



City Council Staff Report

Date: February 16, 2011

CONSENT CALENDAR

Subject: APPROVAL OF REIMBURSEMENT AGREEMENT FOR MOVIE COLONY TRAFFIC CALMING PROGRAM IMPROVEMENTS CONSTRUCTED BY SPANISH INN, INC.

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

In June of 2005, the City Council conceptually approved the Movie Colony Traffic Calming Program. In September of 2005, the City Council conditionally approved Tentative Tract Map 31104, which among other things required the design and construction of the street improvements necessary to implement the Movie Colony Traffic Calming Program. The developer has constructed the improvements, which were accepted by the City in February of 2008, and has recently requested a Reimbursement Agreement to recover eligible costs from other developers generally consistent with an approach initially proposed to the developer by City staff in 2008.

RECOMMENDATION:

- 1) Approve Agreement No. _____ with Spanish Inn, Inc., a California corporation, a Reimbursement Agreement for the Movie Colony Traffic Calming Program Street Improvements; and
- 2) Authorize the City Manager to execute all necessary documents.

STAFF ANALYSIS:

In order to reduce vehicular access to the residential Movie Colony neighborhood east of Indian Canyon Drive adjacent to the Spanish Inn (located at 640 North Indian Canyon Drive), on June 15, 2005, the City Council approved the Movie Colony Traffic Calming Program, which called for certain improvements creating a series of traffic circles with one-way west bound segments that would provide better access from Indian Canyon Drive to the hotels and condominiums along Indian Canyon Drive, including Spanish Inn, the Colony Palms Hotel, and the Indian Manor, but preclude entry from east of Via Chica.

Conditions of approval of Tentative Tract Map 31104 (Spanish Inn) required the developer to design and construct the Movie Colony Traffic Calming Program street improvements and authorized the developer to request a reimbursement agreement with the City to recover eligible costs for improvements constructed adjacent to two other properties located at 572 North Indian Canyon Drive (Colony Palms Hotel) and 784 North Indian Canyon Drive (Indian Manor). The developer has completed the traffic calming improvements, and has requested the City to enter into a Reimbursement Agreement to allow him to recover these eligible costs from others. (The developer has only recently requested the preparation and execution of a Reimbursement Agreement after rebuffing previous proposals by City staff due to disputes regarding costs and the manner in which costs would be shared between affected properties.)

The original estimated cost to construct all of the street improvements required to implement the Movie Colony Traffic Calming Program, as determined by the City Engineer, was \$361,416.20. The owner of the Colony Palms Hotel constructed a portion of these improvements, the estimated cost of which was \$63,712.00, thereby reducing that portion of the Original Estimated Work Cost attributable to work designed and constructed by Spanish Inn, Inc. to \$297,620.20.

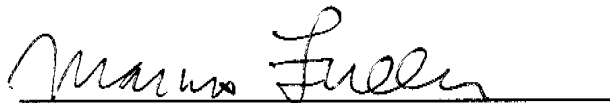
On March 9, 2005 Case No. 3.0619 (Colony Palms Hotel) was approved by the Planning Commission. Pursuant to the conditions of approval of Case No. 3.0619, Colony Palms Hotel was required to execute a street improvement covenant agreeing to participate in the construction of the Movie Colony Traffic Calming Program, subject to future review and approval by the Planning Commission and City Council. The covenant was executed in August of 2007 and bound the Colony Palms Hotel to pay its fair share cost (estimated at \$109,000 by the City Engineer) at the time that the improvements were completed by others. However, the Colony Palms Hotel's original fair share cost was reduced to \$45,288.00 to reflect the value of street improvements constructed by the Colony Palms Hotel at the time the hotel completed their on-site improvements prior to re-opening, and prior to the Spanish Inn moving forward with design and construction of all of the Movie Colony Traffic Calming Program improvements.

The proportionate share of the original estimated cost to construct all of the improvements necessary to implement the Movie Colony Traffic Calming Program adjacent to the Indian Manor is \$50,000. The owner of the Indian Manor has indicated its intent to deposit this amount with the City on or before September 30, 2011, in conjunction with its application for the City's approval of certain improvements to the site, (Case No. 3.2132).

The Reimbursement Agreement facilitates the reimbursement to Spanish Inn, Inc. from the Colony Palms Hotel and the Indian Manor for the design and construction of the Movie Colony Traffic Calming Program street improvements. The agreement was drafted by the City Attorney's office, and is recommended for approval.

SUBMITTED:

Prepared by:



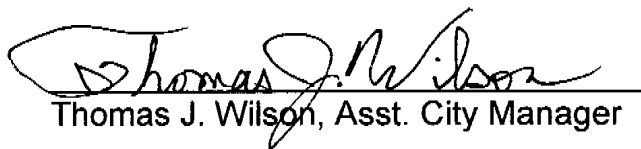
Marcus L. Fuller
Assistant Director of Public Works

Recommended by:

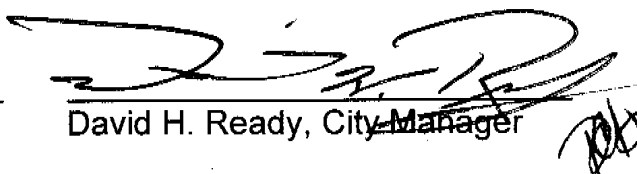


David J. Barakian
Director of Public Works/City Engineer

Approved by:



Thomas J. Wilson, Asst. City Manager



David H. Ready, City Manager

Attachments:

1. Agreement
2. Spanish Inn, Inc. Certification of Work Cost Pursuant to Reimbursement Agreement

REIMBURSEMENT AGREEMENT

THIS REIMBURSEMENT AGREEMENT (this "Agreement") is entered into this _____ day of _____, 2010, by and between the CITY OF PALM SPRINGS, a California charter city ("City"), and SPANISH INN, INC., a California corporation (Developer"). City and Developer are sometimes referenced herein jointly as the "Parties" and each is sometimes alternatively referenced as a "Party."

RECITALS

A. Developer is the owner of real property located at 640 North Indian Canyon Drive in the City of Palm Springs, County of Riverside, State of California (the "Property"), as more fully described in Exhibit "A," which the Developer is developing in accordance with a subdivision map and other entitlements approved by the City. The map contains conditions of approval for the development of the Property (the "Conditions") as described in Exhibit "B."

B. In order to reduce vehicular access to the residential Movie Colony neighborhood east of Indian Canyon Drive adjacent to the Property, on June 15, 2005, the City Council of City approved the "Movie Colony Traffic Calming Program," which called for certain street improvements creating a series of traffic circles with one-way west bound segments that would provide access from Indian Canyon Drive to the hotels and condominiums along Indian Canyon Drive, including Developer's Property, but preclude entry from east of Via Chica. A copy of City Council Minute Order No. 7690, granting conceptual approval of the Movie Colony Traffic Calming Program is attached hereto in Exhibit "C."

C. Pursuant to the Conditions, the Developer was responsible for design and construction of the street improvements necessary to implement the Movie Colony Traffic Calming Program.

D. The Conditions authorized the Developer to request to enter into a reimbursement agreement with the City prior to construction of the street improvements providing for partial reimbursement to the Developer from the owners of the two properties located at 572 North Indian Canyon Drive (hereinafter "Colony Palms Hotel") and 784 North Indian Canyon Drive (hereinafter "Indian Manor") for their proportionate share of the cost of constructing the street improvements required to implement the Movie Colony Traffic Calming Program.

E. Without first entering into a reimbursement agreement with the City, Developer designed and constructed, at Developer's cost and risk, a portion of the street improvements required to implement the Movie Colony Traffic Calming Program. That portion of the street improvements required to implement the Movie Colony Traffic Calming Program that was designed and constructed by the Developer is hereinafter referred to as the "Work". The original estimated cost to construct all of the street

improvements required to implement the Movie Colony Traffic Calming Program, as determined by the City Engineer, was \$361,416.20 (the "Original Estimated Work Cost"). The owner of the Colony Palms Hotel constructed a portion of these improvements, the estimated cost of which was \$63,712.00, thereby reducing that portion of the Original Estimated Work Cost attributable to Work designed and constructed by Spanish Inn, Inc. to \$297,620.20.

F. The proportionate share of the original estimated cost to construct all of the improvements necessary to implement the Movie Colony Traffic Calming Program attributable to Colony Palms Hotel was \$109,000.00. The owner of the Colony Palms Hotel previously constructed a portion of the improvements, however, reducing its maximum proportionate share to \$45,288.00. In August 2007, the owner of Colony Palms Hotel executed and recorded that certain Declaration of Covenants, Conditions and Restrictions to Install Street Improvements (the "Declaration"), a true and correct copy of which is attached hereto at Exhibit "D", pursuant to which the owner of Colony Palms Hotel covenanted to pay the City, upon demand, an amount up to, but not to exceed, \$45,288.00 in satisfaction of its proportionate share of the estimated cost to construct the improvements necessary to implement the Movie Colony Traffic Calming Program.

