



CITY COUNCIL STAFF REPORT

DATE: March 21, 2012

NEW BUSINESS

SUBJECT: APPROVE THE PURCHASE OF REAL PROPERTY AND ESCROW INSTRUCTIONS WITH CHINO CIENEGA FOUNDATION, AND STEPHEN C. NICHOLS & SARAH J. BENSON, TRUSTEES OF THE BENSON-NICHOLS TRUST OF 2003 FOR CERTAIN REAL PROPERTY CONSISTING OF APPROXIMATELY 2.3 ACRES, LOCATED AT THE NORTHWEST CORNER OF TRAMWAY ROAD AND NORTH PALM CANYON DRIVE, AT 2901 NORTH PALM CANYON DRIVE, APN: 504-040-001-8

FROM: David H. Ready, City Manager

BY: Community & Economic Development Department

SUMMARY

This action would facilitate the purchase by the City of the 2.4 acre parcel in fee from the property owner, which would consist of the Visitor Center Parking Lot and the Entryway Sign parcel and the acreage in between.

In 1971, Sallie and Culver Nichols granted the City by license (the "Right of Way Agreement") a right to place the City's gateway entry sign on a portion of the Nichols Site at no cost. In 2003, the successor parties entered a Lease Agreement, which included the area subject to the Right of Way as well as property for the construction of a parking lot for the City's then-new Visitor Center at 2901 North Palm Canyon Drive, landscaped pathways, and entry landscaping and signage improvements to be constructed by its Public Arts Commission. The area between the gateway sign and the Visitor Center was to be minimally developed as a series of landscaped pathways. This Lease superseded and replaced the Right of Way Agreement.

Since 2003, the City has operated the Visitor Center and constructed the enlarged and upgraded entry sign on the property. A portion of the property ownership has now passed from a trust to a charitable foundation, and the owner now desires to sell the property to the City.

ITEM NO. 50

The City appraised the property in March, 2011 and the value was determined to be \$690,000. Given the open space and recreational nature of the acquisition, Staff proposes that the City use Quimby park funds for the acquisition.

RECOMMENDATION:

1. APPROVE AN AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND ESCROW INSTRUCTIONS BETWEEN THE CITY OF PALM SPRINGS AND THE CHINO CIENEGA FOUNDATION, A CALIFORNIA PUBLIC BENEFIT CORPORATION AND STEPHEN C. NICHOLS & SARAH J. BENSON, TRUSTEES OF THE BENSON-NICHOLS TRUST OF 2003 FOR CERTAIN REAL PROPERTY CONSISTING OF APPROXIMATELY 2.3 ACRES, LOCATED AT THE NORTHWEST CORNER OF TRAMWAY ROAD AND NORTH PALM CANYON DRIVE, AT 2901 NORTH PALM CANYON DRIVE, APN: 504-040-001-8
2. Authorize the City Manager or his designee to execute all necessary documents.

STAFF ANALYSIS:

In 1971, Sallie and Culver Nichols granted the City by license a right to place the City's gateway entry sign on a portion of the Nichols Site, at no cost to the City. In 2003, the parties entered a Lease Agreement, which included the original area as well as Property for the construction of a parking lot for the City's then-new Visitor Center at 2901 North Palm Canyon Drive, landscaped pathways, and entry landscaping and signage improvements to be constructed by its Public Arts Commission. The area between the gateway sign and the Visitor Center was to be minimally developed as a series of landscaped pathways. This Lease superseded and replaced the original Right of Way Agreement.

The property is now under the ownership of the Chino Cienega Foundation, a California Public Benefit Corporation, as a 50% owner, and Stephen C. Nichols & Sarah J. Benson, Trustees of the Benson-Nichols Trust of 2003, as the remaining 50% owners. Since the advent of the Lease in 2003, it was always the intent of the parties that the Visitor Center and the ultimate development of the Nichols Site represent an integrated, harmonious project, and that the boundaries of the Property could be altered to accommodate such development, and that reciprocal ingress, egress and parking covenants may be utilized to integrate the development.

In 2007, the City commenced construction of the Entry Improvements and subsequently determined that it needed additional land from the Nichols Site, more particularly described in Exhibit "B" of the Lease, "Map of the Lease Area." In the amendment to the 2003 Lease, the additional square footage was added and the expiration of the Lease term was extended from June 30, 2008 to June 30, 2010. The Lease expired in

June, 2010.

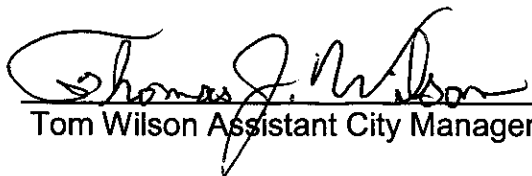
Under the terms of the Lease, at any time during the term of the Lease and any extension, the City had the option to purchase the fee title interest in the Property at the then-current fair market value of the Property. Fair market value was to be determined by an appraisal performed by City. The appraisal was performed by Dozier Appraisal Services in 2011 for the City.

Nichols still intends to develop the Nichols Site for a range of uses permitted under the General Plan and Chino Cone Ordinance but does not currently have a development plan. At the time of the 2003 Lease, the City did not want the precise boundaries of the Property and the Facilities to decrease the flexibility of Nichols to develop the Nichols Site. Accordingly, the parties agreed to meet and negotiate in good faith to make changes in the boundaries of the Property subject to the Lease and purchase, and in the Facilities constructed thereon, if necessary to accommodate the Nichols development, which could still occur under the Agreement.

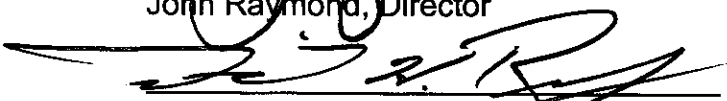
The City appraised the property in March, 2011 and the value was determined to be \$690,000. Given the open space and recreational nature of the acquisition, Staff proposes that the City use Quimby park funds for the acquisition. There are sufficient funds in that account to acquire this parcel and still have money for other acquisition or parks projects.



John Raymond, Director



Tom Wilson Assistant City Manager



David H. Ready, City Manager

Attachments:

Purchase and Sale Agreement

AGREEMENT FOR PURCHASE AND SALE
OF REAL PROPERTY AND ESCROW INSTRUCTIONS

Escrow No. _____

Date of Opening of
Escrow: _____, 2012

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY AND ESCROW INSTRUCTIONS ("Agreement") is made this ___ day of _____ 2012, by and between Chino Cienega Foundation, a California public benefit corporation and Stephen C. Nichols & Sarah J. Benson, Trustees of the Benson-Nichols Trust of 2003, each as to a one-half undivided interest in the parcel (collectively, "Seller"), and THE CITY OF PALM SPRINGS, a California municipal corporation and Charter City ("Buyer").

RECITALS

A. Seller is the owner of that certain real property consisting of approximately 2.4 gross acres, referred to as 2901 North Palm Canyon Drive; APN: 504-040-001-8, located at the northwest corner of Tramway Road and North Palm Canyon Drive in the City of Palm Springs, County of Riverside, State of California, more particularly described on Exhibit "A" attached hereto ("Land"), together with (i) all rights, privileges, easements, licenses and interests appurtenant thereto, including, without limitation, all oil, gas, water and water rights (collectively, "Appurtenances"); and (ii) all intangible property ("Intangible Property") owned or held by Seller in connection with the Land, including, without limitation, development rights, governmental approvals and land entitlements. The Land, Appurtenances and Intangible Property are collectively referred to herein as the "Property."

