



## CITY COUNCIL STAFF REPORT

DATE: July 11, 2012

CONSENT CALENDAR

SUBJECT: 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 2.4 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

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### 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 This Lease superseded and replaced the Right of Way Agreement.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. 2K

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. Approve Resolution No. \_\_\_\_\_, Amending the 2012-2013 Budget in the Amount of \$200,000
3. 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. Part of the Purchase and Sale Agreement would be a retroactive amendment to the Lease granting the City the legal right to have occupied the property since the Lease expiration in June, 2010, at no cost to the City.

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.

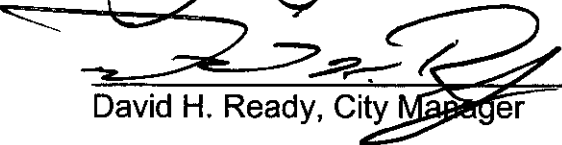
Nichols still intends to develop the Nichols Site for a range of uses permitted under the General Plan and Chino Cone Ordinance but does not currently have a development plan. At the time of the 2003 Lease, the City did not want the precise boundaries of the Property and the Facilities to decrease the flexibility of Nichols to develop the Nichols Site. Accordingly, the parties may 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.

This Agreement would grant the City the ownership of the property with the initial payment of \$200,000 and a Note for the remaining \$490,000 (two notes of \$245,000 each, one to each one-half interest in the property) for a period of seven years.

  
\_\_\_\_\_  
John Raymond, Director

  
\_\_\_\_\_  
Tom Wilson Assistant City Manager

  
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David H. Ready, City Manager

Attachments:

1. Purchase and Sale Agreement with Exhibits
2. Budget Amendment

**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").

**R E C I T A L S**

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. Buyer has occupied the Property as Seller's tenant pursuant to a rent-free lease that expired on June 30, 2010 ("Lease"), and Seller has agreed retroactively to an extension of the Lease, through July 31, 2012, without any rent payable by Buyer. 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 reciprocal ingress, egress and parking covenants may be utilized to integrate the development.

C. Buyer has occupied the Property as Seller's tenant since 2003 and has constructed improvements on the Property, including a parking lot and the Palm Springs Entry Sign, and therefore deems the Property suitable for Buyer's use.

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 Liberty Escrow ("Escrow Holder") by causing an executed copy of this Agreement to be deposited with Escrow Holder. Escrow Holder and Title Company have a physical office location in the City of Palm Springs and were selected through the Buyer'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 total 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 \$200,000.00, as a portion of the Purchase Price ("Initial Payment") with Escrow Holder in "good funds," and a Promissory Note, shown in Exhibit "C" to this Agreement, and Deeds of Trust, shown in Exhibit "D" to this Agreement, as to each ~~one-half undivided interest in the Property~~. "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 the Initial Payment and 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 "E" ("Non-Foreign Affidavit");

(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 declines 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. CONDITIONS PRECEDENT TO CLOSE OF ESCROW.

6.1 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) Seller has removed from the Property all equipment, personal property, debris and waste.
- (e) Escrow Holder holds and will deliver to Buyer the instruments and funds, if any, accruing to Buyer pursuant to this Agreement.
- (f) All representations and warranties specified in Section 9.1 are true and correct.
- (g) Buyer's approval of any other conditions specified in this Agreement.
- (h) 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.



6.2 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 6.2.

6.3 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 6.1 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 6.2.

6.4 Termination for Failure of Condition. In the event Buyer fails to approve or disapprove any condition precedent specified in Section 6.1 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 6.1 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.

## 7. ADDITIONAL COVENANTS OF BUYER AND SELLER.

7.1 Environmental Claims. Notwithstanding any contrary provisions of this Agreement or otherwise, upon the Closing Date, Buyer shall and does hereby release Seller from any liability, cost or expense Buyer may incur as a result of Buyer's Lease of the Property from Seller or purchase of the Property or the presence of any Hazardous Materials (hereinafter defined) which were, are or may be located in, on or about the Property beginning from the effective date of the Lease, which date was [insert date] 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. This release does not apply to any liability, cost or expense Buyer may incur as a result of the presence of any Hazardous Materials (hereinafter defined) which are or may be located in, on or about the Property that existed prior to the Lease's effective date or were knowingly and willingly placed upon the Property by Seller (the "Retained Environmental Liabilities"). Buyer takes the Property without any representations or warranties by Seller or Seller's agent regarding the existence of Hazardous Materials in, on, or about the Property, except for Seller's express representations and warranties in Section 8 and elsewhere in this Agreement; otherwise the Property is being purchased, conveyed and accepted by Buyer in its As-Is condition and Buyer accepts the Property subject to all patent and/or latent physical conditions whether or not known or yet to be discovered.

7.2 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"). Any development on the Nichols Site, the Property or the adjacent City Property (the Visitor Center) is subject to the Chino Cone Special Policy Area (Area 5A) and must be consistent with the Environmentally Sensitive Development Areas Specific Plan Ordinance (ESA-SP) in the Palm Springs Zoning Code ("Code"). As such, under the Code any development by Buyer or Seller would require a Specific Plan that would necessitate describing and integrating adjacent land uses.

The parties may develop the parking area on the Property 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 Property's and Nichols Site's driveways and parking areas. Any amendments to this Agreement or any new agreements which are necessary to provide for ingress, egress or joint use would be on terms mutually agreeable to the Parties.

7.3 Survival. Notwithstanding any other provision of this Agreement, the provisions of this Section 7 shall survive the Close of Escrow and the delivery of the Grant Deed.

## 8. REPRESENTATIONS AND WARRANTIES.

8.1 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 8.1 be construed to limit, diminish or reduce any obligation of disclosure implied upon Seller by law.

8.2 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.

## 9. ESCROW PROVISIONS.

9.1 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.

9.2 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 13.13 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.

9.3 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.

9.4 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.

9.5 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.

10. 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.

11. 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.

12. DEFAULTS; ENFORCEMENT.

12.1 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.

12.2 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.

13. MISCELLANEOUS.

13.1 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.

13.2 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.

13.3 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.

13.4 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.

13.5 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.

13.6 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.

13.7 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.

13.8 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.

13.9 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.

13.10 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.

13.11 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.

13.12 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.

13.13 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.

13.14 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 PROPERTY
EXHIBIT "B"	GRANT DEED
EXHIBIT "C"	Promissory Note(s)
EXHIBIT "D"	Deed(s) of Trust
EXHIBIT "E"	Non-Foreign Affidavit

