



# City of La Quinta

**CITY / SA / HA / FA MEETING DATE:** August 5, 2014

**ITEM TITLE:** ADOPT RESOLUTION TO APPROVE A SALES TAX SHARING AGREEMENT WITH ONE ELEVEN LA QUINTA, LLC FOR CERTAIN IMPROVEMENTS ASSOCIATED WITH 111 LA QUINTA CENTER

**AGENDA CATEGORY:**

**BUSINESS SESSION:**

**CONSENT CALENDAR:**

**STUDY SESSION:**

**PUBLIC HEARING:** 1

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## **RECOMMENDED ACTION:**

Adopt a resolution approving a sales tax sharing agreement with One Eleven La Quinta, LLC for certain improvements associated with the 111 La Quinta Center.

## **EXECUTIVE SUMMARY:**

- The 111 La Quinta Center ("Center") is one of the first and largest shopping centers in La Quinta. Numerous anchor stores and businesses are located within this center (see Attachment 1).
- Due to the latest economic recession, approximately 37 percent of the ancillary tenant space within the Center is currently vacant. A limited amount of pad spaces also remain undeveloped within the Center.
- A new anchor store, Hobby Lobby, is under construction and slated to open by the end of the year. This store is anticipated to stimulate strong customer interest for the Center and the Highway 111 business district.
- Mr. Shovlin has made recent improvements with plans for future improvements to attract additional shopping interest within the Center.
- A new traffic signal is proposed for the intersection of Adams Street and Corporate Center Drive (Attachment 2), which would include a new signalized access point for the Center.
- The sales tax sharing agreement ("Agreement") provides a 50/50 split of the City portion of sales tax generated from Hobby Lobby. Reimbursement would not exceed \$400,000 and is limited to a term of six years anticipating Agreement conclusion by January 2021.

## **FISCAL IMPACT:**

The Agreement would cost the City 50 percent or \$400,000 of future sales tax revenue generated from Hobby Lobby during the first six years of operations. It is unclear how much additional sales tax revenue the City may receive, if any, from neighboring businesses sales increases due to Hobby Lobby patronage traffic.

## **BACKGROUND/ANALYSIS:**

The Center consists of approximately 60 acres bounded by Washington Street, Highway 111, Adams Street and the Whitewater Channel. The project Specific Plan identifies approximately 617,000 square feet of retail space will exist within the Center when built out. Approximately 485,000 square feet of retail space exists today with 54,000 square feet currently under construction (Hobby Lobby). Several prominent businesses are located at the Center, such as Stater Bros., Staples, Big 5, AAA, Petco, Ross and Kohl's.

Though the majority of the Center is developed, a few undeveloped building pads remain. Hobby Lobby represents one of these pads, which is currently under construction and slated to open by the end of the year. Hobby Lobby is an arts and craft supply retailer with a strong customer following. It is anticipated that the store will bring new customers and retail business to the Center and the Highway 111 retail corridor.

A majority of the Center, including the Hobby Lobby site, is owned by One Eleven La Quinta, LLC, managed by Michael Shovlin. On behalf of his company, Mr. Shovlin has requested \$400,000 in economic development assistance from the City via a sales tax reimbursement agreement. These funds would be used toward certain improvements for the Center that will assist in the ability to attract new and maintain existing retail businesses. Though Hobby Lobby is expected to be a positive addition to the Center, Mr. Shovlin desires to see the remaining undeveloped pads and vacant commercial space occupied by other quality retail businesses.

The proposed \$400,000 sales tax reimbursement would be used toward the following improvements:

- \$ 25,000 Miscellaneous Center landscaping improvements/upgrades (majority completed).
- \$150,000 Future pedestrian improvements associated with Hobby Lobby and adjacent pads to improve pedestrian connectivity and flow of shopping center.
- \$120,000 Property for future Adams Street and Corporate Center Drive signal (includes inability to fully utilize remainder property north of signal).
- \$ 50,000 On-site improvements associated with the future signal.

\$ 55,000 Future Center signage and aesthetic improvements.

\$400,000

It is expected that most, if not all identified improvements will be completed within the next 24-36 months. However, it is unclear at this time as to exactly when the remaining pads neighboring Hobby Lobby will develop. The identified pedestrian improvements are intended to be constructed in association with development of these pads.

The Agreement proposes a 50/50 sharing of sales tax generated from Hobby Lobby. Mr. Shovlin provided staff with gross sales figure estimates for the proposed store, which has resulted in the following:

	% Tax	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
<b>Total Sales Tax Revenue</b>		\$139,100	\$282,373	\$429,944	\$581,943	\$738,501	\$899,756
Shovlin Share	50%	\$69,550	\$141,187	\$214,972	\$290,971	\$369,250	\$449,878
City Share	50%	\$69,550	\$141,187	\$214,972	\$290,971	\$369,250	\$449,878

Based upon this information, it is estimated that Mr. Shovlin would receive the \$400,000 reimbursement in approximately 5½ years. The Agreement includes a maximum term of 6 years.

