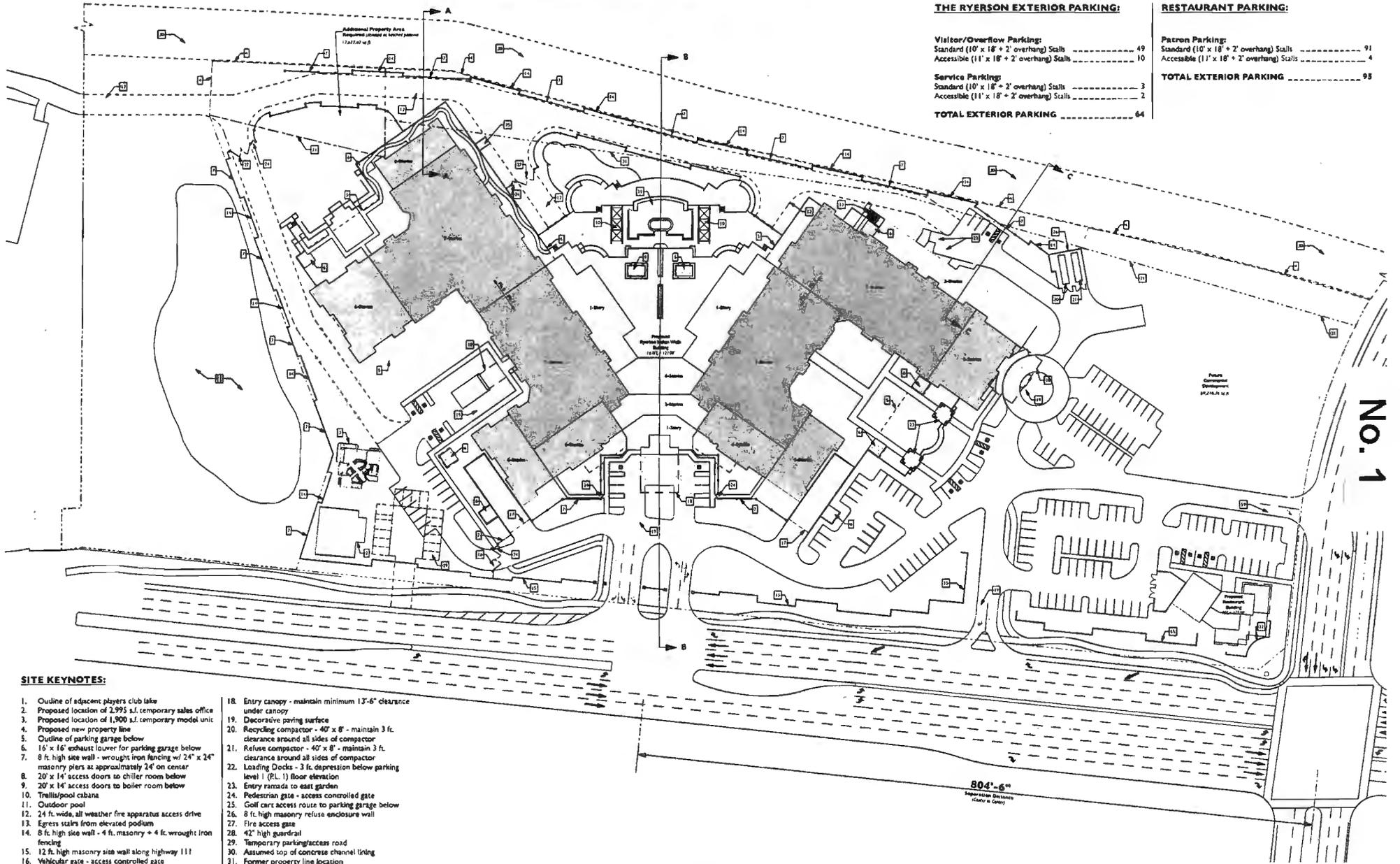


THE RYERSON EXTERIOR PARKING:

Visitor/Overflow Parking:	
Standard (10' x 18' + 2' overhang) Stalls	49
Accessible (11' x 18' + 2' overhang) Stalls	10
Service Parking:	
Standard (10' x 18' + 2' overhang) Stalls	3
Accessible (11' x 18' + 2' overhang) Stalls	2
TOTAL EXTERIOR PARKING	64