B. It is the intent of the parties that the Visitor Center and the ultimate development of the adjacent property owned by Seller ("Nichols Site") represent an integrated, harmonious project, and that the boundaries of the Property may be altered to accommodate such development, and that reciprocal ingress, egress and parking covenants may be utilized to integrate the development.

C. Seller wishes to sell the Property to Buyer and Buyer wishes to buy the Property from Seller pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, the parties hereto agree as follows:

TERMS AND CONDITIONS

1. **PURCHASE AND SALE OF PROPERTY.**

Buyer hereby agrees to purchase from Seller, and Seller agrees to sell to Buyer the Property, upon the terms and conditions hereinafter set forth.

2. OPENING OF ESCROW; CLOSING DATE.

2.1 Opening of Escrow. Within five (5) business days after the execution of this Agreement by Buyer and Seller, the parties shall open an escrow ("Escrow") with _____ Escrow ("Escrow Holder") by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow Holder and Title Company shall have a physical office location in the City of Palm Springs and shall be selected through the City's Escrow Rotation Program. Escrow shall be deemed open on the date that a fully executed copy of this Agreement is delivered to Escrow Holder ("Opening of Escrow"). Escrow Holder shall fax written notice of the Opening of Escrow date to Buyer and Seller.

2.2 Closing Date. Escrow shall close on or before _____, 2012 ("Closing Date"). The terms the "Close of Escrow" and/or the "Closing" are used herein to mean the time the Grant Deed and Deed of Trust (as hereinafter defined) is recorded in the Office of the County Recorder of Riverside County, California.

2.3 Time is of the Essence. Buyer and Seller agree that time is of the essence and each party specifically agrees to strictly comply and perform the obligations herein in the time and manner specified and waives any and all rights to claim such compliance by mere substantial compliance with the terms of this Agreement.

3. CONSIDERATION.

3.1 Purchase Price. The purchase price for the Property is Six Hundred Ninety Thousand AND 00/100 DOLLARS (\$690,000.00) ("Purchase Price"). The Purchase Price to be paid by Buyer to Seller is all-inclusive compensation of Seller's interest in the Property and any rights or obligations which exist or may arise out of the acquisition of the Property for public purposes, which compensation Seller acknowledges and agrees is inclusive, without limitation, of Seller's fee interest in the Land and any improvements located thereon, severance damages, relocation expenses, costs, interest, attorneys' fees, and any claim whatsoever of Seller which might arise out of or relate to the acquisition of the Property by Buyer.

3.2 Payment of Purchase Price. On or before the day preceding Close of Escrow, Buyer shall deposit the Purchase Price with Escrow Holder in "good funds." "Good funds" shall mean a wire transfer of funds, cashier's or certified check drawn on or issued by the offices of a financial institution located in the State of California, or cash.

4. ADDITIONAL FUNDS AND DOCUMENTS REQUIRED FROM BUYER AND SELLER.

4.1 Buyer. Buyer agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Buyer will deposit with Escrow Holder all additional funds and/or documents (executed and acknowledged, if appropriate) which are necessary to comply with the terms of this Agreement, including, without limitation, the following:

(a) A Preliminary Change of Ownership Statement completed in the manner required in Riverside County; and

(b) Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.2 Seller. Seller agrees that on or before 1:00 p.m. on the business day preceding the Closing Date, Seller will deposit with Escrow Holder such funds and other items and instruments (executed and acknowledged, if appropriate) as may be necessary in order for the Escrow Holder to comply with this Agreement, including, without limitation, the following:

(a) A grant deed conveying the Property to Buyer in the form attached hereto as Exhibit "B" ("Grant Deed");

(b) Two duplicate originals of a Non-Foreign Affidavit in the form attached hereto as Exhibit "C" ("Grant Deed");

(c) Two duplicate originals of California Form 590-RE Real Estate Withholding Exemption Certificates in the form required by the California Franchise Tax Board ("California Residency Affidavit"); and

(d) Such funds and other items and instruments as may be necessary in order for Escrow Holder to comply with this Agreement.

4.3 Recordation, Completion and Distribution of Documents. Escrow Holder will cause the Grant Deed to be recorded when (but in no event after the Closing Date) it can issue the Title Policy in the form described in Section 5.2 below, and holds for the account of Seller the items described above to be delivered to Seller through Escrow, less costs, expenses and disbursements chargeable to Seller pursuant to the terms hereof.

5. TITLE MATTERS.

5.1 Approval of Title.

(a) Promptly following execution of this Agreement (but in no event later than ten (10) days following Opening of Escrow), Seller shall cause to be delivered to Buyer a Preliminary Title Report issued through _____ Title Insurance Company ("Title Company"), describing the state of title of the Property, together with legible copies of all exceptions specified therein and a map plotting all locatable easements specified therein ("Preliminary Title Report"). Buyer shall notify Seller in writing ("Buyer's Title Notice") of Buyer's approval of all matters contained in the Preliminary Title Report or of any objections Buyer may have to title exceptions or other matters ("Disapproved Exceptions") contained in the Preliminary Title Report within fifteen (15) business days after Buyer's receipt of the Preliminary Title Report ("Buyer's Title Notice").

(b) In the event Buyer delivers Buyer's Title Notice within said period, Seller shall have a period of ten (10) days after receipt of Buyer's Title Notice in which to notify Buyer of Seller's election to either (i) agree to attempt to remove the Disapproved Exceptions prior to

the Close of Escrow; or (ii) decline to remove any such Disapproved Exceptions (“Seller’s Notice”). Seller shall only elect to decline to remove Disapproved Exceptions which Seller in good faith believes Seller’s reasonable efforts would not result in removal or as to which removal would result in cost or expense to Seller other than nominal administrative expense incurred in the process of removal. Seller’s failure to deliver Seller’s Notice within said ten (10) day period shall be deemed Seller’s election to decline to remove the Disapproved Exceptions. If Seller notifies Buyer of its election to decline to remove the Disapproved Exceptions, if Seller is deemed to have elected to decline to remove the Disapproved Exceptions or if Seller is unable to remove the Disapproved Exceptions, Buyer may elect either to terminate this Agreement and the Escrow or to accept title to the Property subject to the Disapproved Exception(s). Buyer shall exercise such election by delivery of written notice to Seller and Escrow Holder within ten (10) days following the earlier of (i) the date of written advice from Seller that such Disapproved Exception(s) cannot be removed; or (ii) the date Seller decline or is deemed to have declined to remove such Disapproved Exception(s).

(c) Upon the issuance of any amendment or supplement to the Preliminary Title Report which adds additional exceptions, the foregoing right of review and approval shall also apply to said amendment or supplement, provided, however, that Buyer’s initial period of review and approval or disapproval of any such additional exceptions shall be limited to ten (10) days following receipt of notice of such additional exceptions, together with copies of the underlying documents referenced therein.

(d) Nothing to the contrary herein withstanding, Buyer shall be deemed to have automatically objected to all deeds of trust, mortgages, judgment liens, federal and state income tax liens, delinquent general and special real property taxes and assessments and similar monetary encumbrances affecting the Property, and Seller shall discharge any such non-permitted title matters of record prior to or concurrently with the Close of Escrow.