The largest improvement item listed involves the Adams Street and Corporate Center Drive signal (total cost of \$170,000). This signal was originally represented without a connection serving the Center. However, conversation with Mr. Shovlin resulted in amending the plans to provide this access, which includes the need to establish an easement for the future access. Staff believes this connection will provide a safer access for the Center as well as improving general circulation in the area. Access and improvements for this connection adds approximately \$150,000 to the project cost. In an effort to address this additional expense, a cost sharing proposal of \$50,000 each from Mr. Shovlin, Kohl's and the City is proposed.

**ALTERNATIVES:**

Council may choose to discuss and incorporate any adjustments deemed appropriate in order to approve the proposed request.

Report prepared by: Les Johnson, Community Development Director  
Report approved for submission by: Frank J. Spevacek, City Manager

- Attachments:
1. Map of 111 La Quinta Center
  2. Preliminary Design for Adams and Corporate Center Signal



**RESOLUTION NO. 2014 –**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LA QUINTA APPROVING A SALES TAX SHARING AGREEMENT BETWEEN THE CITY AND ONE ELEVEN LA QUINTA, LLC.**

**WHEREAS**, the City of La Quinta (“City”) desires to support high quality and vibrant and economically healthy commercial activity in the City and particularly within the Highway 111 retail corridor; and

**WHEREAS**, supporting such development will generate additional commerce and economic development in accordance with the goals, policies and programs of the La Quinta General Plan; and

**WHEREAS**, the City Council has established economic development goals and identified actions focused upon exploring new opportunities to forge public/private partnerships that ultimately produce General Fund revenue; and

**WHEREAS**, the City Council has approved parameter for a sales tax revenue sharing plan recognizing the importance of encouraging new investment in infrastructure and other certain improvements intended to ultimately enhance revenue generation and job creation within the City.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of La Quinta as follows:

SECTION 1. That the above recitals are true and correct and incorporated herein.

SECTION 2. That the City Council of the City of La Quinta hereby finds and determines that the Agreement is in the best interests of the citizens of the City of La Quinta.

SECTION 3. The Agreement, a copy of which is on file with the City Clerk and attached as Exhibit A, is hereby approved. The City Council authorizes and directs the City Manager and City Attorney to make any final modifications to the Agreement that are consistent with the substantive terms of the Agreement approved hereby, and to thereafter sign the Agreement on behalf of the City.

SECTION 4. The City Council authorizes and directs the City Manager to take any further actions, as may be necessary and proper to carry out the terms of the Agreement.

**PASSED, APPROVED, AND ADOPTED** at a regular meeting of the City Council of the City of La Quinta held this 5th day of August, 2014, by the following vote:

**AYES:**

**NOES:**

**ABSENT:**

**ABSTAIN:**

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DON ADOLPH, Mayor  
City of La Quinta, California

**ATTEST:**

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SUSAN MAYSELS, City Clerk  
City of La Quinta, California

(CITY SEAL)

**APPROVED AS TO FORM:**

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WILLIAM H. IHRKE, City Attorney  
City of La Quinta, California

**AGREEMENT TO ENTER INTO COVENANT TO  
OPERATE AND TO PAY COMPENSATION BASED ON  
SALES TAX REVENUE**  
**(One Eleven La Quinta, LLC)**

This AGREEMENT TO ENTER INTO COVENANT TO OPERATE AND TO PAY COMPENSATION BASED ON SALES TAX REVENUE (Michael Shovlin) (the "Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2014, by and between the CITY OF LA QUINTA, a California charter city and municipal corporation ("City"), and ONE ELEVEN LA QUINTA, LLC, a California limited liability company ("Owner/Developer") (individually a "Party" and collectively the "Parties").

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

A. The 111 La Quinta Center is a large commercial/retail site that consists of approximately 60 acres bounded by Washington Street, Highway 111, Adams Street and the Whitewater Channel (the "Center"). The Specific Plan for the Center provides that there will be approximately 617,000 square feet of retail space when built out. As of the date of this Agreement, approximately 485,000 square feet of retail space currently exists. Several prominent businesses are located at the Center, such as Stater Bros., Staples, Big 5, AAA, Petco, Ross, and Kohl's. Though the majority of the Center is built out, a few building pad locations remain undeveloped.

B. Owner/Developer is the owner in fee of a majority of the Center, including that certain developable pad of raw land generally located north of Highway 111 and west of Adams Street, more particularly identified as Parcel 4 of Parcel Map 36531 attached hereto as Exhibit "A" and incorporated herein by reference (the "Site"). Based on communications received by the City, Owner/Developer has arranged for the development and use of the Site by Hobby Lobby, an arts and craft supply retailer for the "Hobby Lobby Retail Use" (as defined in the Covenant), provided Owner/Developer (or a permitted assignee or successor in interest) obtains the necessary governmental permits and approvals from all governmental agencies with jurisdiction, including the City.