RESTAURANT PARKING:

Patron Parking:	
Standard (10' x 18' + 2' overhang) Stalls	91
Accessible (11' x 18' + 2' overhang) Stalls	4
TOTAL EXTERIOR PARKING	95



SITE KEYNOTES:

1. Outline of adjacent players club lake
2. Proposed location of 2,995 sq. ft. temporary sales office
3. Proposed location of 1,000 sq. ft. temporary model unit
4. Proposed new property line
5. Outline of parking garage below
6. 16' x 16' exhaust louver for parking garage below
7. 8 ft. high site wall - wrought iron fencing w/ 24" x 24" masonry piers at approximately 24' on center
8. 20' x 14' access doors to chiller room below
9. 20' x 14' access doors to boiler room below
10. Trellis/pool cabana
11. Outdoor pool
12. 24 ft. wide, all weather fire apparatus access drive
13. Egress stairs from elevated podium
14. 8 ft. high site wall - 4 ft. masonry + 4 ft. wrought iron fencing
15. 12 ft. high masonry site wall along highway 111
16. Vehicular gate - access controlled gate
17. Vehicular barrier - access controlled barrier
18. Entry canopy - maintain minimum 13'-6" clearance under canopy
19. Decorative paving surface
20. Recycling compactor - 40' x 8' - maintain 3 ft. clearance around all sides of compactor
21. Refuse compactor - 40' x 8' - maintain 3 ft. clearance around all sides of compactor
22. Loading Docks - 3 ft. depression below parking level 1 (P.L. 1) floor elevation
23. Entry ramada to east garden
24. Pedestrian gate - access controlled gate
25. Golf cart access route to parking garage below
26. 8 ft. high masonry refuse enclosure wall
27. Fire access gate
28. 42" high guardrail
29. Temporary parking/access road
30. Assumed top of concrete channel lining
31. Former property line location
32. Decorative site wall at Miles & Hwy. 111 intersection

Additional keynotes are located on drawing sheets 36 and 37.

orcutt|winslow
ARCHITECTS PLANNERS HISTORIC DESIGN

DALE GARDNER DESIGN
LANDSCAPE ARCHITECTURE PLANNING

the design.