5.2 Title Policy. When Escrow Holder holds for Buyer the Grant Deed in favor of Buyer executed and acknowledged by Seller covering the Property, Escrow Holder shall cause to be issued and delivered to Buyer and Seller as of the Close of Escrow a CLTA standard coverage owner’s policy of title insurance (“Title Policy”), or, upon Buyer’s request therefor, an ALTA extended coverage owner’s policy of title insurance, issued by Title Company, with liability in the amount of the Purchase Price, covering the Property and showing title vested in Buyer free of encumbrances, except:

- (a) All non-delinquent general and special real property taxes and assessments for the current fiscal year;
- (b) Those easements, encumbrances, covenants, conditions, restrictions, reservations, rights-of-way and other matters of record shown on the Preliminary Title Report which have been approved by Buyer pursuant to Section 5.1 above;
- (c) The standard printed exceptions and exclusions contained in the CLTA or ALTA form policy;

- (d) Any exceptions created or consented to by Buyer, including, without limitation, any exceptions arising by reason of Buyer's possession of or entry on the Property.

6. DUE DILIGENCE.

6.1 Due Diligence Date. The "Due Diligence Date" shall mean the date which is sixth (60) days following the date of the Opening of Escrow.

6.2 Scope of Due Diligence. Buyer shall have the right to make an analysis of the Property consisting of such engineering, feasibility studies, soils tests, environmental studies, including but not limited to those described in Section 7.3, and other investigations as Buyer may desire to permit Buyer to determine the suitability of the Property for its intended purpose and to conduct such other review and investigation which Buyer deems appropriate to satisfy itself to acquire the Property. Buyer shall also have the right to examine all licenses, permits, authorizations, approvals, and governmental regulations which affect the Property.

6.3 Review of Documents. Within ten (10) days of the Opening of Escrow, Seller shall deliver to Buyer the following documents which Seller may have in its possession or control (or reasonable access thereto) for Buyer's review and approval:

- (a) True and correct copies of any labor, service, employment, supply, property management, leases, subleases, equipment leases, insurance and maintenance contracts or other agreements which relate to the Property, and any and all amendments thereto.
- (b) Copies of all engineering reports, soils studies, soils compaction reports, grading plans, geologic studies, drainage plans or reports, tentative parcel maps, development agreements, governmental permits and approvals and any conditions thereto, environmental audits and reports, environmental remediation plans (and all correspondence and documents related thereto), environmental impact reports, permits, inspections, reports, notices and/or correspondence regarding the condition of the Property or governmental agency review and approval respecting fire, building, health, zoning and use compliance.
- (c) The most recently available survey of the Property, if any, showing all Improvements and things located on the Property and within ten (10) feet of the outside property line of the Property.

6.4 Entry for Investigation.

(a) Subject to the conditions hereafter stated, Seller grants to Buyer, its agents and employees a limited license to enter upon any portion of the Property for the purpose of conducting engineering surveys, soil tests, investigations or other studies reasonably necessary to evaluate the condition of the Property, which studies, surveys, investigations and tests shall be

done at Buyer's sole cost and expense. The license herein granted shall be co-extensive with the term of this Agreement or any extension thereof.

(b) Buyer shall (i) conduct all studies in a diligent, expeditious and safe manner and not allow any dangerous or hazardous conditions to occur on the Property during or after such investigation; (ii) comply with all applicable laws and governmental regulations; (iii) keep the Property free and clear of all materialmen's liens, lis pendens and other liens arising out of the entry and work performed under this paragraph; and (iv) return the Property to its original condition following Buyer's entry. Buyer agrees to indemnify, defend, protect and hold Seller and the Property free and harmless from any and all loss, liability, claims, damages and expenses (including, but not limited to, attorneys' fees and costs) arising directly or indirectly from the exercise of said license. Such undertaking of indemnity shall survive Close of Escrow or the termination of this Agreement for any reason.

6.5 Approval of Due Diligence Matters. Buyer shall notify Seller in writing ("Buyer's Due Diligence Notice") on or before the Due Diligence Date of Buyer's approval or disapproval of each item delivered to or available for review by Buyer pursuant to this Section 6 and of Buyer's approval or disapproval of the condition of the Property and Buyer's investigations with respect thereto (excluding title matters which are to be approved or disapproved pursuant to Section 5.1 above) (collectively, the "Due Diligence Items"), which approval may be withheld in Buyer's sole and absolute discretion. In the event Buyer fails to give written notice of its approval, then it shall be deemed that Buyer has disapproved the condition of the Property.

In the event of Buyer's disapproval of a condition of the Property, within ten (10) days after Seller's receipt of Buyer's Due Diligence Notice, Seller shall give Buyer written notice ("Seller's Due Diligence Notice") of those conditions that Seller will attempt to cure. Seller shall thereafter promptly use all reasonable efforts to cure such conditions, prior to the Close of Escrow, at its sole cost and expense.

In the event that Seller delivers a Seller's Due Diligence Notice listing any of the disapproved Property conditions, Buyer shall have the right to (a) terminate this Agreement or (b) acquire the Property subject to the disapproved Property conditions included within Seller's Due Diligence Notice. Such right shall be exercised by Buyer by giving either written notice of such termination ("Termination Notice") or written notice of such election to accept the disapproved Property conditions ("Property Acceptance Notice") to Seller within twenty (20) days after Buyer's receipt of Seller's Due Diligence Notice. In the event that Buyer should fail to give either the Termination Notice or the Property Acceptance Notice within the time period set forth in the preceding sentence, Buyer shall be deemed to have given a Termination Notice

6.6 Approval of Additional Due Diligence Matters. In the event Seller becomes aware of or obtains possession of any new Due Diligence Items after the Due Diligence Date, Seller will provide Buyer with written notice of such Due Diligence Item to Buyer. Buyer shall have the right to review and approve such Due Diligence Item in the same manner as set forth in Section 6.5 above; provided, however, that Buyer's period to review and approve or disapprove such additional Due Diligence Item shall be limited to fifteen (15) days following receipt of

notice of such new Due Diligence Item, together with a copy of any written document relating thereto.

7. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

7.1 Conditions to Buyer's Obligations. The obligations of Buyer under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Buyer of each of the following conditions precedent:

- (a) Title Company will issue the Title Policy as required by Section 5.2 of this Agreement.
- (b) Buyer has approved or deemed to have approved the condition to title of the Property on or before the date provided in Section 5.1.
- (c) Buyer has approved or deemed to have approved all Due Diligence Items on or before the Due Diligence Date.
- (d) Buyer's approval with the environmental testing and contingency under Section 7.3.
- (e) Seller has removed from the Property all equipment, personal property, debris and waste.
- (f) Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement.
- (g) All representations and warranties specified in Section 9.1 are true and correct.
- (h) Buyer's approval of any other conditions specified in this Agreement.
- (i) Seller shall not be in default of any term or condition of this Agreement.

Buyer's approval shall be based upon Buyer's sole and absolute discretion; provided, however, if Buyer has not delivered written notice of approval of the above conditions to Seller and Escrow Holder by the times provided above, or if no time is provided, on or before the Close of Escrow, each such condition shall automatically and conclusively be deemed to have been disapproved by Buyer. Buyer may waive such automatic disapproval in writing.

7.2 Conditions to Seller's Obligations. The obligations of Seller under this Agreement shall be subject to the satisfaction or written waiver, in whole or in part, by Seller of each of the following conditions precedent:

- (a) Escrow Holder holds and will deliver to Seller the instruments and funds accruing to Seller pursuant to this Agreement.
- (b) Buyer shall not be in default of any term or condition of this Agreement.