G. The proportionate share of the original estimated cost to construct all of the improvements necessary to implement the Movie Colony Traffic Calming Program attributable to Indian Manor was \$50,000.00. The owner of Indian Manor has indicated its intent to deposit this amount with the City on or before September 30, 2011 in conjunction with its application for the City's approval of certain improvements to be made to Indian Manor (City Case No. 3.2132).

H. Developer has now requested to enter into this Agreement with the City for partial reimbursement to the Developer of Developer's costs associated with the design and construction of the Work from payments made by the owners of Colony Palms Hotel and Indian Manor, if any.

I. The City and the Developer desire to set forth the terms and conditions of the Developer and the City regarding the partial reimbursement to the Developer for the costs associated with the design and construction of the Work.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises herein contained, it is hereby agreed by and between City and Developer as follows:

1. Determination of Work Cost. Developer shall certify to the City the final design, engineering, and construction costs incurred by the Developer in constructing the Work and submit such supporting vouchers, invoices, and other data as the City

Engineer may require in order to substantiate the certified costs. Any changes or additional information requested by the City must be submitted to the City within twenty-one (21) days of the City notification of the Developer. City reserves the right to approve or reject the certified costs as reasonable and subject to reimbursement. The certified final design, engineering, and construction costs approved by the City shall constitute the "Work Cost." Due to the recorded Declaration of Covenant from the Colony Palms Hotel and the commitment from Indian Manor, Developer understands and agrees that it shall not be entitled to reimbursement for any portion of the Work Cost that exceeds the \$45,288 from the Colony Palms Hotel and \$50,000 from Indian Manor.

2. Partial Reimbursement of Work Cost.

2.1 Reimbursement from Colony Palms Hotel. Within a reasonable time after City's certification of the Work Costs, the City shall use reasonable efforts to collect from the owner of the Colony Palms Hotel property a sum equal to its approximate proportional share of the Work Cost, as determined by the City Engineer, not to exceed Forty Five Thousand Two Hundred Eighty Eight Dollars (\$45,288), in accordance with the Declaration attached hereto in Exhibit "D.

2.2 Reimbursement from Indian Manor. Within a reasonable time after City's certification of the Work Costs or September 30, 2011, whichever is later, the City shall use reasonable efforts to collect from the owners of the Indian Manor property a sum equal to their approximate proportional share of the Work Cost, as determined by the City Engineer, not to exceed Fifty Thousand Dollars (\$50,000.00).

2.3 Reasonable Collection Efforts. For purposes of Sections 2.1 and 2.2, above, "reasonable efforts to collect" shall not include the initiation or prosecution of litigation and City shall have no obligation to initiate or prosecute litigation in furtherance of collection efforts against the owners of the Colony Palms Hotel or Indian Manor properties. Notwithstanding the foregoing, in the event the City does initiate or prosecute litigation in furtherance of collection efforts against the owners of either or both the Colony Palms Hotel and/or Indian Manor properties, all associated unreimbursed attorneys fees and litigation costs incurred by the City shall be deducted from the amounts payable to Developer pursuant to Section 2.4, below. Upon Developer's request, City agrees to assign to Developer any and all rights City has or may have to collect a proportional share of the Work Cost from the owners of the Colony Palms Hotel and/or Indian Manor properties.

2.4 Payment to Developer. Subject to Sections 2.3 and 4 of this Agreement, upon collection of any payments pursuant to Sections 2.1 and 2.2, the City shall deliver to the Developer a check in the amount of 100% of any and all such reimbursement funds collected. No interest shall be due to the Developer on any monies collected and reimbursed to the Developer pursuant to this Agreement. It is specifically understood by the Developer and the City that the City will reimburse the Developer only when the

City is legally permitted to do so and has legally collected said payments. Should the City not be allowed to retain such funds when collected, or be stopped from so collecting, the Developer shall have no claims against the City and the City shall have no further obligations to the Developer.

3. Assignments. It is understood and agreed that the Developer shall have the right to assign its interest in this Agreement to such other persons or entities that the City reasonably assents thereto, provided that said assignment is in writing and an executed copy thereof is delivered to the City, and the City is fully informed, in writing, of the name(s) of the assignee(s) to whom any reimbursement payments hereunder are to be made.

4. Payment Offsets. The City shall have the right to offset any money due to the Developer under this Agreement, notwithstanding any assignment, if at the time funds become available, the Developer, or its successors in interest, owe the City any sums of money for any reason. Only the net money due to the Developer, after offset by the City, will be paid pursuant to this Agreement.

5. Attorney's Fees and Costs. In the event of any dispute arising out of either party's performance of its obligations under this Agreement, the prevailing party in such action, in addition to any other relief which may be granted, shall be entitled to recover its reasonable attorney's fees and costs. Such attorney's fees and cost shall include fees and costs on any appeal, and in addition a party entitled to attorney's fees and costs shall be entitled to all other reasonable costs incurred in investigating such action, taking depositions and discovery, retaining expert witnesses, and all other necessary and related costs with respect to the litigation. All such fees and costs shall be deemed to have accrued on commencement of the action and shall be enforceable whether or not the action is prosecuted to judgment.

6. General Provisions.

6.1 Successors and Assigns. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

6.2 No Third Party Beneficiaries. This Agreement is intended to benefit only the parties hereto and their respective successors and assigns. Neither City nor Developer intend to create any third party beneficiary rights in this Agreement in any contractor, subcontractor, member of the general public, or other person or entity.

6.3 Entire Agreement; Waivers and Amendments. This Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the parties with respect to all or part of the subject matter hereof, except as may be expressly provided herein. All waivers of the provisions of this Agreement must be in writing and signed by an authorized

representative of the party to be charged, and all amendments hereto must be in writing and signed by the appropriate representatives of both parties.

6.4 Severability. If any term, provision, condition, or covenant of this Agreement, or the application thereof to any Party or circumstance, shall to any extent be held invalid or unenforceable, the remainder of the instrument, or the application of such 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 thereby and each term and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

6.5 Applicable Law and Venue. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. Furthermore, the Parties agree to venue in the Courts of Riverside County, California.

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

6.7 Further Cooperation. The Parties agree to execute any and all agreements, documents or instruments as may be reasonably necessary in order to fully effectuate the agreements and covenants of the Parties contained in this Agreement, or to evidence this Agreement as a matter of public record, if required to fulfill the purposes of this Agreement. The Parties further agree to mutually cooperate with one another in carrying out the purposes of this Agreement.

6.8 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which constitute one and the same instrument.

6.9 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant the (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into of this Agreement does not violate any provisions of any other Agreement to which said party is bound.

IN WITNESS WHEREOF, the parties hereto have executed this Reimbursement Agreement as of the date first above written.

ATTEST:
CALIFORNIA

CITY OF PALM SPRINGS,

By _____
James Thompson, City Clerk

David H. Ready, City Manager

STANDARD FORM CITY ATTORNEY APPROVED AGREEMENT
RECOMMENDED BY:

David Barakian
David Barakian, City Engineer

APPROVED AS TO FORM
Christina M. Doyle
City Attorney
Date 1-3-11

DEVELOPER:

SPANISH INN, INC. A California Corporation

By: MEJAT KOHAN

Check one: Individual Partnership Corporation* Company

*Note, for Corporations, two corporate officers must sign this Agreement, as indicated below; for all others, authorized agents must sign this Agreement.

By: [Signature]
Signature (notarized)

By: [Signature]
Signature (notarized)

Name: HORMUZ RAMZI
Title: PRESIDENT

Name: MEJAT KOHAN
Title: Secretary & Treasurer

(For Corporations, this document must be signed in the above space by one of the following: Chairman of the Board, President or any Vice President)

For Corporations, this document must be signed in the above space by one of the following: Secretary, Chief Financial Officer or any Assistant Treasurer)

ALL-PURPOSE ACKNOWLEDGMENT

State of California
 County of Riverside
 On Oct 23, 2010 before me Derick Soto Hernandez Notary Public
 Date Name, Title of Officer
 personally appeared Hormoz Ramy, Nejat Kohara,
 NAME(S) OF SIGNER(S)

CAPACITY CLAIMED BY SIGNER

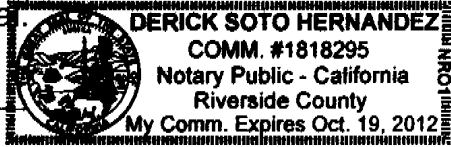
- INDIVIDUAL(S)
- CORPORATE OFFICER(S) _____
TITLE(S) _____
- PARTNER(S)
- ATTORNEY-IN-FACT
- TRUSTEE(S)
- SUBSCRIBING WITNESS
- GUARDIAN/CONSERVATOR
- OTHER

who proved to me on the basis of satisfactory evidence to be the persons(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 persons(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.