C. Owner/Developer has requested \$400,000 in economic development assistance from the City. This funding would be used to make certain improvements to the Center that will assist in the ability to attract new and maintain existing retail businesses, that will assist the Owner/Developer with the construction or facilitating the construction of the remaining undeveloped pads, and that will assist the Owner/Developer to improve and use currently vacant commercial space at the Center, all as more particularly set forth in this Agreement.

D. In consideration of Owner/Developer's encumbrance of the Site by the Covenant (as defined herein below) and Owner/Developer's performance (or a permitted assignee's or successor in interest's performance) of its obligations thereunder, the City has agreed to enter into the Covenant for the purpose of making certain periodic payments to the Owner/Developer in an amount equal to a portion of the Sales Tax (as defined in the Covenant described below)

generated by the Hobby Lobby Retail Use on the Site, subject to and in accordance with the Covenants, Conditions, and Restrictions Affecting Interests in Real Property attached hereto as Exhibit “B” (the “Covenant”). The Covenant shall become effective only if the terms and conditions set forth herein as a condition to its effectiveness are satisfied. The Parties acknowledge and agree that the City’s obligations to make periodic payments equal to a portion of Sales Tax under the Covenant are to be calculated by reference only to the Sales Tax generated by the Hobby Lobby Retail Use on the Site and shall not include the Sales Tax from any other use or property located in the Center or elsewhere in the City.

E. By its approval of this Agreement, the City Council of City has found and determined as follows: (i) that, notwithstanding any other provision set forth in this Agreement or the Covenant which may appear to be to the contrary, the City’s approval and execution of this Agreement shall not constitute a prejudgment or pre-commitment by the City with respect to any of the discretionary City permits and approvals that may be required for the Hobby Lobby Retail Use at the Site, including without limitation any General Plan or Specific Plan Amendment, Planned Community (“PC”) Development Plan text amendment, any demolition, grading, building, or use and occupancy permit, and the environmental reviews and approvals in conjunction with the foregoing that may be required to accommodate the proposed uses on and occupant of the Site, and the City reserves its full and unfettered discretion with respect thereto to the same extent it would have such discretion in the absence of this Agreement; (ii) subject to the foregoing, the City recognizes that the City payments provided for in the Covenant are necessary in order to make the improvement of the Site and contemplated improvements to the Center, as more particularly described in this Agreement, financially feasible; (iii) the value to the City of Owner/Developer’s performance of its obligations set forth in the Covenant in each fiscal year during which City payments are to be made (in terms of economic revitalization, generation of additional local tax revenues that will help to fund vital public services, provision of expanded and more accessible retail and shopping opportunities for the residents of the City, and job growth and retention) will be not less than the amount of such payments; and (iv) that the imposition of the covenants and use restrictions upon the Site pursuant to the Covenant in exchange for the payments to be made by the City constitutes a valid public purpose, including but not limited to furtherance of economic development as expressly permitted by state law.

## C O V E N A N T S

Based upon the foregoing Recitals, which are incorporated herein by this reference, and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, the City and Owner/Developer hereby agree as follows:

1. Defined Terms. Any capitalized terms contained in this Agreement, which are not defined in this Agreement, shall have the meanings ascribed to such terms in the Covenant.
2. Representations and Warranties. Owner/Developer represents and warrants the following: (a) Owner/Developer has entered into an agreement for the construction and use of the Site by Hobby Lobby, and, to the best of Owner/Developer’s knowledge, such agreement is valid and binding, (b) the Hobby Lobby Facility to be constructed and used on the Site is a new



store and is not a store relocated from another city or unincorporated territory, (c) Owner/Developer is not relocating, and shall not relocate, a big box retailer to the Site, within the meaning of California Government Code section 53084, (d) Owner/Developer shall identify the Site as the point-of-sale for any and all sales and use tax generated from the Site in compliance with all applicable state laws, including Government Code section 53084.5, and (e) the individual executing this Agreement and Covenant on behalf of Owner/Developer has the authority to enter into this Agreement and create a binding and enforceable obligation of Owner/Developer, and said individual has obtained any and all necessary authorizations and approvals from the company's governing board for the Owner/Developer to be bound under the terms and conditions in this Agreement.