If requested by Escrow Holder or Buyer, Seller shall deliver to Escrow Holder and Buyer written notice of satisfaction of the conditions set forth in this Section 7.2.

7.3 Environmental Testing and Contingency.

The Closing of Escrow shall be subject to and conditioned upon Buyer's written acceptance, approval of the physical and environmental conditions at, under and about the Property, and the absence from the Property of any hazardous substances, hazardous wastes and/or hazardous materials as such terms are defined in their broadest form under any applicable federal, state or local law or regulation, and any other kind of soil, air, or water contamination. Upon Buyer's review of any Phase I or Phase II Report and completion of any other testing Buyer deems necessary, if Buyer, in its sole discretion, determines that an additional environmental assessment, including but not limited to, a new or supplemental Phase II Environmental Assessment Report, is necessary, then Buyer may elect to obtain such assessment at its sole cost, provided such assessment is complete by the Due Diligence Date.

7.4 Covenant of Seller and Buyer. Buyer and Seller agree to cooperate with one another, at no cost or expense to the cooperating party, in satisfying the conditions precedent to Close of Escrow. Buyer shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Buyer's performance set forth in Section 7.1 and Seller shall be responsible for proceeding with diligence and in good faith to satisfy the conditions to Seller's performance set forth in Section 7.2.

7.5 Termination for Failure of Condition. In the event Buyer fails to approve or disapprove any condition precedent specified in Section 7.1 or elsewhere in this Agreement on or before the date for approval set forth therein, Seller shall notify Buyer of such failure and Buyer shall have a period of twenty (20) days from receipt of such notice to elect to approve such matter or to disapprove such matter and terminate this Agreement. The failure of Buyer to approve such matter within said twenty (20) days shall be deemed to constitute disapproval thereof and Buyer's election to terminate. In the event Seller fails to approve or disapprove any condition precedent specified in Section 7.1 or elsewhere in this Agreement on or before the date for approval set forth therein, Buyer shall notify Seller of such failure and Seller shall have a period of twenty (20) days from receipt of such notice to elect to approve such matter or to disapprove such matter and terminate this Agreement. The failure of Seller to approve such matter within said twenty (20) days shall be deemed to constitute disapproval thereof and Seller's election to terminate. In the event Buyer or Seller terminates this Agreement based on the disapproval of one or more of said conditions precedent as provided herein, Buyer shall be entitled to all sums deposited into Escrow, paid to Seller as a portion of the Purchase Price.

8. ADDITIONAL COVENANTS OF BUYER AND SELLER.

8.1 Environmental Claims. Seller shall retain all liability under all Environmental Laws asserted at any time in connection with any set of facts or conditions existing in, on or about the Property prior to Closing arising from its ownership of the Property (hereinafter referred to as "Retained Environmental Liabilities"). For purposes of this Agreement, "Environmental Laws" shall mean all federal, state or local statutes, regulations, ordinances, codes or rules as such have been or may hereafter be enacted, adopted, amended or

supplemented and all common law causes of action relating to the protection of human health or the environmental, including without limitations the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Section 9601, *et seq.*), the Resource Conservation and Recovery Act, as amended (42 U.S.C. Section 6901, *et seq.*), the Federal Water Pollution Control Act, as amended (33 U.S.C. Section 7401, *et seq.*), the Toxic Substance Control Act, as amended (15 U.S.C. 2601, *et seq.*), the Safe Drinking Water Act, as amended (42 U.S.C. Section 300f, *et seq.*), the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. Section 136, *et seq.*) and the Clean Air Act, as amended (42 U.S.C. 7401, *et seq.*), and private rights of action for nuisance or damages to property or persons.

Notwithstanding any contrary provisions of this Agreement or otherwise, upon the execution of this Agreement by Buyer, Buyer shall and does hereby release Seller from any liability, cost or expense Buyer may incur as a result of Buyer's purchase of the Property or the presence of any Hazardous Materials (hereinafter defined) which are or may be located in, on or about the property commencing on the Close of Escrow or at any time thereafter, with the exception of the Retained Environmental Liabilities. Such release shall survive the Closing Date. For the purposes of this Agreement, Hazardous Materials shall be deemed to mean asbestos, polychlorinated biphenyls, petroleum or by-products thereof, radioactive materials, or any chemical, material or substance included in the definitions of "hazardous substances", "hazardous materials", "hazardous waste", "toxic substances" and/or words of similar import under any federal, state and local laws, ordinances, rules and regulations whether present or future, relating to and/or dealing with the protection of the environment and/or human health and safety and/or applicable to the generation, handling, manufacture, installation, treatment, storage, use, transportation, discharge, disposal, presence and/or release into the air, soil, water at, above or below ground level (whether accidental or intentional) of such substances or materials.

8.2 Master Plan. Seller intends to develop the Nichols Site for a range of uses permitted under the General Plan but does not currently have a development plan (herein the "Master Plan"). The Buyer does not want the precise boundaries of the Property and the Facilities, as established herein, to decrease the flexibility of Seller to develop the Nichols Site. Accordingly the parties agree to meet and negotiate in good faith to make changes in the boundaries of the Property subject to lease and purchase hereunder, and in the Facilities constructed thereon, if necessary to accommodate the Seller's development. The parties recognize the need to be flexible and cooperative to accomplish their respective goals. This agreement to permit the modification of boundaries and facilities is subject to the following:

Seller will meet and confer with Buyer concerning the development plan and shall consider Buyer's comments. The development plan will include the site plan which may show architectural elevations, driveways and parking, planters and landscaping, sidewalks and other improvements.

To the extent the Property is reduced in area, or the City's parking or other improvements are proposed to be removed pursuant to the development plan, the development plan shall make provision, on terms mutually acceptable to the parties, for parking, gateway signage and related improvements sufficient to meet the needs of the Visitor Center and the Seller's development.

The parties, to the extent practicable, may develop the parking area for joint use, and, in such event, shall record (as may be necessary) reciprocal joint use ingress, egress, parking and maintenance covenants providing for the joint use of the driveway and parking areas.

8.3 Survival. Notwithstanding any other provision of this Agreement, the provisions of this Section 8 shall survive the Close of Escrow and the delivery of the Grant Deed.

9. REPRESENTATIONS AND WARRANTIES.

9.1 Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer, each of which (i) is material and relied upon by Buyer in making its determination to enter into this Agreement; (ii) to Seller's actual knowledge, is true in all respects as of the date hereof and shall be true in all respects on the date of Close of Escrow on the Property; and (iii) shall survive the Close of Escrow of the purchase and sale of the Property as well as any future transfer of the Property to Buyer or any transferee, successor or assignee of Buyer:

- (a) There are no pending or threatened litigation, allegations, lawsuits or claims, whether for personal injury, property damage, property taxes, contractual disputes or otherwise, which do or may affect the Property or the operation or value thereof, and there are no actions or proceedings pending or, to the best of Seller's knowledge, threatened against Seller before any court or administrative agency in any way connected with the Property and neither the entering into of this Agreement nor the consummation of the transactions contemplated hereby will constitute or result in a violation or breach by Seller of any judgment, order, writ, injunction or decree issued against or imposed upon it. There is no action, suit, proceeding or investigation pending or threatened against Seller which would become a cloud on Buyer's title to or have a material adverse impact upon the Property or any portion thereof or which questions the validity or enforceability of the transaction contemplated by this Agreement or any action taken pursuant hereto in any court or before or by any federal, district, county, or municipal department, commission, board, bureau, agency or other governmental instrumentality.
- (b) There are no contracts, leases, claims or rights affecting the Property and no agreements entered into by or under Seller shall survive the Close of Escrow that would adversely affect Buyer's rights with respect to the Property, except as heretofore disclosed in writing by Seller to Buyer pursuant to Section 6.3.
- (c) Seller has delivered or, within the period required in Section 6.3, will have delivered true, correct and complete copies of all the documents and other information specified in Section 6.3 in Seller's possession or control (or has reasonable access thereto). To the best of Seller's knowledge, the information contained in the said documents is true and accurate.