**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"**

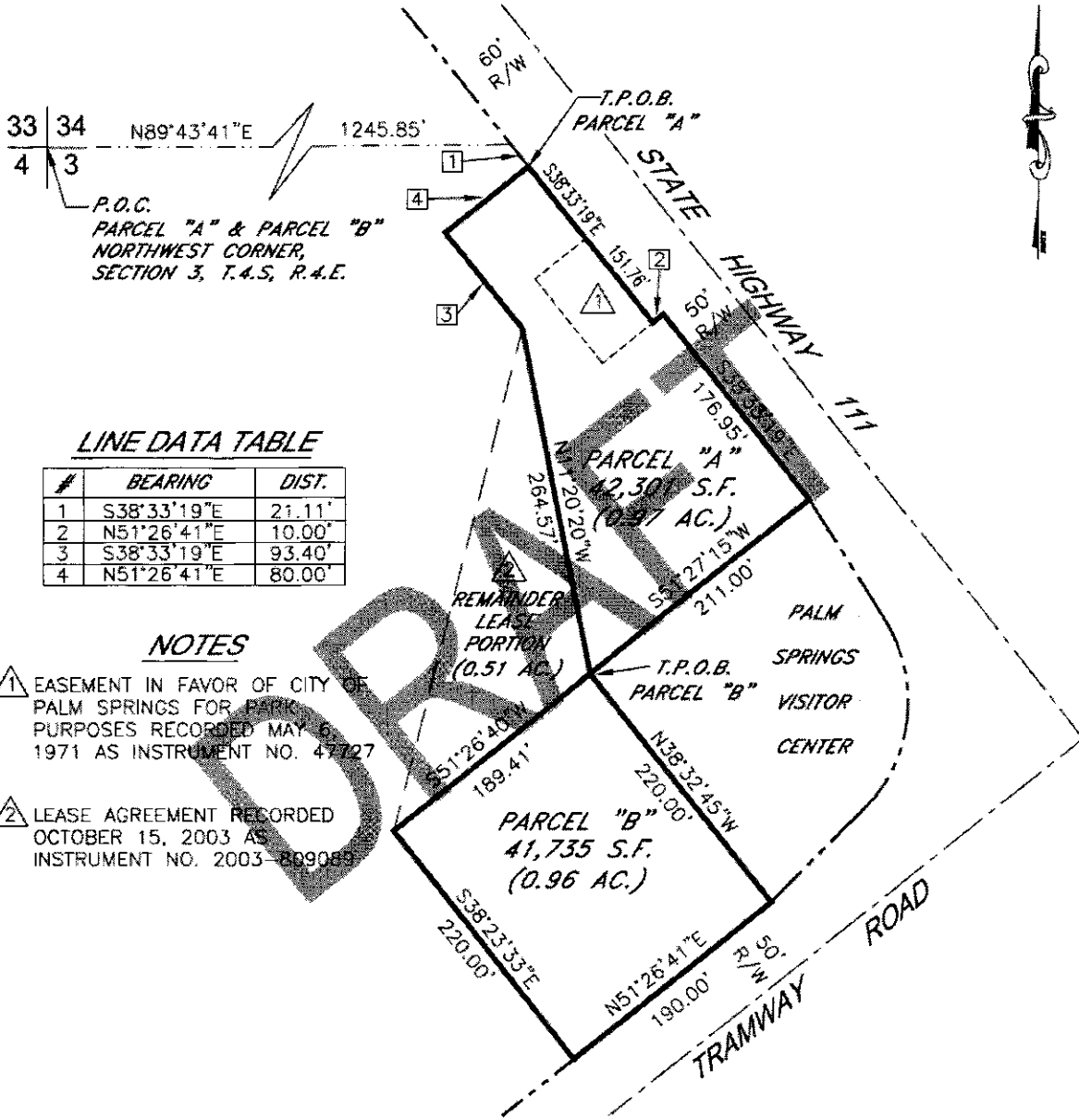
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OF 21.11' FEET; THENCE CONTINUING SOUTH 38°33'19" EAST, A DISTANCE OF 151.76 FEET; THENCE NORTH 51°26'41" EAST, A DISTANCE OF 10.00 FEET; THENCE SOUTH 38°33'19" EAST, A DISTANCE OF 176.95 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE, SOUTH 51°27'15" 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. 2003-899059



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





**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 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"**

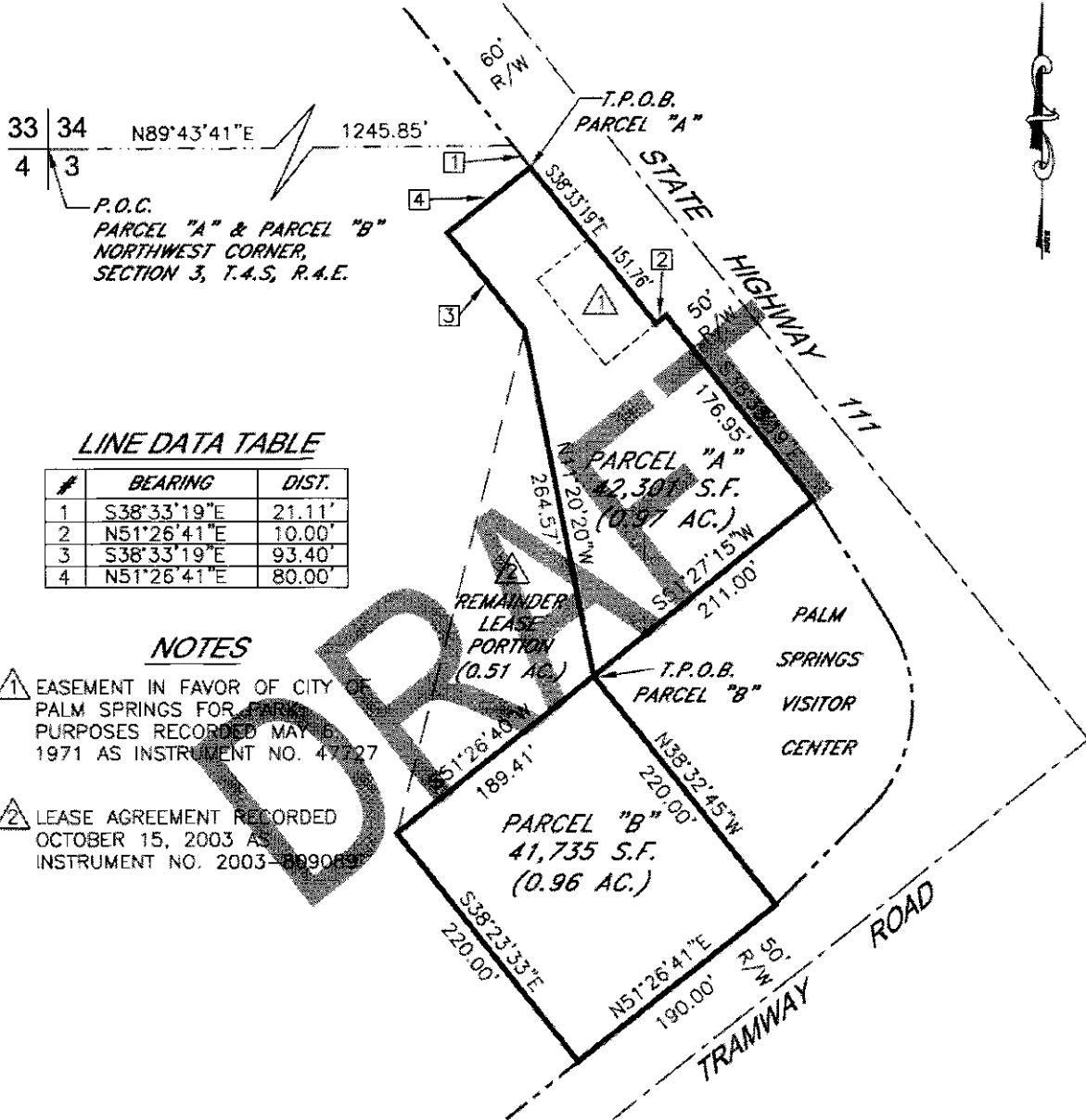
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SAID AREA CONTAINS 41,735 SQUARE FEET (0.96 ACRES), MORE OR LESS, AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF, SUBJECT TO ALL COVENANTS, RIGHTS, RIGHTS-OF-WAY, AND EASEMENTS OF RECORD.

# EXHIBIT "B"



 <p><b>CITY OF PALM SPRINGS PUBLIC WORKS &amp; ENGINEERING DEPARTMENT</b></p>	<p><i>LAND ACQUISITION PARCELS FOR CITY OF PALM SPRINGS</i></p>		
	<p><b>PARCEL EXHIBIT</b></p>	<p>DESIGN BY: FUP</p>	<p>SCALE: N.T.S.</p>
<p>LEGAL DESCRIPTION:  <b>SEE EXHIBIT "A"</b></p>	<p>CHECKED BY: MLF</p>	<p>W.O. #</p>	<p>SHEET NO.: 3 OF 3</p>

**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"

**PROMISSORY NOTE**  
**Visitor's Center Parking Lot and Palm Springs Entry Sign**

**DO NOT DESTROY THIS NOTE: When paid, this note must be surrendered to Borrower for cancellation.**

\$ 245,000.00

Palm Springs, California  
\_\_\_\_\_, 2012

FOR VALUE RECEIVED, the undersigned, the CITY OF PALM SPRINGS, a municipal corporation and California Charter City ("Maker"), promises to pay the Chino Cienega Foundation, a California public benefit corporation ("Holder") located at 901 North Palm Canyon Drive, Suite 200, Palm Springs, CA 92262, the sum of Two Hundred Forty Five Thousand Dollars (\$245,000.00, the "Note Amount"), together with interest thereon at the rate set forth herein. All sums payable hereunder shall be payable in lawful money of the United States of America. This Promissory Note ("Note") is made in connection with the provision by the Holder of funds equal to the Note pursuant to that certain the Agreement for Purchase and Sale by and among Maker and Holder, dated as of \_\_\_\_\_, 2012 (the "Agreement").

This note is made with reference to the sale of a one-half undivided interest in a parcel commonly described as the Visitor's Center Parking Lot and Palm Springs Entry Sign, of approximately 2.44 acres (APN 504-040-001-8), located near 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").