3. Execution and Recordation of Covenant. Within ten (10) days after the later to occur of the following events (collectively, the "Covenant Conditions"), the City and Owner/Developer shall fill in the blanks, date, and execute the Covenant in recordable form and Owner/Developer shall record in the Official Records for Riverside County, California ("Recorder's Office"), the Covenant against the Site and provide a copy of the recorded Covenant to the City: (i) the date on which the City and any other applicable government agency issues all use and occupancy permits necessary for Owner/Developer to use and operate the Site for the Hobby Lobby Retail Use, excluding those permits which by their nature cannot be issued without the progress or completion of construction including, without limitation, any demolition permit, grading permit, encroachment permit for work or improvements to occur within public rights-of-way, foundation permit, building permit, and similar ministerial or administrative permits; or (ii) the expiration of any periods for challenge of, or appeal from, all of the foregoing and the absence of any such challenge, appeal or the successful resolution thereof in favor of the City and Owner/Developer. These Covenant Conditions are for the benefit of both the City and Owner/Developer. The City agrees to cooperate in the recordation of the Covenant against the Site at no cost to City, and the City Manager or his designee is hereby authorized on behalf of City to execute all documents and take all actions necessary or appropriate to implement this Agreement; provided, however, that in no event shall such date of recordation be later than the date the Hobby Lobby Facility opens for business.

4. Termination of Agreement. If the Covenant Conditions are not satisfied on or before June 30, 2015, or such later deadline as may be mutually approved in writing prior to that date by City and Owner/Developer, this Agreement shall automatically terminate and be of no further force or effect at such time without the requirement of any further notice or action by either Party, and thereafter neither Party shall have any further rights or obligations hereunder.

5. Covenant. Upon recordation in the Recorder's Office of the Covenant, the rights and obligations of the Parties shall be as set forth in the Covenant, and the Covenant shall supersede this Agreement.

6. Assignment. The rights and benefits of this Agreement and Covenant are personal to Owner/Developer and its Corporate Successors (as defined below), which shall be the only permitted Owner/Developer assignees and successors-in-interest of this Agreement. Owner/Developer shall not assign, hypothecate, encumber, or otherwise transfer, voluntarily, involuntarily or by operation of law, its rights and obligations set forth in this Agreement to any other person or entity other than to a Corporate Successor without the City's prior written

consent, which consent the City may grant or withhold in its sole and absolute discretion. The term “Corporate Successor” shall have the same meaning set forth in the Covenant.

7. Cooperation in the Event of Legal Challenge; Validation Action. In the event that any third party files an action seeking to invalidate this Agreement or the Covenant or seeking any equitable remedy that would prevent the full performance hereof or thereof, the City and Owner/Developer agree to cooperate in the defense of such action. Owner/Developer shall pay all of the City’s costs and expenses (including attorney’s fees), shall indemnify the City as provided in Section 8, and the City shall have the sole right to select its legal counsel; provided, however, that such obligation to indemnify and pay costs and expenses shall terminate if Owner/Developer elects in a written notice delivered to the City to terminate the Covenant rather than to oppose such challenge. Such cooperation shall include, without limitation: (i) an agreement by each Party not to default or allow a compromise of said action without the prior written consent of the other Party; (ii) an agreement by each Party to make available to the other Party all non-privileged information necessary or appropriate to conduct the defense of the action; and (iii) an agreement by each Party to make available to the other Party, without charge, any witnesses within the control of the first Party upon reasonable notice who may be called upon to execute declarations or testify in said action.

In addition to the foregoing, if Owner/Developer delivers a written request for such action to City (c/o the City Attorney’s Office) not later than five (5) days after the date the City Council of City approves this Agreement at a public meeting, City shall file an action in Riverside County Superior Court pursuant to California Code of Civil Procedure Section 860 *et seq.* to validate this Agreement and the Covenant and each and every one of its and their provisions. In such event, City and Owner/Developer shall reasonably cooperate in drafting the complaint, briefs, the proposed judgment of validation, and such other pleadings, documents, and filings as may be required or desirable in connection with the validation action. City and its legal counsel shall file and prosecute the validation action, but shall reasonably coordinate and cooperate with Owner/Developer concerning the drafting of pleadings and other documents and with regard to the litigation strategy to be employed. Owner/Developer shall reimburse City within fifteen (15) days after written demand therefor for all costs (“Costs”) of the validation action. Costs include without limitation, attorney’s fees, filing fees and court reporter fees (if any), costs of publication and to effectuate service of process, reasonable photocopying and other reproduction charges, travel time and mileage expenses, and other costs and expenses reasonably incurred by City. In the event of an appeal of such action, the Parties shall cooperate with respect to the appeal to the same extent as at the Superior Court level of the proceedings.

Upon the entry of a final non-appealable judgment of any court with jurisdiction invalidating or enjoining the performance of any material covenant set forth in this Agreement or the Covenant, this Agreement and the Covenant shall automatically terminate without the need of further notice or action by either Party.