- (d) No part of the Property has been used by Seller for the use, storage, disposal, or release of toxic or hazardous substances or wastes and that, to the best of Seller's actual knowledge, no part of the Property has ever been so used.
- (e) There are no executory contracts, options or agreements existing (other than this Agreement) relating to the purchase of all or any portion of the Property or any interest therein.
- (f) All federal, state, municipal, county and local taxes, the nonpayment of which might become a lien on or affect all or part of the Property, which are due and payable prior to the Closing have been paid, or on the Closing Date will have been paid in full.
- (g) There are no contingent liabilities arising out of the ownership or operation of, or affecting, the Property or any part thereof which would be binding upon the Buyer or to which the Property would be subject after the Closing.
- (h) Seller has obtained, or will obtain before the Close of Escrow, all required consents, releases and permissions in order to vest good and marketable title in Buyer.
- (i) The closing of the various transactions contemplated by this Agreement will not constitute or result in any default or event that with the notice or lapse of time, or both, would be a default, breach or violation of any lease, mortgage, deed of trust or other agreement, instrument or arrangement by which Seller or the Property are bound. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby will not violate any provision of, or require any consent, authorization or approval under any law or administrative regulation or any order, award, judgment, writ, injunction or decree applicable to, or any governmental permit or license issued to Seller relating to the Property.
- (j) Other than those conditions or encumbrances expressly identified in the Preliminary Title Report which have been approved by Buyer pursuant to Section 5.1 above, no defects or conditions of any portion of the Property or the soil exists which may impair the use of the Property.
- (k) All representations and warranties made hereunder are in addition to any representations and warranties implied by law and in no event shall this Section 9.1 be construed to limit, diminish or reduce any obligation of disclosure implied upon Seller by law.

9.2 Changed Circumstances. If Seller becomes aware of any fact or circumstance which would change or render incorrect, in whole or in part, any representation or warranty made by Seller under this Agreement, whether as of the date given or any time thereafter through

the Close of Escrow and whether or not such representation or warranty was based upon Seller's knowledge and/or belief as of a certain date, Seller will give immediate written notice of such changed fact or circumstance to Buyer, but such notice shall not release Seller of its liabilities or obligations with respect thereto. Seller shall issue a certificate as of the Close of Escrow stating that all the representations and warranties contained in Section 9.1 are true and correct as of said date, or setting forth in detail which of such matters are not true and correct. Buyer shall have ten (10) days from the receipt of any notice by Seller of the material change of any representation or warranty made by Seller hereunder to terminate this Agreement by providing written notice to Seller and Escrow Holder, and receive return of its Deposit and any other sums deposited in the Escrow.

10. ESCROW PROVISIONS.

10.1 Escrow Instructions. This Agreement, when signed by Buyer and Seller, shall also constitute escrow instructions to Escrow Holder. If required by Escrow Holder, Buyer and Seller agree to execute Escrow Holder's standard escrow instructions, provided that the same are consistent with and do not conflict with the provisions of this Agreement. In the event of any such conflict, the provisions of this Agreement shall prevail.

10.2 General Escrow Provisions. Escrow Holder shall deliver the Title Policy to the Buyer and instruct the Riverside County Recorder to mail the Grant Deed to Buyer at the address set forth in Section 14.13 after recordation. All funds received in this Escrow shall be deposited in one or more general escrow accounts of the Escrow Holder with any bank doing business in Riverside County, California, and may be disbursed to any other general escrow account or accounts. All disbursements shall be made by Escrow Holder's check.

10.3 Proration of Real Property Taxes.

(a) All non-delinquent general and special real property taxes and assessments shall be paid by Seller, prorated to the Close of Escrow on the basis of a thirty (30) day month and a three hundred sixty day (360) year. Seller acknowledges that Buyer is a governmental agency, not subject to payment of taxes. Accordingly, Seller shall be solely responsible for seeking a refund of any overpayment of taxes from the appropriate taxing agencies. In the event that property taxes are assessed on a parcel of real property which includes land other than the Property, such proration shall include only taxes attributable to the Property, calculated in terms of total gross square feet of land assessed pursuant to the tax statement versus total gross square footage of the Property. Any supplemental tax bills received after Close of Escrow shall be paid by Seller to the extent they relate to a period prior to Close of Escrow. If a supplemental tax bill covers a period commencing before and continuing after Close of Escrow, Seller will pay the tax and shall be solely responsible for seeking any refund from the appropriate taxing agency. The provisions of this Section shall survive Close of Escrow.

(b) The provisions of this Section shall survive Close of Escrow. If either party fails to pay its pro rata share of taxes or other expenses by the times herein provided, interest shall accrue on all unpaid amounts from when owing until paid at five percent (5%) over the Federal Discount Rate quoted by the Federal Reserve Bank of San Francisco on the 25th day of the month preceding the date interest commences to accrue.

10.4 Payment of Costs. Seller shall pay one-half (1/2) of the Escrow fee, all documentary transfer taxes, all title insurance premiums for that portion of the Title Policy premium which would be incurred for a CLTA form policy, and the charge for drawing the Grant Deed. Buyer shall pay one-half (1/2) of the Escrow fee, all charges for recording the Grant Deed, and that portion of the Title Policy premium which is attributable to the additional cost of obtaining any additional coverage requested by Buyer, including the difference between CLTA and ALTA coverage. Seller and Buyer shall each be responsible for their respective attorneys' fees and costs. All other costs of Escrow not otherwise specifically allocated by this Agreement shall be apportioned between the parties in a manner consistent with the custom and usage of Escrow Holder.

10.5 Termination and Cancellation of Escrow. If Escrow fails to close as provided above, Escrow shall terminate automatically without further action by Escrow Holder or any party, and Escrow Holder is instructed to return all funds and documents then in Escrow to the respective depositor of the same with Escrow Holder; provided that any document which has been signed by a party who is not to receive the return of such document, shall be marked "void and of no force or effect" by Escrow Holder before it is delivered. Cancellation of Escrow, as provided herein, shall be without prejudice to whatever legal rights Buyer or Seller may have against each other arising from the Escrow or this Agreement.

11. BROKERAGE COMMISSIONS.

Buyer and Seller each represent and warrant to the other parties that no third party is entitled to a broker's commission and/or finder's fee with respect to the transaction contemplated by this Agreement. Buyer and Seller each agree to indemnify and hold the other parties harmless from and against all liabilities, costs, damages and expenses, including, without limitation, attorneys' fees, resulting from any claims or fees or commissions, based upon agreements by it, if any, to pay a broker's commission and/or finder's fee.

12. POSSESSION.

Possession of the Property shall be delivered to Buyer as of Close of Escrow. In the event any personal property remains on the Property following the Close of Escrow, it shall automatically become the property of Buyer.