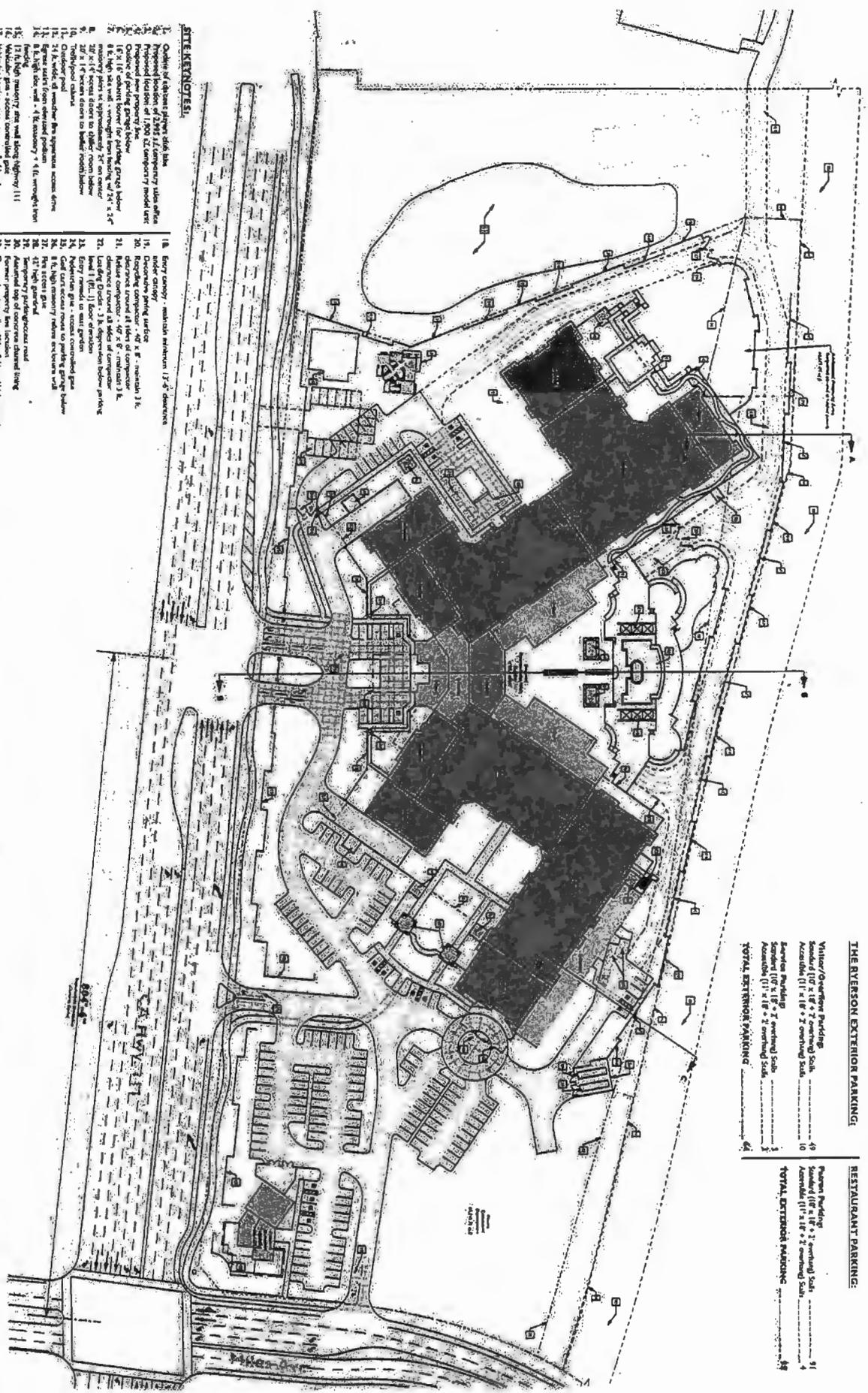
THE RYERSON INDIAN WELLS CROSSING



A-100
Architectural Site Plan



Date: September 15th, 2010



- SITE KEYNOTES:**
1. Outline of adjacent property to be built
 2. Proposed new property line
 3. Proposed location of 1,200 sq. temporary model unit
 4. Outline of parking garage below
 5. 10' x 10' concrete tower for parking garage below
 6. 10' x 10' concrete tower for parking garage below
 7. 20' x 10' concrete tower for parking garage below
 8. 20' x 10' concrete tower for parking garage below
 9. 20' x 10' concrete tower for parking garage below
 10. 20' x 10' concrete tower for parking garage below
 11. Customer pool
 12. 24 ft. wide of weather the signposts across drive
 13. 24 ft. wide of weather the signposts across drive
 14. Light box wall - 4 ft. stationery - 4 ft. wrought iron
 15. 17 ft. high stationery sign wall along Highway 111
 16. Vehicle barrier - access controlled barrier
 17. Vehicle barrier - access controlled barrier
 18. Body canopy - maximum width 17'-0" distance
 19. Dispenser for recycling
 20. Recycling container - 40' x 8' - material 3 ft. distance around all sides of container
 21. Material container - 40' x 8' - material 3 ft. distance around all sides of container
 22. Landfill Dumper - 3 ft. depression below parking level (1 ft. 1) floor elevation
 23. Entry ramp to east garden
 24. 8 ft. high stationery sign wall
 25. 8 ft. high stationery sign wall
 26. 8 ft. high stationery sign wall
 27. 8 ft. high stationery sign wall
 28. 8 ft. high stationery sign wall
 29. 8 ft. high stationery sign wall
 30. 8 ft. high stationery sign wall
 31. 8 ft. high stationery sign wall
 32. Dispenser for wall in files & Hwy 111 intersection

THE RYERSON EXTERIOR PARKING:

Visitor/Restaurant Parking	40
Restaurant Parking	4
TOTAL EXTERIOR PARKING	44

RESTAURANT PARKING:

Restaurant Parking	4
Material (1' x 10' x 2' covered) Sub	0
TOTAL EXTERIOR PARKING	4

THE RYERSON
INDIAN WELLS CROSSING

Architectural Site Plan
A-100
Date: September 7, 2010

Orcutt Winslow
Architectural Firm

ATTACHMENT No. 2

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;

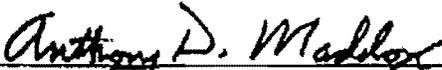
THENCE SOUTH 00°01'57" EAST ALONG SAID EAST LINE A DISTANCE OF 103.94 FEET TO THE TRUE POINT OF BEGINNING.