8. Indemnification of City. Owner/Developer shall defend, indemnify, assume all responsibility for, and hold the City, and the City’s representatives, volunteers, officers, employees and agents, harmless from any and all claims, demands, damages, defense costs or liability of any kind (including attorney’s fees and costs), that arise from this Agreement (other than those damages caused by the breach of the Agreement by City or by the gross negligence or

willful misconduct of the City's representatives, officers, employees and agents) including, but not limited to, Owner/Developer's failure to pay, if required, prevailing wages on the construction and development of the Site; provided, however, that such obligation shall lapse as provided in Section 7 above if Owner/Developer elects not to oppose a challenge to the Covenant. Owner/Developer shall be solely responsible for determining and effectuating compliance with prevailing wage laws, and the City makes no representation as to the applicability or non-applicability of any of such laws to the development and construction of the Site or any part thereof. Owner/Developer hereby expressly acknowledges and agrees that the City has not previously affirmatively represented to Owner/Developer or its contractor(s), in writing or otherwise, in a call for bids or otherwise, that the development or construction of the Hobby Lobby Facility or the Site is not a "public work," as defined in Section 1720 of the Labor Code.

9. Integration and Amendment. This Agreement and the Covenant attached hereto constitute the entire Agreement by and between the Parties pertaining to the subject matter hereof, and supersede all prior agreements and understandings of the Parties with respect thereto. This Agreement may not be modified, amended, or otherwise changed except by a writing executed by the Parties.

10. Notices. Notices to be given by City or Owner/Developer hereunder may be delivered personally or may be delivered by certified mail or by reputable overnight delivery service providing a delivery confirmation receipt, with mailed notices to be addressed to the appropriate address(es) hereinafter set forth or to such other address(es) that a Party may hereafter designate by written notice. If served by overnight delivery service or certified mail, service will be considered completed and binding on the Party served on the date set forth in the confirmation or certification receipt.

If notice is to City:                      City of La Quinta  
78-495 Calle Tampico  
P.O. Box 1504  
La Quinta, CA 92253  
Attention: City Manager

with a copy to:                              Rutan & Tucker, LLP  
611 Anton Blvd., Suite 1400  
Costa Mesa, CA 92626  
Attention: William H. Ihrke, Esq.

If to Owner/Developer:                      One Eleven La Quinta, LLC  
71084 Tamarisk Lane  
Rancho Mirage, CA 92270  
Attention: Mr. Michael Shovlin

11. Counterparts. This Agreement may be executed in two or more counterparts, each of which when so executed and delivered shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

[signatures on next page]

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the date first set forth above.

“City”

CITY OF LA QUINTA,  
a California municipal corporation

By: \_\_\_\_\_

Frank Spevacek  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

“Owner/Developer”

ONE ELEVEN LA QUINTA, LLC,  
a California limited liability company

By: \_\_\_\_\_

Michael Shovlin  
Manager

**EXHIBIT "A"**  
**TO AGREEMENT**

**DESCRIPTION OF SITE**

[Attached]

[INSERT LEGAL DESCRIPTION AND/OR DEPICTION OF SITE SHOWING HOBBY LOBBY SITE]

**EXHIBIT “B”  
TO AGREEMENT  
FORM OF COVENANT**

[Attached]



RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of La Quinta  
78-495 Calle Tampico  
P.O. Box 1504  
La Quinta, CA 92253  
Attention: City Manager

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[Space above for recorder.]  
(Exempt from Recordation Fee per Gov. Code § 27383)

**COVENANTS, CONDITIONS, AND RESTRICTIONS**  
**AFFECTING INTERESTS IN REAL PROPERTY**

This COVENANTS, CONDITIONS, AND RESTRICTIONS AFFECTING INTERESTS IN REAL PROPERTY (the “Covenant”) is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 200\_\_, by and between the CITY OF LA QUINTA, a California charter city and municipal corporation (“City”), and ONE ELEVEN LA QUINTA, LLC, a California limited liability company (“Owner” or “Owner/Developer”) (individually a “Party” and collectively the “Parties”).

**RECITALS**

A. The 111 La Quinta Center is a large commercial/retail site that consists of approximately 60 acres bounded by Washington Street, Highway 111, Adams Street and the Whitewater Channel (the “Center”). The Specific Plan for the Center provides that there will be approximately 617,000 square feet of retail space when built out. As of the date of this Agreement, approximately 485,000 square feet of retail space currently exists. Several prominent businesses are located at the Center, such as Stater Bros., Staples, Big 5, AAA, Petco, Ross, and Kohl’s. Though the majority of the Center is built out, a few building pad locations remain undeveloped.

B. Owner/Developer is the owner in fee of a majority of the Center, including certain developable pad of raw land generally located north of Highway 111 and west of Adams Street, more particularly identified as Parcel 4 of Parcel Map 36531 attached hereto as Exhibit “A” and incorporated herein by reference (the “Site”). Based on communications received by the City, Owner/Developer has arranged for the development and use of the Site by Hobby Lobby, an arts and craft supply retailer that generates Sales Tax, provided Owner/Developer (or a permitted assignee or successor in interest) obtains the necessary governmental permits and approvals from all governmental agencies with jurisdiction, including the City.

C. On or about \_\_\_\_\_, 2014, the City and Owner/Developer entered into that certain unrecorded agreement captioned "Agreement to Enter Into Covenant to Operate and Pay Compensation Based on Sales Tax Revenue (One Eleven La Quinta, LLC)" (the "Agreement") authorizing the recordation of this Covenant against the Site upon the timely satisfaction of the "Covenant Conditions" identified therein.