13. DEFAULTS; ENFORCEMENT.

13.1 Defaults and Right to Cure. Failure or delay by either party to timely perform any covenant of this Agreement constitutes a default under this Agreement, but only if the party who so fails or delays does not commence to cure, correct or remedy such failure or delay within thirty (30) days after receipt of a written notice specifying such failure or delay, and does not thereafter prosecute such cure, correction or remedy with diligence to completion. The injured party shall give written notice of default to the party in default, specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not institute proceedings against the party in default until thirty (30) days after giving such notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default.

13.2 Specific Performance. In addition to any other remedies permitted by this Agreement, if either party defaults hereunder by failing to perform any of its obligations herein, each party agrees that the other shall be entitled to the judicial remedy of specific performance, and each party agrees (subject to its reserved right to contest whether in fact a default does exist) not to challenge or contest the appropriateness of such remedy.

14. MISCELLANEOUS.

14.1 Successors and Assigns. This Agreement shall be binding upon the parties hereto and their respective heirs, representatives, transferees, successors and assigns. The transfer of all or any part of the interest of any party hereunder in the Property shall not release Seller of their obligations under this Agreement.

14.2 Time Period Computations. All periods of time referred to in this Agreement shall include all Saturdays, Sundays and California state or national holidays unless the reference is to business days, in which event such weekends and holidays shall be excluded in the computation of time and provide that if the last date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday or California state or national holiday, such act or notice shall be deemed to have been timely performed or given on the next succeeding day which is not a Saturday, Sunday or California state or national holiday.

14.3 Qualification; Authority. Each individual executing this Agreement on behalf of a partnership or corporation represents and warrants that such entity is duly formed and authorized to do business in the State of California and that he or she is duly authorized to execute and deliver this Agreement on behalf of such partnership or corporation in accordance with authority granted under the formation documents of such entity, and, if a corporation, by a duly passed resolution of its Board of Directors, that all conditions to the exercise of such authority have been satisfied, and that this Agreement is binding upon such entity in accordance with their respective terms. Upon request of either party, Escrow Holder or Title Company, Buyer and Seller agree to deliver such documents reasonably necessary to evidence the foregoing.

14.4 Attorneys' Fees. In the event of any dispute between the parties hereto arising out of the subject matter of this Agreement or the Escrow, or in connection with the Property, the prevailing party in such action shall be entitled to have and to recover from the other party its actual attorneys' fees and other expenses and costs in connection with such action or proceeding (including expert witness fees) in addition to its recoverable court costs.

14.5 Interpretation; Governing Law. This Agreement shall be construed according to its fair meaning and as if prepared by both parties hereto. This Agreement shall be construed in accordance with the laws of the State of California in effect at the time of the execution of this Agreement. Titles and captions are for convenience only and shall not constitute a portion of this Agreement. As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others wherever and whenever the context so dictates.

14.6 No Waiver. No delay or omission by either party hereto in exercising any right or power accruing upon the compliance or failure of performance by the other party hereto under the provisions of this Agreement shall impair any such right or power or be construed to be a waiver thereof. A waiver by either party hereto of a breach of any of the covenants, conditions or agreements hereof 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 hereof.

14.7 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

14.8 Severability. If any term, provision, condition or covenant of this Agreement or the application thereof to any party or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this 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.

14.9 Merger of Prior Agreements and Understandings. This Agreement and other documents incorporated herein by reference contain the entire understanding between the parties relating to the transaction contemplated hereby and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

14.10 Covenants to Survive Escrow. The covenants and agreements contained herein shall survive the Close of Escrow and, subject to the limitations on assignment contained in Section 14.1 above, shall be binding upon and inure to the benefit of the parties hereto and their representatives, heirs, successors and assigns.

14.11 Consent of Parties. Whenever by the terms of this Agreement the consent or approval of Buyer or Seller is to be given, such consent or approval shall be evidenced by the signature of one person designated for such purpose. Initially such person for Seller shall be Lincoln Saul and such person for Buyer shall be the City Manager of Buyer. Such designated persons may be changed by the party so designating at any time by the delivery of a written notice to the other party.

14.12 Execution in Counterpart. This Agreement and any modifications, amendments or supplements thereto may be executed in several counterparts, and all so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

14.13 Notices. Any notice which either party may desire to give to the other party or to the Escrow Holder must be in writing and shall be effective (i) when personally delivered by the other party or messenger or courier thereof; (ii) three (3) business days after deposit in the United States mail, registered or certified; (iii) twenty-four (24) hours after deposit before the daily deadline time with a reputable overnight courier or service; or (iv) upon receipt of a telecopy or fax transmission, provided a hard copy of such transmission shall be thereafter delivered in one

of the methods described in the foregoing (i) through (iii); in each case postage fully prepaid and addressed to the respective parties as set forth below or to such other address and to such other persons as the parties may hereafter designate by written notice to the other parties hereto:

To Seller: Chino Cienega Foundation, a California public benefit corporation and Stephen C. Nichols & Sarah J. Benson, Trustees of the Benson-Nichols Trust of 2003
901 North Palm Canyon Drive
Suite 200
Palm Springs, CA 92262
Attn: Steve Nichols, Trustee

To Buyer: City of Palm Springs
3200 E. Tahquitz Canyon Way
P.O. Box 2743
Palm Springs, CA 92262
Attn: City Manager

Copy to: WOODRUFF, SPRADLIN & SMART, APC
555 Anton Boulevard, Suite 1200
Costa Mesa, California 92626
Attention: Douglas C. Holland, Esq.

14.14 Exhibits. Exhibits "A" and "B," inclusive, attached hereto, are incorporated herein by this reference.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement of Purchase and Sale of Real Property and Escrow Instructions as of the date set forth above.

"SELLER"

Chino Cienega Foundation, a California public benefit corporation

Stephen C. Nichols, Trustee

Stephen C. Nichols & Sarah J. Benson, Trustees of the Benson-Nichols Trust of 2003

Stephen C. Nichols, Trustee

Sarah J. Benson, Trustee

“BUYER”

ATTEST:

THE CITY OF PALM SPRINGS,
a California municipal corporation and Charter City

City Clerk

By: _____
City Manager

APPROVED AS TO FORM

WOODRUFF, SPRADLIN & SMART, APC

Douglas C. Holland, Esq.
City Attorney

SCHEDULE OF EXHIBITS

| | |
|-------------|---------------------------|
| EXHIBIT "A" | LEGAL DESCRIPTION OF LAND |
| EXHIBIT "B" | GRANT DEED |
| Exhibit G: | Promissory Note |
| Exhibit F: | Deed of Trust |

EXHIBIT "A"

LEGAL DESCRIPTION OF LAND

The Land is that certain real property located in the City of Palm Springs, County of Riverside, State of California, described as follows:

PARCEL "A"

THAT PORTION OF PARCEL 1 OF PARCEL MAP 23130 RECORDED IN MAP BOOK 181, PAGES 50-53, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 4 EAST; THENCE NORTH 89°43'41" EAST, ALONG THE NORTHERLY LINE OF SAID SECTION, A DISTANCE OF 1245.85 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 111 AS SHOWN ON SAID PARCEL MAP; THENCE SOUTH 38°33'19" EAST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 21.11' FEET TO THE **TRUE POINT OF BEGINNING**.