1. Interest Rate. Simple interest shall accrue on the Note Amount from the date of disbursement at the rate of six percent (6%) per annum, if the transaction is completed prior to July 13, 2012, or Six and a half percent (6.5%) if the transaction is completed subsequent to July 13, 2012, but in no event greater than the maximum interest rate permitted by law.

2. Repayment. Maker shall repay the principal amount of the Note Amount, plus all interest then accrued at the interest rate set forth in Paragraph 1 above in arrears, in annual installments in equal amounts as shown in the attached Amortization Table shown in Exhibit "B" attached hereto ("Amortization Table"). The principal amount of the Note Amount, plus all interest then accrued upon the Note Amount, shall be immediately due and payable upon (i) any default of the Agreement, which is not cured within the time set forth in Section 13 of the Deed of Trust, and, if not sooner paid in full, (ii) on April 1, 2019.

3. Prepayment of Note Amount. Maker may prepay to Holder the full Note Amount, together with all accrued and unpaid interest thereon at the rate

set forth in Section 1 hereof, at any time prior to the due date of the Note Amount without penalty.

4. Application of Payments. Each payment hereunder shall be credited first to interest then accrued and the remainder, if any, to principal. Interest shall cease to accrue upon principal so credited.

5. Security. This Note is secured by a deed of trust by and between Maker, as trustor, and Holder, as beneficiary (the "Deed of Trust", Exhibit "D" to the Agreement).

6. Holder May Assign. Holder may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Maker.

7. Maker Assignment Prohibited. In no event shall Maker assign or transfer any portion of this Note without the prior express written consent of the Holder, which consent may be given or withheld in the Holder's sole discretion.

8. Attorneys' Fees and Costs. In the event that any action is instituted with respect to this Note, the non-prevailing party promises to pay such sums as a court may fix for court costs and reasonable attorneys' fees. Maker's right to such fees shall not be limited to or by its representation by City Attorney, and such representation shall be valued at customary and reasonable rates for private sector legal services.

9. Non-Waiver. Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment.

10. Successors Bound. This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns. Any person or entity who takes over the any duties and obligations under this Note, is also liable for the satisfaction of all such duties and obligations.

11. Terms. Any terms not separately defined herein shall have the same meanings as set forth in the Agreement.

12. Collection of Penalties. No provision of this Agency Note or any instrument securing payment hereof or otherwise relating to the debt evidenced hereby shall require the payment or permit the collection of interest in excess of the maximum permitted by applicable law. If any excess of interest in such respect is herein or in such other instrument provided for, or shall be adjudicated to be so provided for herein or in any such instrument, the provisions of this paragraph shall govern, in neither Maker or any endorsers of this Note, nor their respective heirs, personal representatives, successors or assigns shall be

obligated to pay the amount of such interest to the extent it is in excess of the amount permitted by applicable law.

13. Non-Recourse. Notwithstanding anything to the contrary herein contained, (i) the liability of Maker shall be limited to its interest in the Site and any rents, issues, and profits arising from the Site and, in addition, with respect to any obligation to hold and apply insurance proceeds, proceeds of condemnation or other monies hereunder, any such monies received by it to the extent not so applied in accordance with the terms of this Note; (ii) no other assets of Maker shall be affected by or subject to being applied to the satisfaction of any liability which Maker may have to Holder or to another person by reason of this Note; and (iii) any judgment, order, decree or other award in favor of Holder shall be collectible only out of, or enforceable in accordance with, the terms of this Note by termination or other extinguishment of Maker's interest in the Site.

**IN WITNESS WHEREOF**, Borrower has caused this Note to be executed by Maker or Maker's authorized agent(s) as of the date and year first above written.

**Maker:**

By: \_\_\_\_\_  
City of Palm Springs, California  
David H. Ready, City Manager

## DEED OF TRUST

**Recording requested by,  
and when recorded mail to:**

Chino Cienega Foundation,  
a California public benefit corporation  
901 North Palm Canyon Drive, Suite 200  
Palm Springs, CA 92262  
Attn: Steve Nichols, Trustee

**INSTRUCTIONS TO COUNTY RECORDER:**

Index this instrument as  
(i) a Deed of Trust, and  
(ii) a Fixture Filing

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Space above for Recorder's Use

## DEED OF TRUST AND ASSIGNMENT OF RENTS

This DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is entered into between the CITY OF PALM SPRINGS, a municipal corporation and California Charter City, whose principal executive office is at 3200 Tahquitz Canyon Way, P.O. Box 2743, Palm Springs, California 92263 (the "Trustor"), in favor of \_\_\_\_\_ TITLE COMPANY, whose address is \_\_\_\_\_ (the "Trustee"), for the benefit of the Chino Cienega Foundation, a California public benefit corporation, located at 901 North Palm Canyon Drive, Suite 200, Palm Springs, CA 92262, (the "Beneficiary").

THE TRUSTOR IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO THE TRUSTEE, in trust, with the power of sale, the real property in the City of Palm Springs, Riverside County, California, more particularly described in **Exhibit A** attached hereto and made part hereof by reference (the "Property"), together with:

(i) All tenements, hereditaments and appurtenances of or to the Property, including without limitation all easements and rights used in connection therewith or as a means of access thereto, all right, title and interest of the Trustor, now owned or hereafter acquired, in any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, strips and other areas of land adjacent to or used in connection with the Property;

(ii) All oil and gas or other mineral rights in or pertaining to the Property and all royalty, leasehold and other rights of the Trustor pertaining thereto;



(iii) All water rights pertaining to the Property and shares of stock evidencing the same, and all deposits made with or other security given to utility companies by the Trustor with respect to the Property;

(iv) The rents, issues and profits thereof, subject, however, to the right, power and authority of Trustor to collect and apply such rents, issues and profits and set forth in this Deed of Trust;

(v) All buildings and improvements of every kind and description now or hereafter erected or placed on the Property, and all fixtures thereon, including, but not limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bath tubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, cabinets, refrigeration plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed permanently affixed to and a part of the realty;

(vi) All building materials and equipment now or hereafter delivered to the Property and intended to be installed thereon.

Said real property and personal property described above, together with appurtenances, are referred to collectively in this Deed of Trust as the "Collateral."

FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS:

(a) Payment to the Beneficiary of an indebtedness in the principal amount of Two Hundred Forty Five Thousand Dollars (\$245,000.00), evidenced by a promissory note executed by the Trustor and payable to the order of the Beneficiary, bearing the same date as this Deed of Trust, and any and all modifications, extensions or renewals thereof or substitutions therefor (the "Note"), and performance and satisfaction of each and all other obligations of the Trustor under the Note;

(b) Performance of every obligation of Trustor in this Deed of Trust, the Note, the Agreement for Purchase and Sale between Beneficiary and Trustor related to the Property (the "Agreement"); and

(c) Payment of all sums, if any, and interest thereon that may hereafter be loaned or advanced by the Beneficiary to or for the benefit of the Trustor or to its successors, transferees and assigns, made to the Trustor while the Trustor is the owner of record of fee title to the Property, or any portion thereof, or to the successors, transferees or assigns of the Trustor while they are the owners of record of such fee title, and evidenced by one or more notes or written instruments which recite that they are secured by this Deed of Trust.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, THE TRUSTOR COVENANTS AND AGREES AS FOLLOWS:

1. The Trustor shall not use or permit the use of any of the Collateral for any purpose other than the use for which it was intended at the time this Deed of Trust was executed, as provided in the Agreement.

2. Upon default under this Deed of Trust or the Note (following delivery of notice and expiration of the cure period, if any, provided therein), the Beneficiary, at its option, may declare the whole of the obligations and sums secured hereby to be immediately due and payable.

3. The person(s) or entity(ies) who have executed this Deed of Trust are fully authorized, and have obtained any and all written authorizations, approvals or consents necessary, to bind the Trustor to this Deed of Trust.

4. All rents, profits and income from the Collateral covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the obligations hereby secured. However, the Trustor shall be permitted, so long as no default exists hereunder or under the Note, to collect such rents, profits and income for use consistent with the provisions of the Agreement.

5. Upon default hereunder or under the Note (following delivery of notice and expiration of the cure period, if any, provided herein or therein), for the purpose of protecting its interests hereunder, the Beneficiary will be entitled to the appointment by a court having jurisdiction, without further notice and without regard to adequacy of any security for the indebtedness secured hereby, of a receiver to take possession of and protect the Collateral described herein and operate same and collect the rents, profits and income therefrom. The entering upon and taking possession of the Property or other Collateral by such receiver, the collection of such rents, profits and income and the application thereof shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. The Trustor, at its sole cost and expense, shall provide and maintain on the entire Property, including all buildings and improvements thereon: (ii) self insurance or a policy of commercial general liability insurance that includes contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence; and (iii) such other insurance as may be reasonably required by the Beneficiary, in each case in such amounts, in such manner and with such companies as the Beneficiary and Trustor may reasonably approve. Upon request by the Beneficiary, the Trustor immediately shall deposit with the Beneficiary certificates evidencing such policies.