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

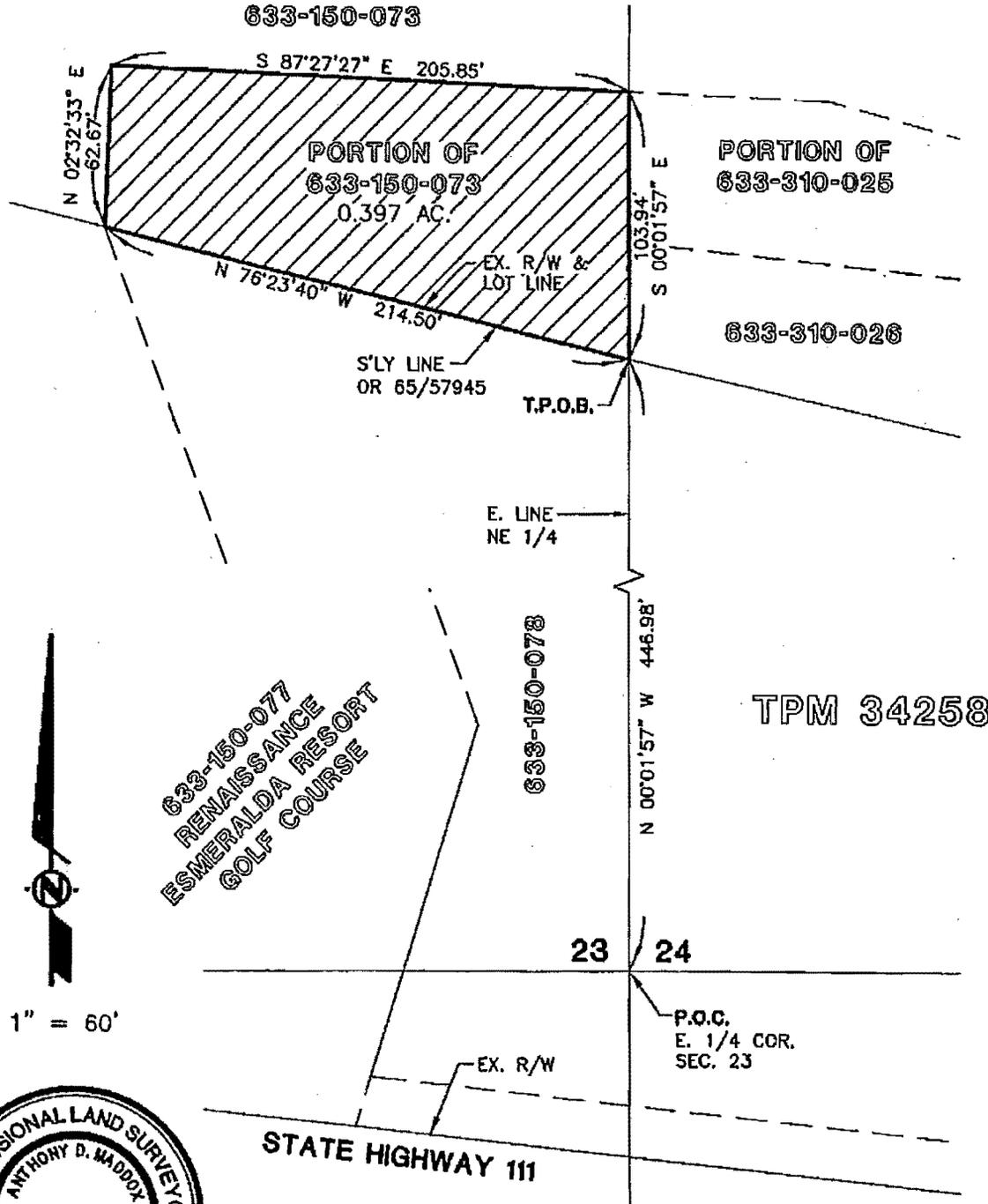


2011-0033227
01/21/2011 09:56A
37 of 39



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 MIRAGE ■ CA 92270
TELEPHONE (760) 320-9811 ■ FAX (760) 323-7893