THENCE CONTINUING SOUTH 38°33'19" EAST, A DISTANCE OF 151.76 FEET;

THENCE NORTH 51°26'41" EAST, A DISTANCE OF 10.00 FEET;

THENCE SOUTH 38°33'19" EAST, A DISTANCE OF 176.95 FEET;

THENCE LEAVING SAID RIGHT-OF-WAY LINE, SOUTH 51°27'15" WEST, A DISTANCE OF 211.00 FEET;

THENCE NORTH 11°20'20" WEST, A DISTANCE OF 264.57 FEET;

THENCE NORTH 38°33'19" WEST, A DISTANCE OF 93.40 FEET;

THENCE NORTH 51°26'41" EAST, A DISTANCE OF 80.00 FEET, TO THE **TRUE POINT OF BEGINNING**.

SAID AREA CONTAINS 42, 301 SQUARE FEET (0.97 ACRES), MORE OR LESS, AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF, SUBJECT TO ALL COVENANTS, RIGHTS, RIGHTS-OF-WAY, AND EASEMENTS OF RECORD

PARCEL "B"

THAT PORTION OF PARCEL 1 OF PARCEL MAP 23130 RECORDED IN MAP BOOK 181, PAGES 50-53, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 3, TOWNSHIP 4 SOUTH, RANGE 4 EAST; THENCE NORTH 89°43'41" EAST, ALONG THE NORTHERLY LINE OF SAID SECTION, A DISTANCE OF 1245.85 FEET TO A POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF STATE HIGHWAY 111 AS SHOWN ON SAID PARCEL MAP; THENCE SOUTH 38°33'19" EAST ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 21.11' FEET; THENCE CONTINUING SOUTH 38°33'19" EAST, A DISTANCE OF 151.76 FEET; THENCE NORTH 51°26'41" EAST, A DISTANCE OF 10.00 FEET;

THENCE SOUTH 38°33'19" EAST, A DISTANCE OF 176.95 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE, SOUTH 51°27'15" WEST, A DISTANCE OF 211.00 FEET TO THE **TRUE POINT OF BEGINNING**;

THENCE SOUTH 51°26'40" WEST, A DISTANCE OF 189.41 FEET;

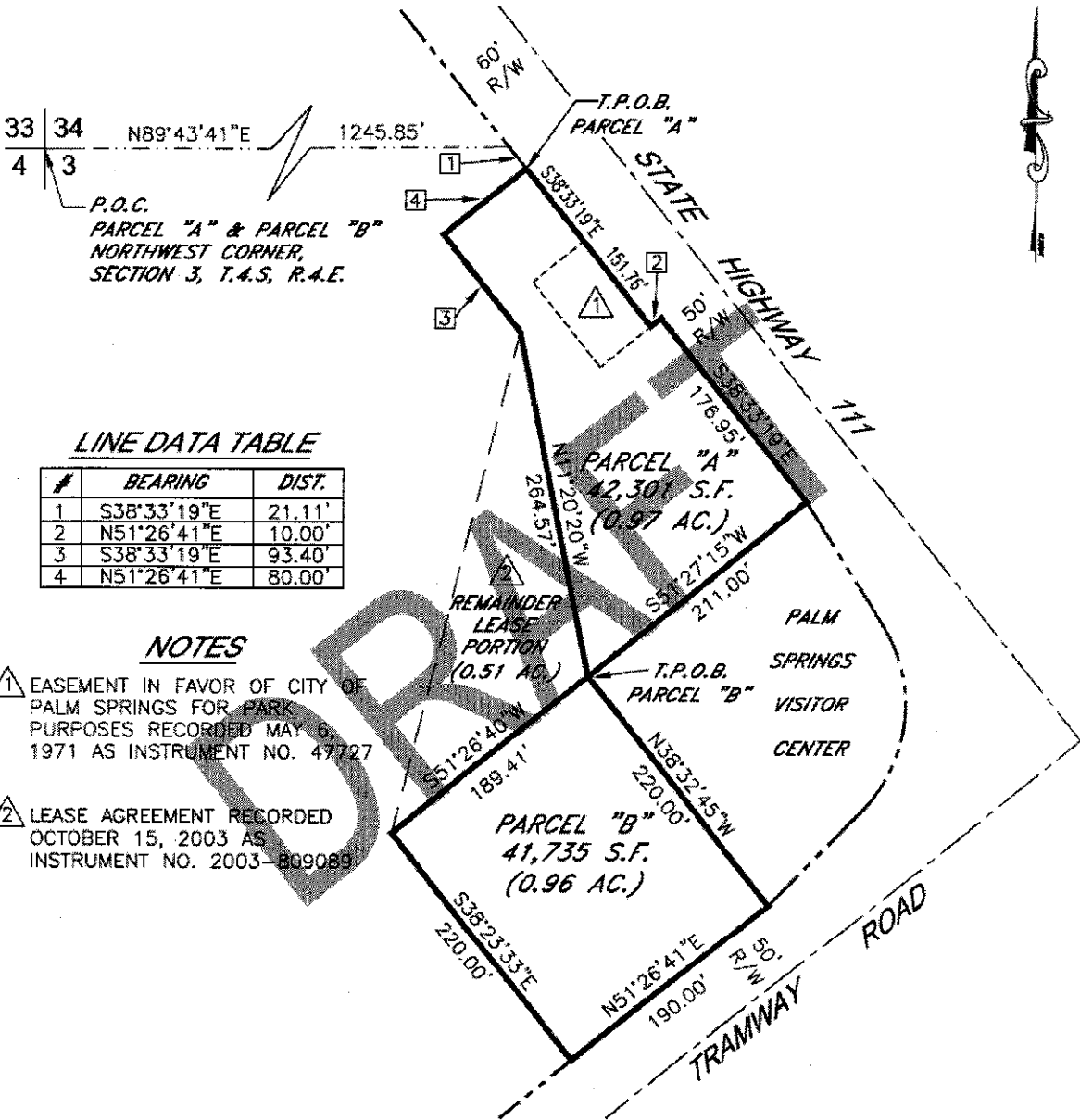
THENCE SOUTH 38°23'33" EAST, A DISTANCE OF 220.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF TRAMWAY ROAD AS SHOWN AS SAID PARCEL MAP;

THENCE NORTH 51°26'41" EAST, A DISTANCE OF 190.00 FEET;

THENCE LEAVING SAID RIGHT-OF-WAY LINE, NORTH 38°32'45" WEST, A DISTANCE OF 220.00 FEET TO THE **TRUE POINT OF BEGINNING**.

SAID AREA CONTAINS 41,735 SQUARE FEET (0.96 ACRES), MORE OR LESS, AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF, SUBJECT TO ALL COVENANTS, RIGHTS, RIGHTS-OF-WAY, AND EASEMENTS OF RECORD.

EXHIBIT "B"



LINE DATA TABLE

| # | BEARING | DIST. |
|---|-------------|--------|
| 1 | S38°33'19"E | 21.11' |
| 2 | N51°26'41"E | 10.00' |
| 3 | S38°33'19"E | 93.40' |
| 4 | N51°26'41"E | 80.00' |

NOTES

① EASEMENT IN FAVOR OF CITY OF PALM SPRINGS FOR PARK PURPOSES RECORDED MAY 6, 1971 AS INSTRUMENT NO. 47727

② LEASE AGREEMENT RECORDED OCTOBER 15, 2003 AS INSTRUMENT NO. 2003-BQ9089



CITY OF PALM SPRINGS
PUBLIC WORKS & ENGINEERING
DEPARTMENT

LAND ACQUISITION PARCELS
FOR CITY OF PALM SPRINGS

PARCEL EXHIBIT

LEGAL DESCRIPTION:

SEE EXHIBIT "A"

DESIGN BY:

FUP

SCALE:

N.T.S.