7. The Trustor shall pay: (i) at least ten days before delinquency, all taxes and assessments affecting the Collateral; (ii) when due, all encumbrances, charges and liens, with interest, on the Collateral or any part thereof which appear to be prior or

superior hereto; and (iii) all costs, fees and expenses of the Trustee or the Beneficiary reasonably incurred in connection with the trusts created under this Deed of Trust.

8. The Trustor shall: (i) keep the Collateral in good condition and repair; (ii) complete or restore promptly and in good and workmanlike manner the buildings and improvements and any other building or improvement which may be constructed, damaged or destroyed thereon; (iii) pay when due all claims for labor performed and materials furnished therefore; (iv) comply in all material respects with all laws affecting the Collateral or requiring any alterations or improvements to be made thereon; (v) not commit or permit waste of or on the Collateral; and (vi) not commit, suffer or permit any act upon the Property in violation of law and/or any covenants, conditions or restrictions affecting the Collateral.

9. The Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee, and shall pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which the Beneficiary or the Trustee may appear, or in any suit brought by the Beneficiary to foreclose this Deed of Trust. Notwithstanding the preceding sentence, in any action between the Trustor on the one hand and the Trustee and/or Beneficiary on the other, the prevailing party is entitled to attorneys' fees.

10. Should the Trustor fail to make any payment or do any act as herein provided, then the Beneficiary or the Trustee, without obligation to do so, and following notice to or demand on the Trustor, and without releasing the Trustor from any obligation hereof: (i) may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, the Beneficiary or the Trustee being authorized to enter on the Property for such purposes; (ii) may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee; (iii) may pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto (except for the deeds of trust, encumbrances and liens securing the Construction/Permanent Financing Loan(s) and the Agency Loan, as such terms are defined below); and (iv) in exercising any such powers, may pay necessary expenses, employ legal counsel and pay such counsel's reasonable fees. All such amounts paid by the Beneficiary or the Trustee hereunder shall be added to the obligations secured by this Deed of Trust.

11. The Beneficiary shall have the right, but not the obligation, to pay when due fire or other insurance premiums required hereunder if the Trustor fails to make such payments. All such amounts paid by the Beneficiary hereunder shall be added to the obligations secured by this Deed of Trust.

12. The Trustor shall pay immediately upon demand all sums so reasonably expended by the Beneficiary or the Trustee under this Deed of Trust, with interest from date of expenditure at the legal rate.

13. If the Trustor fails to pay any amount required by the Note or this Deed of Trust when due and payable, or fails to perform all other covenants, conditions and agreements of the Note, this Deed of Trust or the Agreement (following delivery of notice and expiration of the cure period, if any, provided therein), the amount of the Note, including unpaid principal and late charges, and all other charges and amounts required by the Note and this Deed of Trust shall, at the option of the Beneficiary, become immediately due and payable. This shall be in addition to and without limitation on any other remedy or right available to the Beneficiary for such failure.

14. The Trustor shall not voluntarily create or permit to be created against the Collateral any lien or liens except as specifically permitted by this Deed of Trust or otherwise authorized by the Beneficiary. The Trustor shall keep and maintain the Collateral free from the claims of all persons supplying labor or materials who will enter into the construction, rehabilitation, renovation or repair of any and all buildings or improvements now existing or to be erected on the Property.

15. By accepting payment of any sum secured by this Deed of Trust after its due date or by accepting partial payment of any such sum, the Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for the Trustor's failure to pay.

16. If the Trustor, without the prior written consent of the Beneficiary: (i) agrees to or actually sells, conveys, transfers or disposes of the Collateral or any interest therein or portion thereof, or (ii) assigns or delegates any right or obligation under the Agreement, the Note or this Deed of Trust, then all amounts secured by this Deed of Trust may be declared immediately due and payable, at the option of the Beneficiary. The Beneficiary shall not unreasonably withhold its consent to any such transaction. The Beneficiary's consent to one transaction of this type shall not be a waiver of the right to require consent to future or successive transactions.

17. As further security for the full and complete performance of each and every obligation, covenant, agreement and duty of the Trustor contained herein or in the Note, the Trustor hereby grants and conveys to the Beneficiary a security interest in and lien on all of the Collateral. This Deed of Trust shall serve as a security agreement and financing statement created pursuant to the California *Commercial Code*, and the Beneficiary will have and may exercise all rights, remedies and powers of a secured party under the California *Commercial Code*. Further, this Deed of Trust is filed as a fixture filing pursuant to the California *Commercial Code* and other applicable law, and covers goods which are or are to become fixtures.

18. Should the Property, the buildings or improvements thereon, or any part of any of them be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire or earthquake or in any other manner, the Beneficiary will be entitled, to all of the Trustor's interest in compensation, awards and other payments or relief therefor; and, following the occurrence of a default as

defined in the Note, the Beneficiary shall be entitled, jointly with the Trustor, at the Beneficiary's option, to commence, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any fire and other insurance affecting the Property or the buildings or improvements thereon, are hereby assigned to the Beneficiary. After deducting therefrom all its expenses, including reasonable attorneys' fees, and if there has not occurred a default under the Note, the Beneficiary shall apply all such proceeds to restoring the Property or the buildings or improvements thereon, or if there has been such default, or if the Trustor determines not to rebuild, the Beneficiary shall retain the proceeds to the extent of the amount due under the Note and any amounts due under this Deed of Trust. Any balance of such proceeds still remaining shall be disbursed by the Beneficiary to the Trustor.

19. If the Trustor fails to perform any material covenant or agreement in this Deed of Trust or the Agreement, or if a default occurs under the Note, the Beneficiary may declare all obligations and sums secured hereby immediately due and payable by delivery to the Trustee of written declaration of default and demand for sale and written notice of default and of election to cause the Collateral to be sold, which notice the Trustee shall cause to be duly filed for record, and the Beneficiary may foreclose this Deed of Trust; provided, however that the Trustor shall not be deemed to be in default hereunder for failure to make any payment when due or for failure to perform any other covenant or agreement contained herein until thirty (30) days after written notice of such failure is given to the Trustor and Trustor is afforded a reasonable opportunity to cure the default. The Beneficiary shall also deposit with the Trustee this Deed of Trust, the Note and all other documents evidencing the obligations or sums secured hereby.

20. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, the Trustee, without demand on the Trustor, shall sell the Property at the time and place fixed by the Trustee in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. The Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may further postpone the sale by public announcement at the time fixed by the preceding postponement. The Trustee shall deliver to the purchaser its deed conveying fee title to the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Trustor, the Trustee and the Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of the sale to payment of: (i) the expenses of the sale, together with the reasonable expenses of the trust created by this Deed of Trust, including reasonable Trustee's fees and attorneys' fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (ii) the cost of any search and/or other evidence of title procedure in connection with the sale and of revenue stamps on the Trustee's deed; (iii) all sums

expended under the terms hereof not then repaid, with accrued interest at the legal rate; (iv) all other sums then secured hereby; and (v) the remainder, if any, to the person or persons legally entitled thereto.

21. The Beneficiary may from time to time substitute a successor or successors to the Trustee named herein or acting hereunder to execute the trusts under this Deed of Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by the Beneficiary, containing reference to this Deed of Trust and its place of record, which instrument, when duly recorded in Riverside County, California, shall be conclusive proof of proper appointment of the successor trustee.

22. Upon written request of the Beneficiary stating that all obligations secured hereby have been satisfied and all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to the Trustee for cancellation and retention, and upon payment of its fees, the Trustee shall reconvey, without warranty, the Collateral then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

23. The trusts created by this Deed of Trust are irrevocable by the Trustor.

24. This Deed of Trust applies to, inures to the benefit of, and binds of the Trustor, the Beneficiary and the Trustee and their respective administrators, executors, officers, directors, transferees, successors and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder, including pledges, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular includes the plural.