Derick Soto Hernandez
 Signature of Notary



SIGNER IS REPRESENTING:

ATTENTION NOTARY: Although the information requested below is **OPTIONAL**, it could prevent fraudulent attachment of this certificate to unauthorized document.

THIS CERTIFICATE MUST BE ATTACHED TO THE DOCUMENT DESCRIBED AT RIGHT:

Title or Type of Document _____
 Number of Pages _____ DATE OF DOCUMENT _____
 Signer(s) Other Than Named Above _____

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Tract Map No. 31104, as recorded in Map Book 429, Pages 82 through 83 inclusive, records of Riverside County, California.

EXHIBIT "B"

TENTATIVE TRACT MAP 31104 CONDITIONS OF APPROVAL

RESOLUTION NO. 21388

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING TENTATIVE TRACT MAP 31104 TO SUBDIVIDE APPROXIMATELY 1.46 ACRES TO RENOVATE THE HOTEL, CONVERT A PORTION OF THE HOTEL TO CONDOMINIUMS, AND CONSTRUCT NEW CONDOMINIUMS, LOCATED AT 640 NORTH INDIAN CANYON, ZONE R-3, SECTION 11, APN 507183006.

WHEREAS, Nejat Kohan ("Applicant") has filed an application with the City pursuant to Section 9.63 of the Municipal Code for a Tentative Tract to subdivide approximately 1.46 acres to renovate the hotel, convert the hotel to condominiums, and construct new condominiums, located at 640 North Indian Canyon, Zone R-3, Section 11; and

WEHERAS, the Conditional Use Permit to allow the construction of multiple-family residential in the Resort Overlay has been reviewed and approved by the Planning Commission, subject to the City Council approval of the Tentative Tract Map; and

WEHERAS, the Architectural Approval for the renovation of Building A as hotel use, renovation of Building B as residential condominium use, and construction of Building C as hotel use with underground parking; has been reviewed and approved by the Planning Commission, subject to the City Council approval of the Tentative Tract Map; and

WEHERAS, the applicant has agreed to pay for the Movie Colony Street Calming Program; and

WEHERAS, the applicant shall abide by the schedule as outlined in the Conditions of Approval; and

WHEREAS, notice of public hearing of the Planning Commission of the City of Palm Springs to consider the application for Tentative Tract Map 31104 and Case No. 5.1019 was given in accordance with applicable law; and

WHEREAS, on July 13, 2005, a public hearing on the application for Tentative Tract Map 31104 and Case 5.1012 was held by the Planning Commission in accordance with applicable law; and

WHEREAS, notice of public hearing of the City Council of the City of Palm Springs to consider the application for Tentative Tract Map 31104 was given in accordance with applicable law; and

WHEREAS, on September 7, 2005, a public hearing on the application for Tentative Tract Map 31104 was held by the City Council in accordance with applicable law; and

WHEREAS, the City Council has carefully reviewed and considered all of the evidence presented in connection with the hearing on the project, including, but not limited to, the staff report, and all written and oral testimony presented.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES HEREBY FINDS AS FOLLOWS:

Section 1: Pursuant to CEQA, the City Council finds that the Initial Study and Mitigated Negative Declaration adequately address the general setting of the project, its potentially significant impacts, and the mitigation measures related to each significant effect for the proposed project.

The City Council further finds that with the adoption of the proposed Mitigated Negative Declaration, potentially significant environmental impacts resulting from this project will be reduced to a level of insignificance.

Section 2: Pursuant to Government Code Section 66474 (Subdivision Map Act), the City Council finds that with the incorporation of those conditions attached in Exhibit A:

1. The proposed Tentative Map is consistent with applicable general and specific plans.

The proposed project is consistent with the General Plan. The General Plan designation for the site is H43/21, High Density Residential. The General Plan allows up to 62 hotel units or 30 dwelling units or a combination of hotel and dwelling units on the project site. The applicant is proposing 18 hotel units and 20 dwelling units for the approximately 1.46 acre site. The proposed project is hotel and residential use; therefore the proposed project is consistent with the General Plan.

2. The design of improvement of the proposed subdivision is consistent with the General Plan and any applicable Specific Plan.

Pursuant to Government Code Section 66473.5 the Planning Commission finds that the proposed subdivision and the provisions for its design and improvement are compatible with the objectives, policies, and general land uses and program provided in the City's General Plan. All street, drainage, and utilities improvements will be constructed to the standards of the General Plan and Conditions of Approval associated with TTM 31104.

The proposed project consists of legal, nonconforming structures and a new structure. The nonconforming structures are exempt from meeting Zoning Ordinance development standards. The new construction will

comply with the Zoning Ordinance development standards. With the Conditions of Approval, the proposed project has been determined to be compatible with overall goals and policies of the General Plan in order to provide quality architecture, open space and distinctive landscape elements. Therefore it is concluded that the proposed project will not be in conflict with the overall intent of the General Plan.

3. The site is physically suitable for the type and density of development contemplated by the proposed subdivision.

The project proposes the subdivision of approximately 1.46 acres for hotel and residential condominium use. The proposed development is at the maximum allowable density of 18 hotel units and 20 dwelling units, as permitted under the General Plan. The subject property is surrounded with a mix of single-family residential, multiple-family residential, hotel, and commercial uses. The subject property is physically suitable for the type and density of development.

4. The designs of the proposed subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and unavoidably injure fish or wildlife or their habitat.

All potential environmental impacts as a result of developing the subject property are fully disclosed in the Initial Study and Mitigated Negative Declaration. The incorporation of the mitigation measures as prescribed in the Mitigated Negative Declaration will ensure that any potentially significant impacts will be reduced to a level of insignificance. Therefore, the designs of the proposed subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and unavoidably injure fish or wildlife or their habitat.

5. The design of the subdivision or type of improvements is not likely to cause serious public health problems.

The design of the subdivision and proposed improvements must comply with the conditions of approval including, but not limited to, the application of the Uniform Building Code Seismic Safety Standards, and the City of Palm Springs Fugitive Dust Control Ordinance in order to ensure public health and safety.

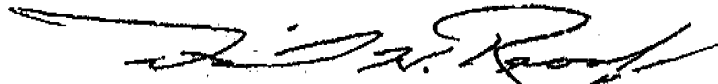
6. The design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision.

The applicant will be required to construct on and off-site improvements. Therefore the design and the type of improvements proposed will not conflict with easements acquired by the public at large.


THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES HEREBY RESOLVE AS FOLLOWS:

- 1 Adopts the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program prepared for the project; and
- 2 Approves Case TTM31104 subject to the conditions contained in Exhibit "A" and "B".

ADOPTED this 7th day of September, 2005.


 David H. Ready, City Manager

ATTEST:


 James Thompson, City Clerk

CERTIFICATION

STATE OF CALIFORNIA)
 COUNTY OF RIVERSIDE) ss.
 CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. 21388 is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on September 7, 2005, by the following vote:

AYES: Members Mills, McCulloch, Pougnet and Mayor Oden
 NOES: None
 ABSENT: Councilmember Foat
 ABSTAIN: None



 James Thompson, City Clerk
 City of Palm Springs, California

Exhibit "A"

CONDITIONS OF APPROVAL

CASE TTM31104 - TENTATIVE TRACT MAP

SPANISH INN
640 NORTH INDIAN CANYON DRIVE

SEPTEMBER 7, 2005

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer, the Director of Planning Services, the Chief of Police, the Fire Chief or their designee, depending on which department recommended the condition.

Any agreements, easements or covenants required to be entered into shall be in a form approved by the City Attorney.

ADMINISTRATIVE

1. The proposed development of the premises shall conform to all applicable regulations of the Palm Springs Zoning Ordinance, Municipal Code, or any other City Codes, ordinances and resolutions which supplement the zoning district regulations.
2. The owner shall defend, indemnify, and hold harmless the City of Palm Springs, its agents, officers, and employees from any claim, action, or proceeding against the City of Palm Springs or its agents, officers or employees to attach, set aside, void or annul, an approval of the City of Palm Springs, its legislative body, advisory agencies, or administrative officers concerning Case TTM31104 – Tentative Tract Map. The City of Palm Springs will promptly notify the applicant of any such claim, action, or proceeding against the City of Palm Springs and the applicant will either undertake defense of the matter and pay the City's associated legal costs or will advance funds to pay for defense of the matter by the City Attorney. If the City of Palm Springs fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Palm Springs. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without the applicant's consent but should it do so, the City shall waive the indemnification herein, except, the City's decision to settle or abandon a matter following an adverse judgment or failure to appeal, shall not cause a waiver of the indemnification rights herein.
3. That the property owner(s) and successors and assignees in interest shall maintain and repair the improvements including and without limitation sidewalks, bikeways,

parkways, parking areas, landscape, irrigation, lighting, signs, walls, and fences between the curb and property line, including sidewalk or bikeway easement areas that extend onto private property, in a first class condition, free from waste and debris, and in accordance with all applicable law, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction at the property owner's sole expense. This condition shall be included in the recorded covenant agreement for the property if required by the City.