FILE NO.:

R 11-13

CHECKED BY:

MLF

W.O. #

SHEET NO.:

3 OF 3

EXHIBIT "B"

GRANT DEED

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

THE CITY OF PALM SPRINGS
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262
Attn: City Manager

Space above this line for Recorder's Use

Order No. _____

Escrow No. _____

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Chino Cienega Foundation, a California public benefit corporation and Stephen C. Nichols & Sarah J. Benson, Trustees of the Benson-Nichols Trust of 2003, each as to a one-half undivided interest in the parcel (collectively, "Seller"), hereby grant to the CITY OF PALM SPRINGS, a California municipal corporation and Charter City, the real property in the City of Palm Springs, County of Riverside, State of California, described in Exhibit "1" attached hereto and incorporated herein by reference (the "Property").

The Property conveyed hereby is subject to (i) non-delinquent general and special real property taxes and assessments; and (ii) matters of record.

Dated: _____, 2012

Chino Cienega Foundation, a California public
benefit corporation

Stephen C. Nichols, Trustee

Stephen C. Nichols & Sarah J. Benson, Trustees of
the Benson-Nichols Trust of 2003

Stephen C. Nichols, Trustee

Sarah J. Benson, Trustee

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On _____, before me, _____, 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.

Notary Public

[SEAL]

EXHIBIT "1" TO GRANT DEED

LEGAL DESCRIPTION OF LAND

The Land is that certain real property located in the City of Palm Springs, County of Riverside, State of California, described as follows:

PARCEL "A"

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THENCE SOUTH 51°26'40" WEST, A DISTANCE OF 189.41 FEET;

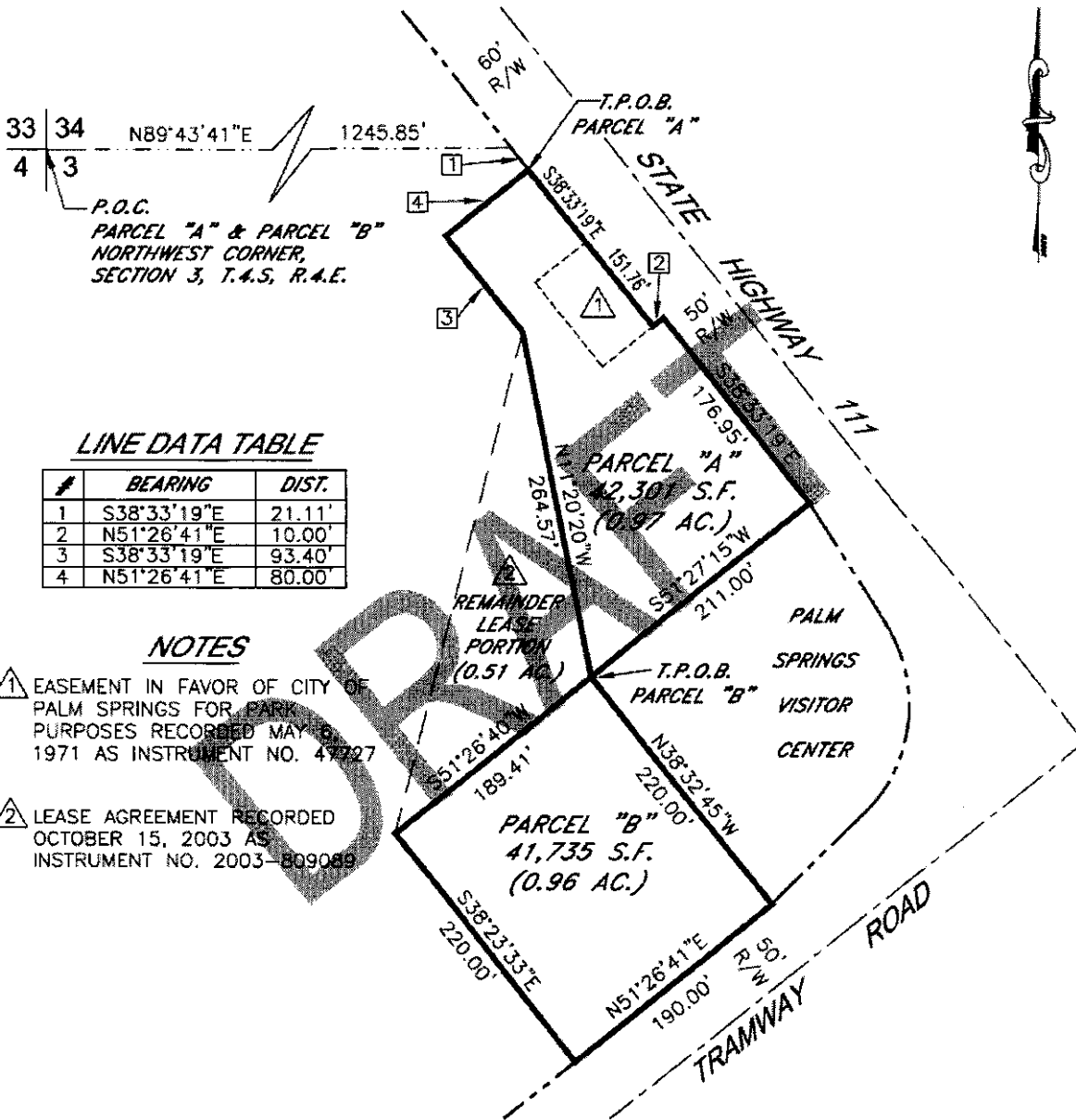
THENCE SOUTH 38°23'33" EAST, A DISTANCE OF 220.00 FEET TO A POINT ON THE NORTHERLY RIGHT-OF-WAY LINE OF TRAMWAY ROAD AS SHOWN AS SAID PARCEL MAP;

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EXHIBIT "B"



LINE DATA TABLE

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NOTES

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⚠ LEASE AGREEMENT RECORDED OCTOBER 15, 2003 AS INSTRUMENT NO. 2003-809089



**CITY OF PALM SPRINGS
PUBLIC WORKS & ENGINEERING
DEPARTMENT**

*LAND ACQUISITION PARCELS
FOR CITY OF PALM SPRINGS*

PARCEL EXHIBIT

LEGAL DESCRIPTION:

SEE EXHIBIT "A"

DESIGN BY:

FUP

SCALE:

N.T.S.

FILE NO.:

R 11-13

CHECKED BY:

MLF

W.O. #

SHEET NO.:

3 OF 3

EXHIBIT "C"

NON-FOREIGN AFFIDAVIT

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon disposition of a U.S. real property interest by _____ ("Transferor"), the undersigned hereby certifies the following on behalf of Transferor:

1. Transferor is not a foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2. Transferor's U.S. employer identification or social security number is _____; and

3. Transferor's office address is _____.

The undersigned understands that this certification may be disclosed to the Internal Revenue Service by the transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury, we declare that we have examined this certification and to the best of our knowledge and belief, it is true, correct, and complete, and we further declare that we have authority to sign this document on behalf of Transferors.

Dated: _____, 2012

Stephen C. Nichols, Trustee

"Transferor"

Address of Property for Sale: 2901 North Palm Canyon Drive

See legal description attached as Exhibit "A"