25. In addition to and without limitation on any other rights or remedies of the Trustee or the Beneficiary, if the Trustee or the Beneficiary commences any legal action or proceeding to enforce or interpret any provision of this Deed of Trust or the Note, the Trustor shall pay all costs and expenses incurred by the Trustee or the Beneficiary in connection with such action or proceeding, including legal expenses and reasonable attorneys' fees and court costs. Notwithstanding the preceding sentence, in any action between the Trustor on the one hand and the Trustee and/or Beneficiary on the other, the prevailing party is entitled to attorneys' fees.

26. The Trustee accepts the trusts hereunder when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which the Trustor, the Beneficiary or the Trustee is a party, unless brought by the Trustee.

27. The Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at 3200 Tahquitz Canyon Way, P.O. Box 2743, Palm Springs, California 92262. Attention: City Manager.

28. The Trustor shall cause a copy of each deed of trust securing a Construction/ Permanent Financing Loan to be provided to the Beneficiary immediately upon its recordation, so that the Beneficiary may prepare and record a request for notice of default and notice of sale thereunder pursuant to California *Civil Code* Section 2924b.

29. This Deed of Trust shall be interpreted and enforced, and the rights and duties (both procedural and substantive) of the parties hereunder shall be determined, according to California law.

30. Capitalized terms not otherwise defined herein shall have the meanings given them in the Agreement or the Note.

\* \* \* \* \*

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date set forth above.

TRUSTOR:

\_\_\_\_\_  
City of Palm Springs, California  
David H. Ready, City Manager

ACKNOWLEDGMENTS

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF RIVERSIDE )

On \_\_\_\_\_, 2012, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_

(SEAL)



**EXHIBIT A TO DEED OF TRUST**

**LEGAL DESCRIPTION**

All that certain real property situated in the City of Palm Springs, County of Riverside, State of California, described as follows:

**EXHIBIT A TO DEED OF TRUST**

**LEGAL DESCRIPTION**

All that certain real property situated in the City of Palm Springs, County of Riverside, State of California, described as follows:

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"**

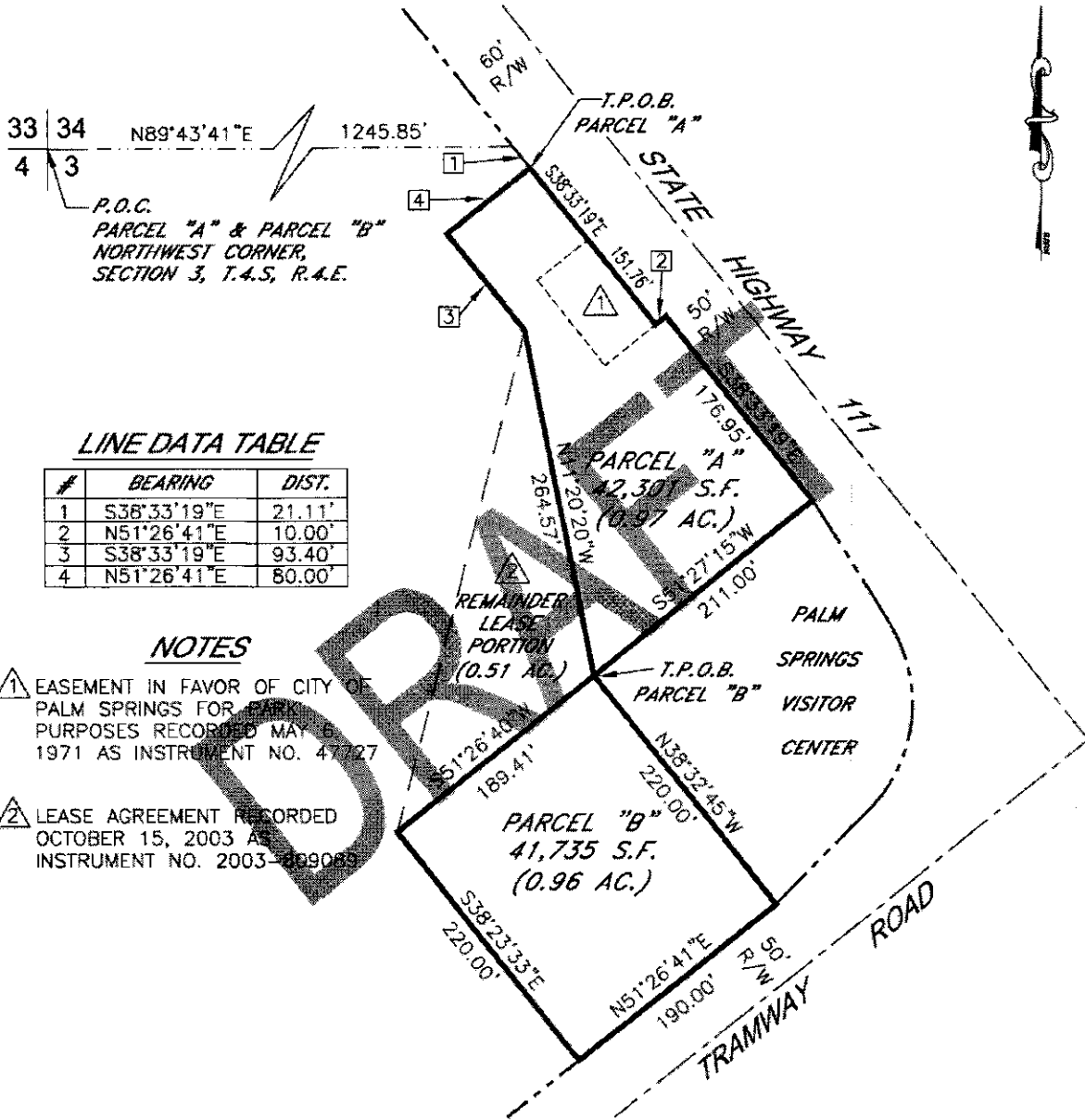
THAT PORTION OF PARCEL 1 OF PARCEL MAP 23130 RECORDED IN MAP BOOK 181, PAGES 50-53, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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

- ⚠ EASEMENT IN FAVOR OF CITY OF PALM SPRINGS FOR PURPOSES RECORDED MAY 6, 1971 AS INSTRUMENT NO. 47727
- ⚠ LEASE AGREEMENT RECORDED OCTOBER 15, 2003 AS INSTRUMENT NO. 2003-009083



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

**PROMISSORY NOTE**  
**Visitor's Center Parking Lot and Palm Springs Entry Sign**

**DO NOT DESTROY THIS NOTE: When paid, this note must be surrendered to Borrower for cancellation.**

\$ 245,000.00

Palm Springs, California  
\_\_\_\_\_, 2012

FOR VALUE RECEIVED, the undersigned, the CITY OF PALM SPRINGS, a municipal corporation and California Charter City ("Maker"), promises to pay the Stephen C. Nichols & Sarah J. Benson, Trustees of the Benson-Nichols Trust of 2003 ("Holder") located at 901 North Palm Canyon Drive, Suite 200, Palm Springs, CA 92262, the sum of Two Hundred Forty Five Thousand Dollars (\$245,000.00, the "Note Amount"), together with interest thereon at the rate set forth herein. All sums payable hereunder shall be payable in lawful money of the United States of America. This Promissory Note ("Note") is made in connection with the provision by the Holder of funds equal to the Note pursuant to that certain the Agreement for Purchase and Sale by and among Maker and Holder, dated as of \_\_\_\_\_, 2012 (the "Agreement").

This note is made with reference to the sale of a one-half undivided interest in a parcel commonly described as the Visitor's Center Parking Lot and Palm Springs Entry Sign, of approximately 2.44 acres (APN 504-040-001-8), located near 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").

1. Interest Rate. Simple interest shall accrue on the Note Amount from the date of disbursement at the rate of six percent (6%) per annum, if the transaction is completed prior to July 13, 2012, or Six and a half percent (6.5%) if the transaction is completed subsequent to July 13, 2012, but in no event greater than the maximum interest rate permitted by law.

2. Repayment. Maker shall repay the principal amount of the Note Amount, plus all interest then accrued at the interest rate set forth in Paragraph 1 above in arrears, in annual installments in equal amounts as shown in the attached Amortization Table shown in Exhibit "B" attached hereto ("Amortization Table"). The principal amount of the Note Amount, plus all interest then accrued upon the Note Amount, shall be immediately due and payable upon (i) any default of the Agreement, which is not cured within the time set forth in Section 13 of the Deed of Trust, and, if not sooner paid in full, (ii) on April 1, 2019.

3. Prepayment of Note Amount. Maker may prepay to Holder the full Note Amount, together with all accrued and unpaid interest thereon at the rate

set forth in Section 1 hereof, at any time prior to the due date of the Note Amount without penalty.