4. This project shall be subject to Chapters 2.24 and 3.37 of the Municipal Code regarding public art. The project shall either provide public art or payment of an in lieu fee. In the case of the in-lieu fee, the fee shall be based upon the total building permit valuation as calculated pursuant to the valuation table in the Uniform Building Code, the fee being 1/2% for commercial projects or 1/4% for residential projects with first \$100,000 of total building permit valuation for individual single-family units exempt. Should the public art be located on the project site, said location shall be reviewed and approved by the Director of Planning and Zoning and the Public Arts Commission, and the property owner shall enter into a recorded agreement to maintain the art work and protect the public rights of access and viewing.
5. Pursuant to Park Fee Ordinance No. 1632 and in accordance with Government Code Section 66477 (Quimby Act), all residential development shall be required to contribute to mitigate park and recreation impacts such that, prior to issuance of residential building permits, a parkland fee or dedication shall be made. Accordingly, all residential development shall be subject to parkland dedication requirements and/or park improvement fees. The parkland mitigation amount shall be based upon the cost to acquire and fully improve parkland. The fee shall be collected by the Planning Services Department.
6. The Project will bring additional residents to the community. The City's existing public safety and recreation services, including police protection, criminal justice, fire protection and suppression, ambulance, paramedic, and other safety services and recreation, library, cultural services are near capacity. Accordingly, the City may determine to form a Community Services District under the authority of Government C. Section 53311 et seq, or other appropriate statutory or municipal authority. Developer agrees to support the formation of such assessment district and shall waive any right to protest, provided that the amount of such assessment shall be established through appropriate study and shall not exceed \$500 annually with a consumer price index escalator. The district shall be formed prior to sale of any lots or a covenant agreement shall be recorded against each parcel, permitting incorporation of the parcel in the district.

CC&R's

7. The applicant prior to issuance of building permits shall submit a draft declaration of covenants, conditions and restrictions ("CC&R's") to the Director of Planning Services for approval in a form to be approved by the City Attorney, to be recorded

prior to approval of a final map. The CC&R's shall be enforceable by the City, shall not be amended without City approval, shall require maintenance of all property in a good condition and in accordance with all ordinances,

The applicant shall submit to the City of Palm Springs, a deposit in the amount of \$10,000, for the review of the CC&R's by the City Attorney. A \$2,000 filing fee shall also be paid to the City Planning Department for administrative review purposes.

Cultural Resources

8. Prior to any ground disturbing activity, including clearing and grubbing, installation of utilities, and/or any construction related excavation, an Archaeologist qualified according to the Secretary of the Interior's Standards and Guidelines, shall be employed to survey the area for the presence of cultural resources identifiable on the ground surface.
9. The project area has the possibility of buried resources. A Native American Monitor shall be present during all ground-disturbing activities.
 - a) Experience has shown that there is always a possibility of buried cultural resources in a project area. Given that, a Native American Monitor(s) shall be present during all ground disturbing activities including clearing and grubbing, excavation, burial of utilities, planting of rooted plants, etc. Contact the Agua Caliente Band of Cahuilla Indian Cultural Office for additional information on the use and availability of Cultural Resource Monitors. Should buried cultural deposits be encountered, the Monitor shall contact the Director of Planning Services and after the consultation the Director shall have the authority to halt destructive construction and shall notify a Qualified Archaeologist to investigate and, if necessary, the Qualified Archaeologist shall prepare a treatment plan for submission to the State Historic Preservation Officer and Agua Caliente Cultural Resource Coordinator for approval.
 - b) Two copies of any cultural resource documentation generated in connection with this project, including reports of investigations, record search results and site records/updates shall be forwarded to the Tribal Planning, Building, and Engineering Department and one copy to the City Planning and Zoning Department prior to final inspection.

Final Design

12. Final landscaping, irrigation, exterior lighting, and fencing plans shall be submitted for approval by the Department of Planning Services, Department of Public Works, and Department of Parks and Recreation, prior to issuance of a building permit. Landscape plans shall be approved by the Riverside County Agricultural Commissioner's Office prior to submittal. All landscaping located

within the public right of way or within community facilities districts must be approved by the Public Works Director and the Director of Parks and Recreation.

13. An exterior lighting plan in accordance with Zoning Ordinance Section 93.21.00, Outdoor Lighting Standards, shall be submitted for review and approval by the Director of Planning & Zoning prior to the issuance of building permits. Manufacturer's cut sheets of all exterior lighting on the building and in the landscaping shall be submitted for approval prior to issuance of a building permit. If lights are proposed to be mounted on buildings, down-lights shall be utilized. No lighting of the hillside is permitted.

GENERAL CONDITIONS/CODE REQUIREMENTS

14. The project is subject to the City of Palm Springs Water Efficient Landscape Ordinance. The applicant shall submit an application for Final Landscape Document Package to the Director of Planning and Zoning for review and approval prior to the issuance of a building permit. Refer to Chapter 8.60 of the Municipal Code for specific requirements.
15. Prior to issuance of a grading permit, a Fugitive Dust and Erosion Control Plan shall be submitted and approved by the Building Official. Refer to Chapter 8.50 of the Municipal Code for specific requirements.
16. The grading plan shall show the disposition of all cut and fill materials. Limits of site disturbance shall be shown and all disturbed areas shall be fully restored or landscaped.
17. Separate architectural approval and permits shall be required for all signs. A detailed sign program shall be submitted for review and approval by the Planning Commission prior to issuance of building permits.
18. All materials on the flat portions of the roof shall be earth tone in color.
19. All awnings shall be maintained and periodically cleaned.
20. All roof mounted mechanical equipment shall be screened from all possible vantage points both existing and future per Section 9303.00 of the Zoning Ordinance. The screening shall be considered as an element of the overall design and must blend with the architectural design of the building(s). The exterior elevations and roof plans of the buildings shall indicate any fixtures or equipment to be located on the roof of the building, the equipment heights, and type of screening. Parapets shall be at least 6" above the equipment for the purpose of screening.

21. No exterior downspouts shall be permitted on any facade on the proposed building(s) which are visible from adjacent streets or residential and commercial areas.
22. Perimeter walls shall be designed, installed and maintained in compliance with the corner cutback requirements as required in Section 9302.00.D.
23. The design, height, texture and color of building(s), fences and walls shall be submitted for review and approval prior to issuance of building permits.
24. The street address numbering/lettering shall not exceed eight inches in height.
25. Construction of any residential unit shall meet minimum soundproofing requirements prescribed pursuant to Section 1092 and related sections of Title 25 of the California Administrative Code. Compliance shall be demonstrated to the satisfaction of the Director of Building and Safety.
26. Submit plans meeting City standard for approval on the proposed trash and recyclable materials enclosure prior to issuance of a building permit.
27. Details of pool fencing (material and color) and equipment area shall be submitted with final landscape plan.
28. No sirens, outside paging or any type of signalization will be permitted, except approved alarm systems.
29. No outside storage of any kind shall be permitted except as approved as a part of the proposed plan.
30. Vehicles associated with the operation of the proposed development including company vehicles or employees vehicles shall not be permitted to park off the proposed building site unless a parking management plan has been approved.
31. Prior to the issuance of building permits, locations of all telephone and electrical boxes must be indicated on the building plans and must be completely screened and located in the interior of the building. Electrical transformers must be located toward the interior of the project maintaining a sufficient distance from the frontage(s) of the project. Said transformer(s) must be adequately and decoratively screened.
32. The applicant shall provide all tenants with Conditions of Approval of this project.
33. Standard parking spaces shall be 17 feet deep by 9 feet wide; handicap parking spaces shall be 18 feet deep by 9 feet wide plus an 8 foot walkway at the right side of the parking space and shall be designated as "van accessible".