D. As set forth in the Agreement, the Owner/Developer requested \$400,000 in economic development assistance from the City. This funding would be used to make certain improvements to the Center that will assist in the ability to attract new and maintain existing retail businesses, that will assist the Owner/Developer with the construction or facilitating the construction of the remaining undeveloped pads, and that will assist the Owner/Developer to improve and use currently vacant commercial space at the Center, all as more particularly set forth in this Covenant and the Agreement.

E. Subject to the terms and conditions hereof and of the Entitlements (defined below), Owner/Developer has agreed to develop the Site for the Hobby Lobby Facility and use and operate the Site for the Hobby Lobby Retail Use, as more particularly set forth in this Covenant .

F. In consideration for Owner/Developer's encumbrance of the Site by this Covenant and Owner/Developer's performance of its obligations hereunder, the City has agreed to make certain payments to Owner/Developer, the amount of which is measured by the Sales Tax generated by the Hobby Lobby Retail Use on the Site. The City and Owner/Developer have agreed that the amounts required to be paid by the City to Owner/Developer hereunder during each Quarter of the Operating Period provided for herein is a fair exchange for the consideration to be furnished by Owner/Developer to City in that Quarter.

G. Owner/Developer represents and warrants that (i) Owner/Developer has entered into an agreement for the construction and use of the Site by Hobby Lobby, and, to the best of Owner/Developer's knowledge, such agreement is valid and binding, (ii) the Hobby Lobby Facility to be constructed and used on the Site is a new store and is not a store relocated from another city or unincorporated territory, (iii) Owner/Developer is not relocating, and shall not relocate, a big box retailer to the Site, within the meaning of California Government Code section 53084, (iv) Owner/Developer shall identify the Site as the point-of-sale for any and all Sales Tax generated from the Site in compliance with all applicable state laws, including Government Code section 53084.5, and (v) the individual executing this Covenant on behalf of Owner/Developer has the authority to enter into this Covenant and create a binding and enforceable obligation of Owner/Developer, and said individual has obtained any and all necessary authorizations and approvals from the company's governing board for the Owner/Developer to be bound under the terms and conditions in this Covenant.

## **C O V E N A N T S**

Based upon the foregoing Recitals, which are incorporated herein by this reference and are acknowledged by the Parties as true and correct, and for other good and valuable

consideration, the receipt and sufficiency of which is acknowledged by both Parties, the City and Owner/Developer hereby agree as follows:

1. DEFINED TERMS.

The following terms when used in this Covenant shall have the meanings set forth below:

The term “Agreement” shall have the meaning ascribed in Recital C of this Covenant.

The term “Center” shall mean the 111 La Quinta Center, a large commercial/retail site that consists of approximately 60 acres bounded by Washington Street, Highway 111, Adams Street and the Whitewater Channel in the City.

The term “Commencement Date” shall have the meaning ascribed in Section 2 of this Covenant.

The term “Corporate Successor” shall mean any single purpose entity (such as limited liability company or corporation authorized to conduct business in the State of California) that is wholly owned by, controlled by, or under common control with Owner/Developer or Michael Shovlin, or both.

The term “Covenant Payments” shall mean the amounts to be paid by the City to Owner/Developer with respect to each Quarter of the Operating Period.

The term “Covenant Payments Cap Amount” shall have the meaning ascribed in Section 4.1.1(b) of this Covenant.

The term “Default” shall have the meaning ascribed in Section 5.1 of this Covenant.

The term “Effective Date” shall mean the date this Covenant is executed by the latter of the two Parties to sign, which date shall be inserted in the preamble to this Covenant.

The term “Entitlements” shall mean those discretionary City land use permits and approvals (including all conditions of approval therein) required to authorize construction, use, and operation of the Hobby Lobby Facility on the Site, as the same may be amended from time to time.

The term “Fiscal Year” shall mean City’s fiscal year, which commences on July 1 and ends on the next succeeding June 30.

The term “Force Majeure” is defined in Section 6.6 below.

The term “Holder” shall have the meaning ascribed in Section 5.1(b) of this Covenant.

The term “Hobby Lobby” shall mean that certain arts and crafts retailer and company doing business as and generally known and marketed to the general public as “Hobby Lobby,” which engages in retail sales and operations open to the general public that produce Sales Tax

revenues, whether the company is in the form of a closely held corporation, publicly traded corporation, limited liability company, or other entity.

The term “Hobby Lobby Facility” shall mean a facility for retail sales for Hobby Lobby located on the Site, containing not less than 50,000 square feet of building area and operating under the Hobby Lobby name.

The term “Hobby Lobby Retail Use” shall mean the use and operation of the Hobby Lobby Facility for the marketing and sale of arts and crafts (and all other merchandise and taxable goods and services) to the general public.