4. Application of Payments. Each payment hereunder shall be credited first to interest then accrued and the remainder, if any, to principal. Interest shall cease to accrue upon principal so credited.

5. Security. This Note is secured by a deed of trust by and between Maker, as trustor, and Holder, as beneficiary (the "Deed of Trust", Exhibit "D" to the Agreement).

6. Holder May Assign. Holder may, at its option, assign its right to receive payment under this Note without necessity of obtaining the consent of the Maker.

7. Maker Assignment Prohibited. In no event shall Maker assign or transfer any portion of this Note without the prior express written consent of the Holder, which consent may be given or withheld in the Holder's sole discretion.

8. Attorneys' Fees and Costs. In the event that any action is instituted with respect to this Note, the non-prevailing party promises to pay such sums as a court may fix for court costs and reasonable attorneys' fees. Maker's right to such fees shall not be limited to or by its representation by City Attorney, and such representation shall be valued at customary and reasonable rates for private sector legal services.

9. Non-Waiver. Failure or delay in giving any notice required hereunder shall not constitute a waiver of any default or late payment, nor shall it change the time for any default or payment.

10. Successors Bound. This Note shall be binding upon the parties hereto and their respective heirs, successors and assigns. Any person or entity who takes over the any duties and obligations under this Note, is also liable for the satisfaction of all such duties and obligations.

11. Terms. Any terms not separately defined herein shall have the same meanings as set forth in the Agreement.

12. Collection of Penalties. No provision of this Agency Note or any instrument securing payment hereof or otherwise relating to the debt evidenced hereby shall require the payment or permit the collection of interest in excess of the maximum permitted by applicable law. If any excess of interest in such respect is herein or in such other instrument provided for, or shall be adjudicated to be so provided for herein or in any such instrument, the provisions of this paragraph shall govern, in neither Maker or any endorsers of this Note, nor their respective heirs, personal representatives, successors or assigns shall be

obligated to pay the amount of such interest to the extent it is in excess of the amount permitted by applicable law.

13. Non-Recourse. Notwithstanding anything to the contrary herein contained, (i) the liability of Maker shall be limited to its interest in the Site and any rents, issues, and profits arising from the Site and, in addition, with respect to any obligation to hold and apply insurance proceeds, proceeds of condemnation or other monies hereunder, any such monies received by it to the extent not so applied in accordance with the terms of this Note; (ii) no other assets of Maker shall be affected by or subject to being applied to the satisfaction of any liability which Maker may have to Holder or to another person by reason of this Note; and (iii) any judgment, order, decree or other award in favor of Holder shall be collectible only out of, or enforceable in accordance with, the terms of this Note by termination or other extinguishment of Maker's interest in the Site.

**IN WITNESS WHEREOF**, Borrower has caused this Note to be executed by Maker or Maker's authorized agent(s) as of the date and year first above written.

**Maker:**

By: \_\_\_\_\_  
City of Palm Springs, California  
David H. Ready, City Manager

**DEED OF TRUST**

**Recording requested by,  
and when recorded mail to:**

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

**INSTRUCTIONS TO COUNTY RECORDER:**

Index this instrument as  
(i) a Deed of Trust, and  
(ii) a Fixture Filing

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Space above for Recorder's Use

**DEED OF TRUST AND ASSIGNMENT OF RENTS**

This DEED OF TRUST AND ASSIGNMENT OF RENTS ("Deed of Trust") is entered into between the CITY OF PALM SPRINGS, a municipal corporation and California Charter City, whose principal executive office is at 3200 Tahquitz Canyon Way, P.O. Box 2743, Palm Springs, California 92263 (the "Trustor"), in favor of \_\_\_\_\_ TITLE COMPANY, whose address is \_\_\_\_\_ (the "Trustee"), for the benefit of Stephen C. Nichols & Sarah J. Benson, Trustees of the Benson-Nichols Trust of 2003, located at 901 North Palm Canyon Drive, Suite 200, Palm Springs, CA 92262, (the "Beneficiary").

THE TRUSTOR IRREVOCABLY GRANTS, TRANSFERS AND ASSIGNS TO THE TRUSTEE, in trust, with the power of sale, the real property in the City of Palm Springs, Riverside County, California, more particularly described in **Exhibit A** attached hereto and made part hereof by reference (the "Property"), together with:

(i) All tenements, hereditaments and appurtenances of or to the Property, including without limitation all easements and rights used in connection therewith or as a means of access thereto, all right, title and interest of the Trustor, now owned or hereafter acquired, in any land lying within the right-of-way of any street, open or proposed, adjoining the Property, and any and all sidewalks, alleys, strips and other areas of land adjacent to or used in connection with the Property;

(ii) All oil and gas or other mineral rights in or pertaining to the Property and all royalty, leasehold and other rights of the Trustor pertaining thereto;



(iii) All water rights pertaining to the Property and shares of stock evidencing the same, and all deposits made with or other security given to utility companies by the Trustor with respect to the Property;

(iv) The rents, issues and profits thereof, subject, however, to the right, power and authority of Trustor to collect and apply such rents, issues and profits and set forth in this Deed of Trust;

(v) All buildings and improvements of every kind and description now or hereafter erected or placed on the Property, and all fixtures thereon, including, but not limited to, all gas and electric fixtures, engines and machinery, radiators, heaters, furnaces, heating equipment, laundry equipment, steam and hot water boilers, stoves, ranges, elevators and motors, bath tubs, sinks, water closets, basins, pipes, faucets and other plumbing and heating fixtures, mantels, cabinets, refrigeration plant and refrigerators, whether mechanical or otherwise, cooking apparatus and appurtenances, and all shades, awnings, screens, blinds and other furnishings, it being hereby agreed that all such fixtures and furnishings shall to the extent permitted by law be deemed permanently affixed to and a part of the realty;

(vi) All building materials and equipment now or hereafter delivered to the Property and intended to be installed thereon.

Said real property and personal property described above, together with appurtenances, are referred to collectively in this Deed of Trust as the "Collateral."

**FOR THE PURPOSE OF SECURING THE FOLLOWING OBLIGATIONS:**

(a) Payment to the Beneficiary of an indebtedness in the principal amount of Two Hundred Forty Five Thousand Dollars (\$245,000.00), evidenced by a promissory note executed by the Trustor and payable to the order of the Beneficiary, bearing the same date as this Deed of Trust, and any and all modifications, extensions or renewals thereof or substitutions therefor (the "Note"), and performance and satisfaction of each and all other obligations of the Trustor under the Note;

(b) Performance of every obligation or Trustor in this Deed of Trust, the Note, the Agreement for Purchase and Sale between Beneficiary and Trustor related to the Property (the "Agreement"); and

(c) Payment of all sums, if any, and interest thereon that may hereafter be loaned or advanced by the Beneficiary to or for the benefit of the Trustor or to its successors, transferees and assigns, made to the Trustor while the Trustor is the owner of record of fee title to the Property, or any portion thereof, or to the successors, transferees or assigns of the Trustor while they are the owners of record of such fee title, and evidenced by one or more notes or written instruments which recite that they are secured by this Deed of Trust.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, THE TRUSTOR COVENANTS AND AGREES AS FOLLOWS:

1. The Trustor shall not use or permit the use of any of the Collateral for any purpose other than the use for which it was intended at the time this Deed of Trust was executed, as provided in the Agreement.

2. Upon default under this Deed of Trust or the Note (following delivery of notice and expiration of the cure period, if any, provided therein), the Beneficiary, at its option, may declare the whole of the obligations and sums secured hereby to be immediately due and payable.

3. The person(s) or entity(ies) who have executed this Deed of Trust are fully authorized, and have obtained any and all written authorizations, approvals or consents necessary, to bind the Trustor to this Deed of Trust.

4. All rents, profits and income from the Collateral covered by this Deed of Trust are hereby assigned to the Beneficiary for the purpose of discharging the obligations hereby secured. However, the Trustor shall be permitted, so long as no default exists hereunder or under the Note, to collect such rents, profits and income for use consistent with the provisions of the Agreement.