34. Handicapped accessibility shall be indicated on the site plan to include the location of handicapped parking spaces, the main entrance to the proposed structure and the path of travel to the main entrance. Consideration shall be given to potential difficulties with the handicapped accessibility to the building due to the future grading plans for the property.
35. Curbs shall be installed at a minimum of five (5) feet from face of walls, fences, buildings, or other structures. Areas that are not part of the maneuvering area shall have curbs placed at a minimum of two (2) feet from the face of walls, fences or buildings adjoining driveways.
36. Parking lot light fixtures shall align with stall striping and shall be located two to three feet from curb face.
37. Islands of not less than 9 feet in width with a minimum of 6 feet of planter shall be provided every 10 parking spaces. Additional islands may be necessary to comply with shading requirements.
38. Shading requirements for parking lot areas as set forth in Section 9306.00 of the Zoning Ordinance shall be met. Details to be provided with final landscape plan.
39. Parking stalls shall be delineated with a 4 to 6 inch double stripe - hairpin or elongated "U" design. Individual wheel stops shall be prohibited; a continuous 6" barrier curb shall provide wheel stops.
40. Concrete walks with a minimum width of two (2) feet shall be installed adjacent to end parking spaces or end spaces shall be increased to eleven (11) feet wide.
41. Tree wells shall be provided within the parking lot and shall have a planting area of six feet in diameter/width.
42. The development standards for the legal, nonconforming structures are as follows:

Lot Area	63,698 square feet
Lot Width	357 feet
Lot Depth	220 feet to 345 feet
Density - Hotel	1 unit per 1,000 square feet
Density - Condominium	1 unit per 2,000 square feet
	18 hotel units, 20 condominium units
Building Height	24 feet
Front Yard	10 feet
Side Yard	10 feet
Rear Yard	10 feet
Building Distance	5 feet to 10 feet

43. The applicant shall voluntarily pay for the cost of the Movie Colony Street Calming Program and shall pursue private reimbursements from the other participating properties. The City shall not have any obligation or enforcement of such private reimbursement agreements
44. The applicant shall agree to the following schedule for development of the proposed project:

Description	Timeline (Date)
All internal demolition	3 months after final map
Submit for final map	Within 1 year of TTM approval
Apply for grading permits	6 months after final map
Secure grading permits	1 year after final map
Submit construction plans	6 months after final map
Apply for building permits	1 year after final map
Complete construction	2 years after final map
Certificate of Occupancy	3 years after final map

POLICE DEPARTMENT

45. Developer shall comply with Section II of Chapter 8.04 of the Palm Springs Municipal Code.

BUILDING DEPARTMENT

46. Prior to any construction on-site, all appropriate permits must be secured.

FIRE DEPARTMENT

47. Shall comply with all Fire Department codes and regulations

ENGINEERING DEPARTMENT

48. See Exhibit B

Exhibit "B"

The Engineering Division recommends that if this application is approved, such approval is subject to the following conditions being completed in compliance with City standards and ordinances.

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer.

STREETS

1. Any improvements within the public right-of-way require a City of Palm Springs Encroachment Permit.
2. Submit street improvement plans prepared by a Registered Civil Engineer to the Engineering Division. The plan(s) shall be approved by the City Engineer prior to issuance of any grading or building permits.
3. Tentative Tract Map 31104 proposes a partial abandonment of the south half of the existing right-of-way for Via Altamira adjacent to the project site, to facilitate construction of new bay parking spaces along the Via Altamira frontage. A partial abandonment of Via Altamira right-of-way is not possible, and the proposed improvements within Via Altamira will require the full abandonment of right-of-way, consistent with the "Movie Colony Traffic Calming Program" adopted by the City Council on June 15, 2005.
4. Vacation of right-of-way is required to facilitate the proposed development application. An application for the right-of-way vacation of Via Altamira between Indian Canyon Drive and Via Chica, Gran Via Valmonte between Indian Canyon Drive and Via Chica, and Via Chica between Via Altamira and Via Colusa shall be submitted to the Engineering Division for separate processing and approval, all as necessary to implement the "Movie Colony Traffic Calming Program" adopted by the City Council on June 15, 2005. As necessary, coordinate final relocation, adjustment or abandonment of all utilities with the respective utility companies, and demolition of all existing improvements, reconstruction of affected intersecting streets, and coordination of improvements with adjacent property owners, as appropriate, with the Engineering Division. The right-of-way vacation shall be conditionally approved by the City prior to approval of a final map, and shall not be recorded until completion of the construction of the street improvements necessary to implement the "Movie Colony Traffic Calming Program".
5. The applicant shall be responsible for the design and construction of the street improvements required to implement the "Movie Colony Traffic Calming Program" adopted by the City Council on June 15, 2005. The street improvements have been conceptually outlined by the Engineering Division, and

will be made available to the applicant upon request. The required street improvements to implement the "Movie Colony Traffic Calming Program" are generally listed within these conditions; however, additional requirements may be added at the discretion of the City Engineer as street improvement plans are prepared by the applicant for review and approval by the City Engineer. The applicant is advised that not all required street improvements necessary to implement the "Movie Colony Traffic Calming Program" are specifically listed herein, and that off-site street improvements are required as a condition of this development.

6. The Engineering Division has estimated the total cost of the "Movie Colony Traffic Calming Program" at approximately \$362,000 with an estimated fair share of \$111,000 assigned to the proposed development. The applicant may request to enter into a reimbursement agreement with the City that provides for reimbursement to the applicant from other property owners subject to the "Movie Colony Traffic Calming Program", as identified by the City. Reimbursement shall be determined as the proportionate share of the cost of constructing the street improvements, as approved by the City Engineer, and reimbursement shall be made to the applicant as reimbursements are received, if any, in accordance with the terms of the reimbursement agreement. The developer shall deposit \$2,000 with the Engineering Division for costs associated with preparation of the reimbursement agreement by the City Attorney, and shall be liable for all costs in the preparation thereof.

INDIAN CANYON DRIVE

7. Dedicate an additional 20 feet to provide the ultimate half street right-of-way width of 50 feet along the entire frontage, together with a property line - corner cut-back at the northwest and southwest corners of the subject property in accordance with City of Palm Springs Standard Drawing No. 105.
- *8. Remove the existing 8 inch curb and gutter located 26 feet east of centerline and replace with an 8 inch curb and gutter located 38 feet east of centerline along the entire frontage, with a 25 feet radius curb return and spandrel at the southeast corner of the intersection of Indian Canyon Drive and Via Altamira and at the northeast corner of the intersection of Indian Canyon Drive and Granvia Valmonte, in accordance with City of Palm Springs Standard Drawing No. 200 and 206.
- *9. Remove the existing curb return and spandrel at the southeast corner of the intersection of Indian Canyon Drive and Granvia Valmonte, as necessary to coordinate with the "Movie Colony Traffic Calming Program" street improvements.
- *10. Construct an 8 feet wide cross gutter across the Indian Canyon Drive and Via Altamira intersection, and across the east leg of the Indian Canyon Drive and

Granvia Valmonte intersection, as necessary to coordinate with the "Movie Colony Traffic Calming Program" street improvements, in accordance with City of Palm Springs Standard Drawing No. 200.

- *11. Remove the existing sidewalk and construct an 8 feet wide sidewalk behind the proposed curb along the entire frontage in accordance with City of Palm Springs Standard Drawing No. 210.
12. Construct a Type A curb ramp meeting current California State Accessibility standards at the southeast corner of the intersection of Indian Canyon Drive and Via Altamira and at the northeast corner of the intersection of Indian Canyon Drive and Granvia Valmonte in accordance with City of Palm Springs Standard Drawing No. 212.
13. Construct pavement with a minimum pavement section of 5 inches asphalt concrete pavement over 4 inches crushed miscellaneous base with a minimum subgrade of 24 inches at 95% relative compaction, or equal, from edge of proposed gutter to clean sawcut edge of pavement along the entire frontage in accordance with City of Palm Springs Standard Drawing No. 110 and 340. If an alternative pavement section is proposed, the proposed pavement section shall be designed by a California registered Geotechnical Engineer using "R" values from the project site and submitted to the City Engineer for approval.

VIA CHICA

14. Remove the existing asphalt pavement, and construct full width street improvements consisting of 2½ inches asphalt concrete pavement over 4 inches crushed miscellaneous base with a minimum subgrade of 24 inches at 95% relative compaction, along Via Chica, from Via Altamira to Via Colusa, in accordance with the "Movie Colony Traffic Calming Program". Street improvements shall consist of a 20 feet wide, one-way street, and 45 feet diameter traffic circles located at the intersections with Via Altamira, Granvia Valmonte, and Via Colusa. Standard curb and gutter, wedge curb, or other approved street edge treatment shall be constructed, as necessary to convey street surface drainage.
15. Proposed bay parking spaces along Via Chica adjacent to this project shall be aligned as necessary to facilitate the one-way southbound direction of Via Chica. Perpendicular bay parking, as proposed, shall not be allowed.
16. The proposed driveway entrance into the open parking garage identified as "Complex C" shall have a minimum width of 24 feet, and shall be constructed of 6 inches of concrete, unless otherwise approved by the City Engineer, from the garage structure to the edge of travel way on Via Chica. The proposed driveway width of 20 feet is not approved.