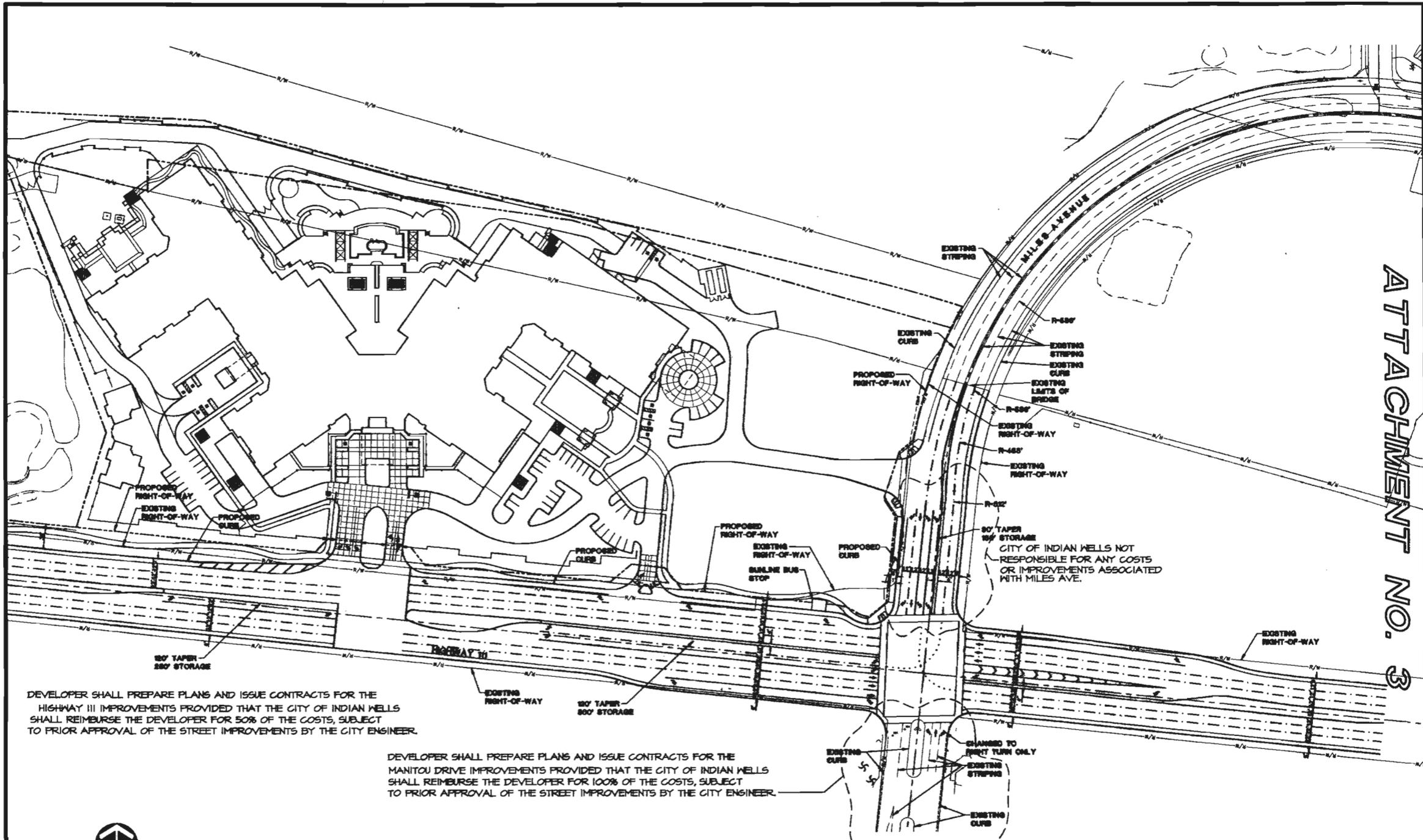
J.N. 1702

10/13/2010

SHEET 1 OF 1



2011-0033227
01/21/2011 09:56A
38 of 38



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.



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

OCTOBER 21, 2010

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

3400 San Marcos Drive • Rancho Mirage • CA 92270
 Telephone (760) 330-9000 • Fax (760) 353-7000

2011-0033227
 495-60 1102/12/10
 39 of 39