5. Upon default hereunder or under the Note (following delivery of notice and expiration of the cure period, if any, provided herein or therein), for the purpose of protecting its interests hereunder, the Beneficiary will be entitled to the appointment by a court having jurisdiction, without further notice and without regard to adequacy of any security for the indebtedness secured hereby, of a receiver to take possession of and protect the Collateral described herein and operate same and collect the rents, profits and income therefrom. The entering upon and taking possession of the Property or other Collateral by such receiver, the collection of such rents, profits and income and the application thereof shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

6. The Trustor, at its sole cost and expense, shall provide and maintain on the entire Property, including all buildings and improvements thereon: (ii) self insurance or a policy of commercial general liability insurance that includes contractual, products and completed operations coverages, bodily injury and property damage liability insurance with combined single limits of not less than \$1,000,000 per occurrence; and (iii) such other insurance as may be reasonably required by the Beneficiary, in each case in such amounts, in such manner and with such companies as the Beneficiary and Trustor may reasonably approve. Upon request by the Beneficiary, the Trustor immediately shall deposit with the Beneficiary certificates evidencing such policies.

7. The Trustor shall pay: (i) at least ten days before delinquency, all taxes and assessments affecting the Collateral; (ii) when due, all encumbrances, charges and liens, with interest, on the Collateral or any part thereof which appear to be prior or

superior hereto; and (iii) all costs, fees and expenses of the Trustee or the Beneficiary reasonably incurred in connection with the trusts created under this Deed of Trust.

8. The Trustor shall: (i) keep the Collateral in good condition and repair; (ii) complete or restore promptly and in good and workmanlike manner the buildings and improvements and any other building or improvement which may be constructed, damaged or destroyed thereon; (iii) pay when due all claims for labor performed and materials furnished therefore; (iv) comply in all material respects with all laws affecting the Collateral or requiring any alterations or improvements to be made thereon; (v) not commit or permit waste of or on the Collateral; and (vi) not commit, suffer or permit any act upon the Property in violation of law and/or any covenants, conditions or restrictions affecting the Collateral.

9. The Trustor shall appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee, and shall pay all costs and expenses, including cost of evidence of title and reasonable attorneys' fees, in any such action or proceeding in which the Beneficiary or the Trustee may appear, or in any suit brought by the Beneficiary to foreclose this Deed of Trust. Notwithstanding the preceding sentence, in any action between the Trustor on the one hand and the Trustee and/or Beneficiary on the other, the prevailing party is entitled to attorneys' fees.

10. Should the Trustor fail to make any payment or do any act as herein provided, then the Beneficiary or the Trustee, without obligation to do so, and following notice to or demand on the Trustor, and without releasing the Trustor from any obligation hereof: (i) may make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, the Beneficiary or the Trustee being authorized to enter on the Property for such purposes; (ii) may commence, appear in and/or defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Beneficiary or the Trustee; (iii) may pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto (except for the deeds of trust, encumbrances and liens securing the Construction/Permanent Financing Loan(s) and the Agency Loan, as such terms are defined below); and (iv) in exercising any such powers, may pay necessary expenses, employ legal counsel and pay such counsel's reasonable fees. All such amounts paid by the Beneficiary or the Trustee hereunder shall be added to the obligations secured by this Deed of Trust.

11. The Beneficiary shall have the right, but not the obligation, to pay when due fire or other insurance premiums required hereunder if the Trustor fails to make such payments. All such amounts paid by the Beneficiary hereunder shall be added to the obligations secured by this Deed of Trust.

12. The Trustor shall pay immediately upon demand all sums so reasonably expended by the Beneficiary or the Trustee under this Deed of Trust, with interest from date of expenditure at the legal rate.

13. If the Trustor fails to pay any amount required by the Note or this Deed of Trust when due and payable, or fails to perform all other covenants, conditions and agreements of the Note, this Deed of Trust or the Agreement (following delivery of notice and expiration of the cure period, if any, provided therein), the amount of the Note, including unpaid principal and late charges, and all other charges and amounts required by the Note and this Deed of Trust shall, at the option of the Beneficiary, become immediately due and payable. This shall be in addition to and without limitation on any other remedy or right available to the Beneficiary for such failure.

14. The Trustor shall not voluntarily create or permit to be created against the Collateral any lien or liens except as specifically permitted by this Deed of Trust or otherwise authorized by the Beneficiary. The Trustor shall keep and maintain the Collateral free from the claims of all persons supplying labor or materials who will enter into the construction, rehabilitation, renovation or repair of any and all buildings or improvements now existing or to be erected on the Property.

15. By accepting payment of any sum secured by this Deed of Trust after its due date or by accepting partial payment of any such sum, the Beneficiary does not waive its right either to require prompt payment when due of all other sums so secured or to declare default for the Trustor's failure to pay.

16. If the Trustor, without the prior written consent of the Beneficiary: (i) agrees to or actually sells, conveys, transfers or disposes of the Collateral or any interest therein or portion thereof, or (ii) assigns or delegates any right or obligation under the Agreement, the Note or this Deed of Trust, then all amounts secured by this Deed of Trust may be declared immediately due and payable, at the option of the Beneficiary. The Beneficiary shall not unreasonably withhold its consent to any such transaction. The Beneficiary's consent to one transaction of this type shall not be a waiver of the right to require consent to future or successive transactions.

17. As further security for the full and complete performance of each and every obligation, covenant, agreement and duty of the Trustor contained herein or in the Note, the Trustor hereby grants and conveys to the Beneficiary a security interest in and lien on all of the Collateral. This Deed of Trust shall serve as a security agreement and financing statement created pursuant to the California *Commercial Code*, and the Beneficiary will have and may exercise all rights, remedies and powers of a secured party under the California *Commercial Code*. Further, this Deed of Trust is filed as a fixture filing pursuant to the California *Commercial Code* and other applicable law, and covers goods which are or are to become fixtures.

18. Should the Property, the buildings or improvements thereon, or any part of any of them be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire or earthquake or in any other manner, the Beneficiary will be entitled, to all of the Trustor's interest in compensation, awards and other payments or relief therefor; and, following the occurrence of a default as

defined in the Note, the Beneficiary shall be entitled, jointly with the Trustor, at the Beneficiary's option, to commence, appear in and prosecute in its own name, any action or proceeding, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any fire and other insurance affecting the Property or the buildings or improvements thereon, are hereby assigned to the Beneficiary. After deducting therefrom all its expenses, including reasonable attorneys' fees, and if there has not occurred a default under the Note, the Beneficiary shall apply all such proceeds to restoring the Property or the buildings or improvements thereon, or if there has been such default, or if the Trustor determines not to rebuild, the Beneficiary shall retain the proceeds to the extent of the amount due under the Note and any amounts due under this Deed of Trust. Any balance of such proceeds still remaining shall be disbursed by the Beneficiary to the Trustor.

19. If the Trustor fails to perform any material covenant or agreement in this Deed of Trust or the Agreement, or if a default occurs under the Note, the Beneficiary may declare all obligations and sums secured hereby immediately due and payable by delivery to the Trustee of written declaration of default and demand for sale and written notice of default and of election to cause the Collateral to be sold, which notice the Trustee shall cause to be duly filed for record, and the Beneficiary may foreclose this Deed of Trust; provided, however that the Trustor shall not be deemed to be in default hereunder for failure to make any payment when due or for failure to perform any other covenant or agreement contained herein until thirty (30) days after written notice of such failure is given to the Trustor and Trustor is afforded a reasonable opportunity to cure the default. The Beneficiary shall also deposit with the Trustee this Deed of Trust, the Note and all other documents evidencing the obligations or sums secured hereby.

20. After the lapse of such time as may then be required by law following the recordation of the notice of default, and notice of sale having been given as then required by law, the Trustee, without demand on the Trustor, shall sell the Property at the time and place fixed by the Trustee in the notice of sale, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder for cash in lawful money of the United States, payable at time of sale. The Trustee may postpone sale of all or any portion of the Property by public announcement at the time and place of sale, and from time to time thereafter may further postpone the sale by public announcement at the time fixed by the preceding postponement. The Trustee shall deliver to the purchaser its deed conveying fee title to the Property or portion thereof so sold, but without any covenant or warranty, express or implied. The recitals in the Trustee's deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including the Trustor, the Trustee and the Beneficiary, may purchase at the sale. The Trustee shall apply the proceeds of the sale to payment of: (i) the expenses of the sale, together with the reasonable expenses of the trust created by this Deed of Trust, including reasonable Trustee's fees and attorneys' fees for conducting the sale, and the actual cost of publishing, recording, mailing and posting notice of the sale; (ii) the cost of any search and/or other evidence of title procedure in connection with the sale and of revenue stamps on the Trustee's deed; (iii) all sums

expended under the terms hereof not then repaid, with accrued interest at the legal rate; (iv) all other sums then secured hereby; and (v) the remainder, if any, to the person or persons legally entitled thereto.