VIA ALTAMIRA

17. Remove the existing asphalt pavement, and construct full width street improvements consisting of 2½ inches asphalt concrete pavement over 4 inches crushed miscellaneous base with a minimum subgrade of 24 inches at 95% relative compaction, along Via Altamira, from Indian Canyon Drive to east of Via Chica, in accordance with the "Movie Colony Traffic Calming Program". Street improvements shall consist of a 24 feet wide, two-way street, and a 45 feet diameter traffic circle located at the intersection with Via Chica. Standard curb and gutter, wedge curb, or other approved street edge treatment shall be constructed, as necessary to convey street surface drainage.
18. Proposed bay parking spaces along Via Altamira adjacent to this project shall be aligned as necessary to facilitate the two-way direction of Via Altamira. Bay parking shall be aligned perpendicular to the travel way.

GRANVIA VALMONTE

19. Remove the existing curb and gutter and asphalt pavement, and construct full width street improvements consisting of 2½ inches asphalt concrete pavement over 4 inches crushed miscellaneous base with a minimum subgrade of 24 inches at 95% relative compaction, along Granvia Valmonte, from Indian Canyon Drive to Via Chica, and along Valmonte Del Norte and Valmonte Del Sur east of Via Chica, in accordance with the "Movie Colony Traffic Calming Program". Street improvements shall consist of a 24 feet wide, two-way street, and a 45 feet diameter traffic circle located at the intersection with Via Chica. Standard curb and gutter, wedge curb, or other approved street edge treatment shall be constructed, as necessary to convey street surface drainage.
20. Proposed bay parking spaces along Granvia Valmonte adjacent to this project shall be aligned as necessary to facilitate the two-way direction of Granvia Valmonte. Bay parking shall be aligned perpendicular to the travel way.

SANITARY SEWER

21. All sanitary facilities shall be connected to the public sewer system. New laterals shall not be connected at manholes.
22. An on-site private sewer system shall be constructed to collect sewage from the development and connect to the existing public sewer system. Sewer plans shall be submitted to the Engineering Division for review and approval. Private on-site sewer mains shall conform to City sewer design standards. A profile view of the on-site private sewer mains is not necessary provided sufficient invert information is provided in the plan view, including elevations with conflicting utility lines. Connection of the on-site private sewer system to the public sewer main shall be connected as a lateral and not to an existing manhole or with a new manhole.

Plans for sewers other than the private on-site sewer mains, i.e. building sewers and laterals from the buildings to the on-site private sewer mains, are subject to separate review and approval by the Building Division.

23. All on-site sewer systems shall be privately maintained by a Home Owners Association (HOA). Provisions for maintenance of the on-site sewer system acceptable to the City Engineer shall be included in the Covenants, Conditions and Restrictions (CC&R's) required for this project.

GRADING

24. Submit a Precise Grading Plan prepared by a California registered Civil Engineer or qualified Architect to the Engineering Division for review and approval. The Precise Grading Plan shall be approved by the City Engineer prior to issuance of grading permit.
25. A Fugitive Dust Control Plan shall be prepared by the applicant and/or its grading contractor and submitted to the Engineering Division for review and approval. The applicant and/or its grading contractor shall be required to comply with Chapter 8.50 of the City of Palm Springs Municipal Code, and shall be required to utilize one or more "Coachella Valley Best Available Control Measures" as identified in the Coachella Valley Fugitive Dust Control Handbook for each fugitive dust source such that the applicable performance standards are met. The applicant's or its contractor's Fugitive Dust Control Plan shall be prepared by staff that has completed the South Coast Air Quality Management District (AQMD) Coachella Valley Fugitive Dust Control Class. The applicant and/or its grading contractor shall provide the Engineering Division with current and valid Certificate(s) of Completion from AQMD for staff that have completed the required training. For information on attending a Fugitive Dust Control Class and information on the Coachella Valley Fugitive Dust Control Handbook and related "PM10" Dust Control issues, please contact Elio Torrealba at AQMD at (909) 396-3752, or at etorrealba@AQMD.gov. A Fugitive Dust Control Plan, in conformance with the Coachella Valley Fugitive Dust Control Handbook, shall be submitted to and approved by the Engineering Division prior to approval of the Grading plan.
26. The first submittal of the Grading Plan shall include the following information: a copy of final approved conformed copy of Conditions of Approval; a copy of a final approved conformed copy of the Site Plan; a copy of current Title Report; and a copy of Soils Report.
27. Drainage swales shall be provided adjacent to all curbs and sidewalks to keep nuisance water from entering the public streets, roadways, or gutters.
28. A soils report prepared by a California registered Geotechnical Engineer shall be required for and incorporated as an integral part of the grading plan for the

proposed development. A copy of the soils report shall be submitted to the Building Department and to the Engineering Division prior to approval of the Grading Plan.

29. In cooperation with the Riverside County Agricultural Commissioner and the California Department of Food and Agriculture Red Imported Fire Ant Project, applicants for grading permits involving a grading plan and involving the export of soil will be required to present a clearance document from a Department of Food and Agriculture representative in the form of an approved "Notification of Intent To Move Soil From or Within Quarantined Areas of Orange, Riverside, and Los Angeles Counties" (RIFA Form CA-1) prior to approval of the Grading Plan. The California Department of Food and Agriculture office is located at 73-710 Fred Waring Drive, Palm Desert (Phone: 760-776-8208).

DRAINAGE

30. All stormwater runoff across the property shall be accepted and conveyed in a manner acceptable to the City Engineer and released to an approved drainage system.
31. The project is subject to flood control and drainage implementation fees pursuant to Resolution 14082. The acreage drainage fee at the present time is \$9,212.00 per acre per Resolution No. 15189. Fees shall be paid prior to issuance of a building permit.

ON-SITE

32. For on-site bay parking in residential and commercial zones, paving material shall be decorative paving, colored and/or patterned to relate to the overall design in accordance with Zoning Code 93.06.00.C.15.e.
33. No structures shall be constructed within existing or proposed public utility easements.

GENERAL

34. Any utility trenches or other excavations within existing asphalt concrete pavement of off-site streets required by the proposed development shall be backfilled and repaired in accordance with City of Palm Springs Standard Drawing No. 115. The developer shall be responsible for removing, grinding, paving and/or overlaying existing asphalt concrete pavement of off-site streets as required by and at the discretion of the City Engineer, including additional pavement repairs to pavement repairs made by utility companies for utilities installed for the benefit of the proposed development (i.e. Desert Water Agency, Southern California Edison, Southern California Gas Company, Time Warner, Verizon, etc.). Multiple excavations, trenches, and other street cuts within

existing asphalt concrete pavement of off-site streets required by the proposed development may require complete grinding and asphalt concrete overlay of the affected off-site streets, at the discretion of the City Engineer. The pavement condition of the existing off-site streets shall be returned to a condition equal to or better than existed prior to construction of the proposed development.

35. All proposed utility lines shall be installed underground.
36. All existing utilities shall be shown on the grading/street plans. The existing and proposed service laterals shall be shown from the main line to the property line.
37. Upon approval of any improvement plan by the City Engineer, the improvement plan shall be provided to the City in digital format, consisting of a DWG (AutoCAD drawing file) and DXF (AutoCAD ASCII drawing exchange file). Variation of the type and format of the digital data to be submitted to the City may be authorized, upon prior approval of the City Engineer.
38. The original improvement plans prepared for the proposed development and approved by the City Engineer shall be documented with record drawing "as-built" information and returned to the Engineering Division prior to issuance of a certificate of occupancy. Any modifications or changes to approved improvement plans shall be submitted to the City Engineer for approval prior to construction.
39. Contact Whitewater Mutual Water Company to determine impacts to any existing water lines and other facilities that may be located within the property. Make appropriate arrangements to protect in place or relocate any existing Whitewater Mutual Water Company facilities that are impacted by the development. A letter of approval for relocated or adjusted facilities from Whitewater Mutual Water Company shall be submitted to the Engineering Division prior to issuance of a grading permit.
40. Nothing shall be constructed or planted in the corner cut-off area of any driveway which does or will exceed the height required to maintain an appropriate sight distance per City of Palm Springs Zoning Code Section 93.02.00, D.
41. All proposed trees within the public right-of-way and within 10 feet of the public sidewalk and/or curb shall have City approved deep root barriers installed per City of Palm Springs Standard Drawing No. 904.

MAP

42. A Final Map shall be prepared by a California registered Land Surveyor or qualified Civil Engineer and submitted to the Engineering Division for review and approval. A Title Report prepared for subdivision guarantee for the subject property, the traverse closures for the existing parcel and all lots created therefrom, and copies of record documents shall be submitted with the Final Map

to the Engineering Division as part of the review of the Map. The Final Map shall be approved by the City Council prior to issuance of building permits.