The term “operate” shall mean for not less than 50,000 square feet of building area on the Site to be open to the public and Hobby Lobby’s and Owner/Developer’s members during its business hours except for such reasonable interruptions as may be incidental to the conduct of Hobby Lobby’s business.

The term “Operating Period” refers to the period between the Commencement Date and the Termination Date.

The term “Permitted Assigns” shall mean a “Corporate Successor” to Owner.

The term “Permitted Closure” shall mean periods of “Force Majeure” (as such term is defined in Section 6.6) and such period or periods aggregating up to not more than one (1) year associated with any renovation of the Site.

The term “Quarter” shall mean (i) any of the three (3) month periods during a Fiscal Year commencing July 1, October 1, January 1, or April 1, or (ii) the quarterly or other periods used by the State Board of Equalization (SBE) in calculating or making Sales Tax payments to City, if such periods differ from City’s fiscal quarters described in clause (i) hereinabove.

The term “Request for Notice” shall have the meaning ascribed in Section 5.1(b) of this Covenant.

The term “Sales Tax” shall mean, for a given Quarter, or part thereof, during the Operating Period, that portion of sales and use taxes allocated, paid to, and received by City from the imposition of the Bradley-Burns Uniform Sales and Use Tax Law (commencing with Section 7200 of the California Revenue and Taxation Code) and the Sales and Use Tax Law (commencing with Section 6000 of the California Revenue and Taxation Code), or any successor law or amendments thereto, that arises from taxable sales and lease transactions generated by the Hobby Lobby Facility on the Site. Notwithstanding the foregoing, the term “Sales Tax” shall not include (i) the portion of sales or use taxes attributable to the Hobby Lobby Facility on the Site that are retained by the State Board of Equalization as an administrative, processing, or handling charge (calculated at the same percentage of gross revenues as is applicable City-wide); (ii) the portion of such revenues which in future years may be allocated and paid to City but which is restricted by law (but not contract) by an entity other than City (and binding upon City) to be used for specific uses (other than the uses provided for in this Covenant including without limitation disaster relief, transportation improvements, or otherwise); or (iii) any Sales Tax that may be generated from other retail sources at the Center other than a sale generated from the

Hobby Lobby Facility. In addition, the term “Sales Tax” for a given quarter shall also include any sums allocated, paid to and received by the City in substitution for Sales Taxes or otherwise by reference to taxable sales generated by the Hobby Lobby Facility (and not excluded under classes (i) through (iii) above) including without limitation other funds actually received by the City pursuant to legislation such as, but not limited to, Revenue and Taxation Code section 97.68, enacted expressly as a substitute for sales tax revenues in order to reimburse the City for sales tax revenues losses resulting from decreases in the 1% rate of sales tax.

The term “Sales Tax Statement” refers to each quarterly statement to be prepared by Owner/Developer or caused to be prepared at the direction of Owner/Developer and submitted to the SBE and City identifying the portion of Sales Tax generated by the Hobby Lobby Facility on the Site during the previous Quarter as a result of taxable sales transactions, as provided in Section 4.3 of this Covenant.

The term “SBE” shall mean the California State Board of Equalization or successor agency with the responsibility of collecting and administering the distribution and payment to the City of Sales Tax.

The term “Site” shall have the meaning ascribed in Recital B of this Covenant.

The term “Termination Date” shall mean the date that is the earliest of (i) the date that is five and one-half (5 ½) years following the Commencement Date, unless continued pursuant to Section 4.1.1(d), in which case such date may be up to but not more than six (6) years following the Commencement Date; (ii) the date that the Covenant Payments Cap Amount is paid in full; or (iii) the date on which this Covenant is terminated pursuant to Sections 5.2 or 5.3, as applicable.

## 2. CONDITION TO OWNER/DEVELOPER’S RIGHT TO RECEIVE PAYMENTS.

2.1 Opening Date; Commencement Date. As a condition precedent to Owner/Developer’s right to receive the Covenant Payments, Owner/Developer shall open or cause and allow to be opened the Hobby Lobby Facility to be opened for business to the public (excluding any special “pre-opening” periods) for the Hobby Lobby Retail Use, all in compliance with the Entitlements. The term “the public” includes, in addition to all members of the general public, Hobby Lobby’s and Owner/Developer’s members (if any). The day on which the aforesaid condition is satisfied shall constitute the “Commencement Date,” at which time Owner/Developer’s obligations pursuant to Section 3 of this Covenant and City’s obligations pursuant to Section 4 of this Covenant shall commence.

2.2 Outside Date. Notwithstanding any other provision set forth in this Covenant to the contrary, and subject to extension for events of force majeure as provided in Section 6.6, if the condition set forth in the first sentence of the preceding paragraph is not satisfied on or before the date that is eighteen (18) months after the issuance of the first building permit for the Hobby Lobby Facility project, either Owner/Developer or City may terminate this Covenant by delivery of written notice of termination to the other Party and, in such event, neither Party shall have any further rights against or obligations to the other Party arising out of this Covenant.