21. The Beneficiary may from time to time substitute a successor or successors to the Trustee named herein or acting hereunder to execute the trusts under this Deed of Trust. Upon such appointment, and without conveyance to the successor trustee, the latter shall be vested with all title, powers and duties conferred upon any Trustee herein named or acting hereunder. Each such appointment and substitution shall be made by written instrument executed by the Beneficiary, containing reference to this Deed of Trust and its place of record, which instrument, when duly recorded in Riverside County, California, shall be conclusive proof of proper appointment of the successor trustee.

22. Upon written request of the Beneficiary stating that all obligations secured hereby have been satisfied and all sums secured hereby have been paid, and upon surrender of this Deed of Trust and the Note to the Trustee for cancellation and retention, and upon payment of its fees, the Trustee shall reconvey, without warranty, the Collateral then held hereunder. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto."

23. The trusts created by this Deed of Trust are irrevocable by the Trustor.

24. This Deed of Trust applies to, inures to the benefit of, and binds of the Trustor, the Beneficiary and the Trustee and their respective administrators, executors, officers, directors, transferees, successors and assigns. The term "Beneficiary" shall include not only the original Beneficiary hereunder but also any future owner and holder, including pledges, of the Note secured hereby. In this Deed of Trust, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular includes the plural.

25. In addition to and without limitation on any other rights or remedies of the Trustee or the Beneficiary, if the Trustee or the Beneficiary commences any legal action or proceeding to enforce or interpret any provision of this Deed of Trust or the Note, the Trustor shall pay all costs and expenses incurred by the Trustee or the Beneficiary in connection with such action or proceeding, including legal expenses and reasonable attorneys' fees and court costs. Notwithstanding the preceding sentence, in any action between the Trustor on the one hand and the Trustee and/or Beneficiary on the other, the prevailing party is entitled to attorneys' fees.

26. The Trustee accepts the trusts hereunder when this Deed of Trust, duly executed and acknowledged, is made public record as provided by law. Except as otherwise provided by law, the Trustee is not obligated to notify any party hereto of pending sale under this Deed of Trust or of any action or proceeding in which the Trustor, the Beneficiary or the Trustee is a party, unless brought by the Trustee.

27. The Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to it at 3200 Tahquitz Canyon Way, P.O. Box 2743, Palm Springs, California 92262. Attention: City Manager.

28. The Trustor shall cause a copy of each deed of trust securing a Construction/ Permanent Financing Loan to be provided to the Beneficiary immediately upon its recordation, so that the Beneficiary may prepare and record a request for notice of default and notice of sale thereunder pursuant to California *Civil Code* Section 2924b.

29. This Deed of Trust shall be interpreted and enforced, and the rights and duties (both procedural and substantive) of the parties hereunder shall be determined, according to California law.

30. Capitalized terms not otherwise defined herein shall have the meanings given them in the Agreement or the Note.

\* \* \* \* \*

IN WITNESS WHEREOF, Trustor has executed this Deed of Trust as of the date set forth above.

TRUSTOR:

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City of Palm Springs, California  
David H. Ready, City Manager





## EXHIBIT A TO DEED OF TRUST

### LEGAL DESCRIPTION

All that certain real property situated in the City of Palm Springs, County of Riverside, State of California, described as follows:

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"**

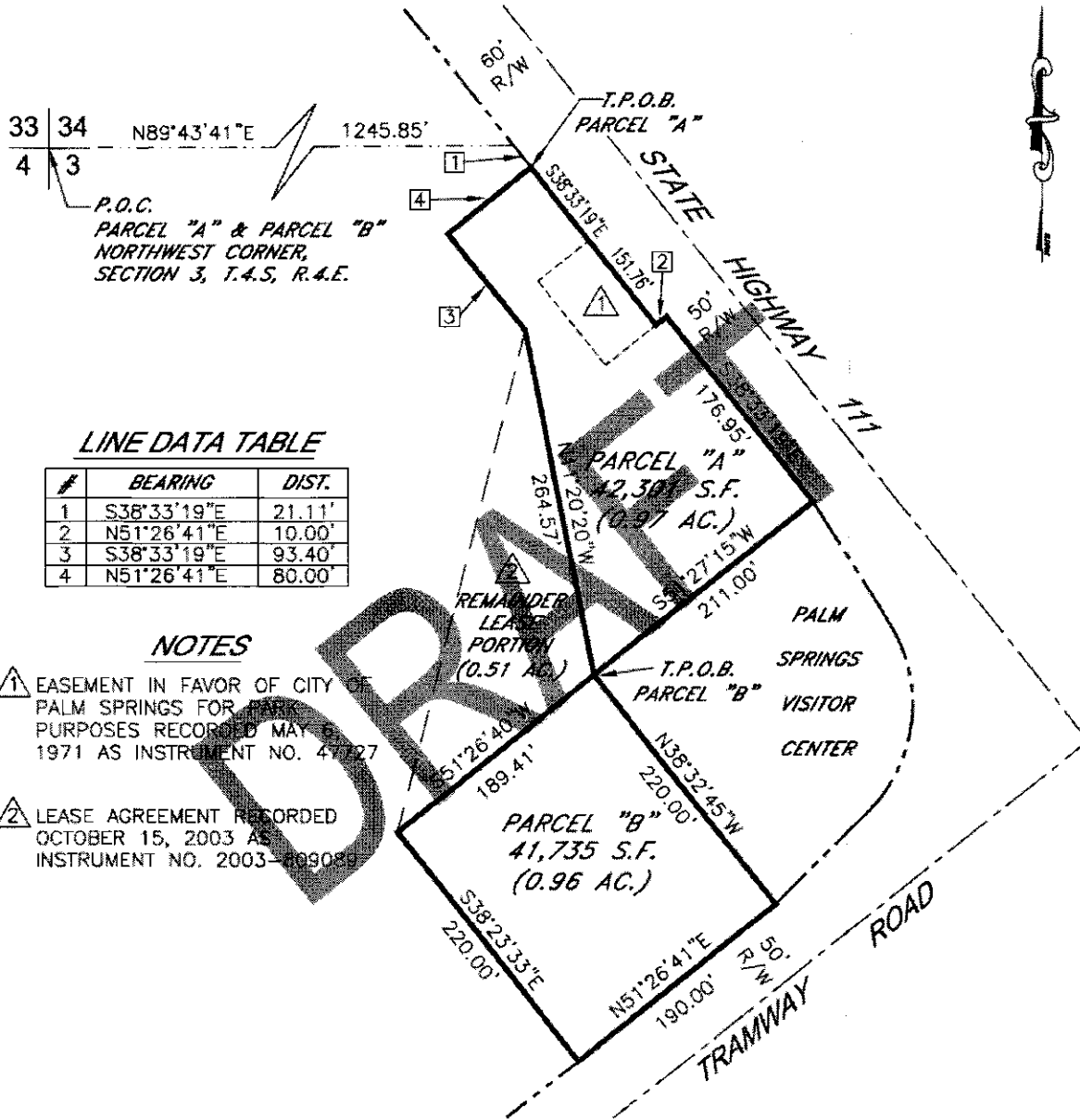
THAT PORTION OF PARCEL 1 OF PARCEL MAP 23130 RECORDED IN MAP BOOK 181, PAGES 50-53, INCLUSIVE, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:


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"



 **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

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
PALM SPRINGS, CALIFORNIA, AMENDING THE BUDGET  
FOR THE 2012-13 FISCAL YEAR.

WHEREAS, Resolution No. 23146 approving the budget for the Fiscal Year 2012-13 was adopted on June 6, 2012; and

WHEREAS, the City Manager has recommended, and the City Council desires to approve, certain amendments to said budget.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES HEREBY RESOLVE, that the Director of Finance is authorized to record inter-fund cash transfers as required in accordance with this Resolution, and that Resolution No. 23146, adopting the Fiscal Year 2012-13 budget is hereby amended as follows:

SECTION 1. ADDITIONS

Fund	Activity	Account	Amount
			\$200,000.00

Purpose: Establish funding for Purchase of Visitor Center Parking Lot, Entry Sign site and adjacent parcel. Initial payment.

SECTION 2. SOURCE

Fund	Activity	Account	Amount
Quimby Fund		Fund Balance	\$200,000.00

ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2012.

\_\_\_\_\_  
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. \_\_\_\_\_ 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 \_\_\_\_\_, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

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James Thompson, City Clerk  
City of Palm Springs, California