43. Upon approval of a final map, the final map shall be provided to the City in G.I.S. digital format, consistent with the "Guidelines for G.I.S. Digital Submission" from the Riverside County Transportation and Land Management Agency." G.I.S. digital information shall consist of the following data: California Coordinate System, CCS83 Zone 6 (in U.S. feet); monuments (ASCII drawing exchange file); lot lines, rights-of-way, and centerlines shown as continuous lines; full map annotation consistent with annotation shown on the map; map number; and map file name. G.I.S. data format shall be provided on a CDROM/DVD containing the following: ArcGIS Geodatabase, ArcView Shapefile, ArcInfo Coverage or Exchange file (e00), DWG (AutoCAD drawing file), DGN (Microstation drawing file), and DXF (AutoCAD ASCII drawing exchange file). Variations of the type and format of G.I.S. digital data to be submitted to the City may be authorized, upon prior approval of the City Engineer.

TRAFFIC

44. The applicant shall relocate the existing City street lights along the Indian Canyon Drive frontage behind the curb, as part of the widening of Indian Canyon Drive required by this development. The relocated street lights shall have the existing overhead power converted to underground service through installation of underground conduits and pull boxes between the street lights located along the Indian Canyon Drive frontage, subject to the review and approval of the City Engineer. Prior to removal and relocation of existing street lights, contact the City of Palm Springs Facilities Division for requirements related to the removal and relocation of the affected street lights.
45. Submit traffic striping plans for Indian Canyon Drive prepared by a California registered Civil Engineer to the Engineering Division for review and approval. All required traffic striping improvements shall be completed in conjunction with required street improvements, to the satisfaction of the City Engineer, and prior to issuance of a Certificate of Occupancy.
46. Construction signing, lighting and barricading shall be provided for on all projects as required by City Standards or as directed by the City Engineer. As a minimum, all construction signing, lighting and barricading shall be in accordance with State of California, Department of Transportation, "Manual of Traffic Controls for Construction and Maintenance Work Zones" dated 1996, or subsequent additions in force at the time of construction.
47. This property is subject to the Transportation Uniform Mitigation Fee which shall be paid prior to issuance of building permit.

*Off-Site Improvements Approved For Deferral By Covenant

EXHIBIT "C"

CITY COUNCIL MINUTE ORDER NO. 7690

MINUTE ORDER NO. 7690

GRANTING CONCEPTUAL APPROVAL OF CASE
NO. 5.1047, AN APPLICATION BY THE CITY OF
PALM SPRINGS FOR THE MOVIE COLONY
TRAFFIC CALMING PROGRAM

I HEREBY CERTIFY that this Minute Order, granting conceptual approval of Case No. 5.1047, an application by the City of Palm Springs for the Movie Colony Traffic Calming Program, was adopted by the City Council of the City of Palm Springs, California, in a meeting thereof held on the 15th day of June, 2005.


JAMES THOMPSON
City Clerk

EXHIBIT "D"

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS TO INSTALL STREET
IMPROVEMENTS BY AND BETWEEN PACIFICA COLONY PALMS, LLC AND CITY OF PALM
SPRINGS

FREE RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

CITY OF PALM SPRINGS
PO Box 2743
Palm Springs, CA 92263-2743
Attn: City Clerk



S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
1			9						
M	A	L	465	426	PCOR	NCOR	SMF	NCHG	EXAM
									811

Filing Fee Exempt Per Government Code 6103

(For Recorder's Use Only)

811

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS TO INSTALL
STREET IMPROVEMENTS UPON NOTICE

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS TO
INSTALL STREET IMPROVEMENTS UPON NOTICE ("Declaration") is entered into this
6th day of August, 2007, by and between Pacifica Colony Palms, LLC, a
California Limited Liability company ("Declarants"), 5220 Pacific Concourse Drive, Suite
190, Los Angeles, Ca, 90045, and the CITY OF PALM SPRINGS, a municipal
corporation ("City"), whose address is PO Box 2743, 3200 E. Tahquitz Canyon Way,
Palm Springs, CA 92263, Attn: City Clerk.

RECITALS:

A. Declarants' are the owners of that certain real property located in the City
of Palm Springs, County of Riverside, State of California, commonly known as 572 North
Indian Canyon Drive, Palm Springs, California 92262, more particularly described on
Exhibit "A" attached hereto and incorporated herein by reference (APN 507-195-018)
("Property"). The City has fee or easement interests in various streets, sidewalks and
other property within the City and is responsible for the planning and development of
land within the City in such a manner as to provide for the health, safety and welfare of
the residents of the City. That portion of the City's interest in real property most directly
affected by this Agreement is a portion of the following streets Via Colusa, Via Chica,
Granvia Valmonte, Via Altamira, Valmonte Del Norte and Valmonte Del Sur ("Public
Parcel").

B. Declarants' desire to obtain building permit(s) and other City approvals to
renovate, expand and operate a hotel facility upon the Property ("City Approval"). In

accordance with the City Approval, Declarants' have requested deferral to construct certain street, or other improvements on the Property or the Public Parcel, which street improvements are more particularly described on **Exhibit "B"** attached hereto and incorporated herein by reference ("Improvements"). Declarants' desire to defer the construction of the Improvements and the Director, Department of Public Works/City Engineer has determined that the construction of the Improvements can be deferred on the terms more particularly set forth herein.

NOW THEREFORE, the Declarants" declare, covenant and agree, by and for themselves, their heirs, executors and assigns, and all persons claiming under or through it that the Property shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied subject to the covenants and restrictions hereinafter set forth, which covenants are established expressly and exclusively for the use and benefit of the City and the Public Parcel.

1.0 Covenants, Conditions and Restrictions.

1.1 Construction of Improvements. At any time after this Declaration is executed by Declarants and construction of the Improvements has commenced, the City shall notify Declarants in writing that Declarants shall pay their fair share cost of the Improvements, estimated at \$109,000.00, unless portions of the Improvements have been previously constructed by Declarants, the cost of which shall be credited against Declarants' fair share cost of the Improvements. Any credit against Declarants' fair share cost shall be subject to review and approval by the City Engineer. Payment to the City of Declarants' fair share cost of the Improvements shall be made within 30 days notice from the City.

2.0 Enforcement.

2.1 Rights of City. In the event of any violation or threatened violation of any of the provisions of this Agreement, then in addition to, but not in lieu of, any of the rights or remedies the City may have to enforce the provisions hereof, the City shall have the right (i) to enforce the provisions hereof as a party hereto and as an owner of the Public Parcel, (ii) to withhold or revoke, after giving written notice of said violation, any building permits, occupancy permits, certificates of occupancy, business licenses and similar matters or approvals pertaining to the Property or any part thereof or interests therein as to the violating person or one threatening violation and (iii) to obtain from a court of competent jurisdiction an injunction against such violation or threatened violation.

2.2 Failure to Perform: Lien. If any owner of the Property defaults on the performance of any of their obligations hereunder, the City, its employees, contractors and agents may, at their sole option, and after making reasonable demand

of the owners of the Property that it cure said default, cure the default. In making a cure, the City shall give the owners of the Property or their representative, reasonable notice of the time and manner of said action and said action shall only be at such times and in such manners as reasonably necessary to carry out this Agreement. In such event, the owners of the Property shall reimburse the City for all costs and expenses related to the curing of said default plus interest at a rate of ten percent (10%) per annum commencing on the date that is thirty (30) days after the date notice thereof is given and ending on the date said sum is fully repaid. Any and all delinquent amounts, together with said interest, costs and reasonable attorneys fees shall be a personal obligation of the owners of the Property as well as a lien and charge, with power of sale, upon the Property. The City may bring an action at law against the owners of the Property to pay any such sums. The lien provided for in this Section may be recorded by the City as a Notice of Lien against the Property in the Office of the Riverside County Recorder, signed and acknowledged, which Notice of Lien shall contain a statement of the unpaid amount of costs and expenses. Such lien may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction or in accordance with the provisions of Section 2924 of the California Civil Code applicable to the exercise of powers of sale for mortgages and deeds of trust, or in any other manner permitted by California law. Upon the timely curing of any default for which such lien was recorded, the City shall record an appropriate release of such lien, upon payment by the owner of the Property of a reasonable fee to cover the costs of preparing and recording such release, together with the payment of such other costs, including, without limitation, reasonable attorneys fees, court costs, interest or other fees which have been incurred.

3.0 Covenants to Run With the Land.

3.1 Covenants Running With the Land. This Declaration is designed to create equitable servitudes and covenants appurtenant to the Public Parcel and running with the Property. Declarants' hereby declare that all of the Property shall be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the covenants, conditions, restrictions and equitable servitudes, all of which are for the purposes of uniformly enhancing or protecting the value, attractiveness and desirability of the Property and the Public Parcel. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall run with the Property and shall be binding upon all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns; shall inure to the benefit of every portion of the Public Parcel and any interest therein; shall inure to the benefit of the City and its successors and assigns and successors in interest; shall be binding upon the Declarants', their successors and assigns and successors in interest; and may be enforced by the City.

3.2 Agreement Among Declarants', Agency and City. In exchange for granting of the City Approval by the City, the Declarants' hereby agree to hold, sell

and convey the Property subject to the covenants, conditions, restrictions and reservations of this Declaration. Declarants' also grant to the City the right and power to enforce the covenants, conditions, restrictions and reservations contained in this Declaration against the Declarants' and all persons having any right, title or interest in the Property, or any part thereof, their heirs, successive owners and assigns.

4.0 **Miscellaneous.**

4.1 **Term.** The covenants, conditions and restrictions contained in this Declaration shall remain in effect until the Improvements are constructed and accepted by the City.

4.2 **Modification.** This Declaration may not be modified, terminated or rescinded, in whole or in part, except by a written instrument duly executed and acknowledged by the parties hereto, their successors or assigns and duly recorded in the Office of the County Recorder, County of Riverside.

4.3 **Governing Law.** This Declaration shall be governed by and construed in accordance with the laws of the State of California.

4.4 **Severability.** The invalidity or inability to enforce any provision of this Declaration with respect to a particular party or set of circumstances shall not in any way affect the validity and enforceability of any other provision hereof, or the same provision when implied to another party or to a different set of circumstances.

4.5 **Notices.** Any notice to be given under this Declaration shall be given by personal delivery or by depositing the same in the United States Mail, certified or registered, postage prepaid, to the address set forth on the first page of this Declaration. Any notice delivered personally shall be effective upon delivery. Any notice given by mail as above provided shall be effective forty-eight (48) hours after deposit in the mails. Any party may change address for notice by giving written notice of such change to the other party.

4.6 **Attorneys' Fees.** In any action between the parties seeking enforcement of any of the terms and provisions of this Declaration, the prevailing party in such action shall be awarded, in addition to any damages, injunctive or other relief, its reasonable costs and expenses, including attorney's fees.

4.7 **Counterparts.** This Declaration may be executed in any number of counterparts each of which shall be an original but all of which shall constitute one and the same document.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the date first written above.

Pacifica Colony Palms, LLC, a California Limited Liability company.

By: Steve Ohren
Steve Ohren
Managing Member

"Declarants"

(DECLARANTS" SIGNATURES MUST BE NOTARIZED)

ATTEST:

CITY OF PALM SPRINGS,
a municipal corporation

By: James Thompson
James Thompson
City Clerk

By: David H. Ready
David H. Ready
City Manager

"City"

APPROVED AS TO FORM:

RECOMMENDED BY:

By: Richard Fordland
City Attorney

By: Marcus Fuller
Assistant Public Works Director/
Assistant City Engineer

APPROVED AS TO OWNERSHIP &
LEGAL DESCRIPTION:

By: Rick Minjares
Rick Minjares
Engineering Assistant

NOTARY FORMS ON NEXT PAGE

STATE OF CALIFORNIA)

SS.

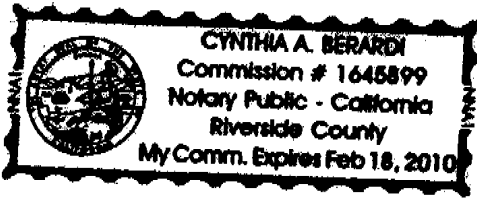
COUNTY OF RIVERSIDE)

On August 6, 2007 before me, Cynthia A. Berardi, Notary Public
Date Notary Public

personally appeared Steve Ohren

personally known to me OR

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



Witness my hand and official seal.

Cy A. Berardi
Signature of Notary

STATE OF CALIFORNIA)

SS.

COUNTY OF RIVERSIDE)

On _____ Before me, _____
Date Notary Public

personally appeared _____

personally known to me OR

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

Witness my hand and official seal.

Signature of Notary

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

Lots 1 through 6 in Block "G" of the Palm Springs Estates, in the City of Palm Springs, County of Riverside, State of California, as shown by map on file in Book 15, Page 43, of Maps, in the office of the County Recorder of said County.

Together with that portion of the Northerly half of Via Colusa adjoining Lots 3 and 4 on the South and Southeast as described in Resolution Number 13151 vacating and abandoning a portion of Via Colusa recorded December 3, 1987 as instrument number 342781, Official Records.

EXHIBIT "B"
DESCRIPTION OF DEFERRED ITEMS

The owner shall execute a street improvement covenant agreeing to participate in the construction of the Movie Colony Traffic Calming Program previously submitted to and reviewed by the Movie Colony neighborhood, and subject to future review and approval by the Planning Commission and City Council. The owner shall be bound by the covenant to deposit the fair share cost of implementing the Movie Colony Traffic Calming Program, as approved by City Council, upon the request of the City of Palm Springs City Engineer at such time as deemed necessary in order to facilitate construction of said improvements. Although there is no time frame placed on this covenant, any deposit owner makes is fully refundable if construction of said improvements does not commence within a reasonable time period. The total Engineering Department's estimated cost to construct the Movie Colony Traffic Calming Program is approximately \$360,000 (as identified in a Division of Construction Costs distributed at a neighborhood meeting on September 21, 2004), with a fair share cost attributed to the Colony Palms development of \$109,000. The covenant shall establish that the owner's maximum contribution to and participation in the Movie Colony Traffic Calming Program, as approved by City Council, is \$109,000, even in the event that total costs exceed the preliminary estimate prepared by the Engineering Department.

As described above the owner shall be bound by this covenant to pay a fair share cost of implementing the Movie Colony Traffic Calming Program at the time the Movie Colony Traffic Calming Program is completed by others, upon thirty (30) days written notice from the City Engineer.

The original fair share cost is hereby reduced to \$ 45,288.00 to reflect construction by Declarants of a portion of the Movie Colony Traffic Calming program adjacent to the Colony Palms Hotel, as reflected on Exhibit 'C'.

EXHIBIT "C"

COLONY PALMS HOTEL 9/2/104

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	Engineer's Estimate TOTAL
1	Initial Mobilization	1	LS	\$2,500.00	\$2,500.00
2	Traffic Control	1	LS	\$750.00	\$750.00
3	Construct 2" AC Overlay	18,214	SF	\$1.50	\$27,321.00
4	Construct A2-6 Curb & Gutter	2095	LF	\$16.00	\$33,520.00
5	Sawcut and Remove Existing AC Paving	2,984	SF	\$1.00	\$2,984.00
6	Remove Existing PCC Pavement	162	SF	\$2.00	\$324.00
7	Sawcut and Remove Existing Curb & Gutter	0	LF	\$2.00	\$0.00
8	Construct PCC Driveway Approach	0	SF	\$5.00	\$0.00
9	Construct PCC Handicap Access Ramp	2	EA	\$1,500.00	\$3,000.00
10	Construct Spandrel & Curb Return	684	SF	\$6.00	\$4,104.00
11	Construct Cross Gutter	120	SF	\$7.50	\$900.00
12	landscaping & Irrigation (Noses & Circles)	1	LS	\$6,250.00	\$6,250.00
13	Adjust Existing Manhole to Grade	1	EA	\$500.00	\$500.00
14	Signing & Striping	1	LS	\$2,500.00	\$2,500.00

subtotal \$84,653.00
 Design & Admin \$7,500.00
 20% contingency \$16,930.60
 Total \$109,083.60

COLONY PALMS HOTEL 8/2/07

CONSTRUCTED QUANTITY	DIFFERENCE	UNIT PRICE	Engineer's Estimate TOTAL
0	0	\$2,500.00	\$2,500.00
0	0	\$750.00	\$750.00
1,285	13828	\$1.50	\$6,579.00
1918	1079	\$16.00	\$16,256.00
2,864	0	\$1.00	\$2,984.00
310	-138	\$2.00	\$600.00
513	-613	\$2.00	\$1,226.00
0	0	\$5.00	\$0.00
3	-1	\$1,500.00	\$4,500.00
1253	-519	\$6.00	\$7,218.00
240	-120	\$7.50	\$1,800.00
0	1	\$6,250.00	\$0.00
0	1	\$500.00	\$0.00
1	0	\$2,500.00	\$2,500.00

Constructed Subtotal \$46,913.00
 Design & Admin \$7,500.00
 20% contingency \$9,382.60
 Constructed Total \$63,795.60
 Original Total \$109,083.60
 New Covenant Amount \$45,288.00