2.3 Operating Condition. If Owner/Developer, or Permitted Assigns, ceases to own the Site and/or ceases to allow for the use and operation of the Site for the Hobby Lobby Facility in furtherance of the Hobby Lobby Retail Use, other than by reason of a Permitted Closure, then this Covenant shall terminate as of the date such event occurs (other than by reason of a Permitted Closure), and no further payments shall be due under Section 4.1 below by reference to Sales Tax generated in any Quarters after such date.

3. OWNER/DEVELOPER'S OBLIGATIONS.

3.1 Continuous Operation; Site As Point of Sale. If the Hobby Lobby Facility opens pursuant to Sections 2.1 and 2.2 of this Covenant, then, from and after the Commencement Date, Owner/Developer shall continuously use and operate, or shall cause and allow for the continuous use and operation of, the Hobby Lobby Facility on the Site for the Hobby Lobby Retail Uses during normal business hours (except for Permitted Closures) during the entire Operating Period. Owner/Developer shall cause and allow for the Hobby Lobby Facility to operate with inventory and sales personnel sufficient to satisfy and respond to customer demand. To the maximum extent permitted by law, and in compliance with Government Code section 53084.5, Owner/Developer shall designate or shall cause Hobby Lobby to designate the Site on its Sales Tax Statements as the point-of-sale for all sales transactions arising out of or generated from the business conducted on the Site. In addition, Owner shall exercise commercially reasonable diligence in an effort to cause financing companies to designate the Site (and the City of La Quinta) on reports they are required to file with the SBE as the situs of the financing of any goods where the transaction is generated from the Site.

3.2 Use Restriction. During the entire Operating Period, the Site shall be the Hobby Lobby Facility for the Hobby Lobby Retail Use and for no other purpose, in compliance with the Entitlements and applicable provisions of the City's Municipal Code. Owner/Developer shall ensure that the Site shall not be put to any use other than the intended and approved use and operation as the Hobby Lobby Facility in furtherance of the Hobby Lobby Retail Use.

3.3 Maintenance and Repair of Site; Landscaping. During the entire Operating Period, Owner/Developer at its sole cost and expense shall maintain, or shall cause the maintenance of, the Site and the improvements thereon and all facilities appurtenant thereto in first class condition (as judged by other developments of similar quality located in Palm Desert, Palm Springs, Rancho Mirage, Indian Wells or La Quinta) and repair and free from accumulations of debris, weeds, graffiti, and waste materials, with landscaping in a healthy condition, and shall otherwise fully comply with the Site's maintenance standards established in the Entitlements and applicable provisions in the City's Municipal Code. During such period, Owner/Developer shall not abandon, or allow for the abandonment of, any portion of the Site or leave the Site unguarded or unprotected, and shall not otherwise act or fail to act in such a way as to unreasonably increase the risk of any damage to the Site or of any other impairment of City's interest set forth in this Covenant. During the entire Operating Period, Owner/Developer at its sole cost and expense shall maintain, or cause the maintenance of, the landscaping on the Site in compliance with the approved landscape plans and applicable provisions in the City's Municipal Code.

3.4 Compliance with Laws. During the entire Operating Period, Owner/Developer shall construct, use and operate, or shall cause and allow for the construction, use, and operation of, the Hobby Lobby Facility on the Site in conformity with all applicable federal, state (including without limitation the California Civil Code, the California Government Code, the California Health and Safety Code, the California Labor Code, the California Public Resources Code, and the California Revenue and Taxation Code), and local laws, ordinances, and regulations (including without limitation City standards relating to the placement of storage containers); provided, however, that Owner/Developer does not waive its right to challenge the validity or applicability thereof to Owner/Developer or the Site; provided further, however, that nothing in the preceding clause (sentence) does or shall be deemed to relieve or release Owner/Developer of its obligations set forth in this Covenant by Owner/Developer delegating any obligation to Hobby Lobby or any other third party, by written or oral agreement or otherwise, to which the City is not a party or to which the City has not expressly agreed to such assignment of Owner/Developer's obligation pursuant to the terms and conditions in this Covenant.

3.5 Non-Discrimination. Owner/Developer agrees not to violate applicable laws that prohibit discrimination against any person or class of persons by reason of gender, marital status, race, color, creed, mental or physical disability, religion, age, ancestry, or national origin.

3.6 Indemnification of City. Owner/Developer shall defend, indemnify, assume all responsibility for, and hold the City, and the City's representatives, volunteers, officers, employees and agents, harmless from any and all claims, demands, damages, defense costs or liability of any kind (including attorney's fees and costs), that arise from Owner/Developer's ownership of the Site, or from the allowance for the use and operation of the Site, or which may be caused by any acts or omissions of the Owner/Developer under this Covenant, whether such activities or performance thereof be by Owner/Developer or by anyone directly or indirectly employed or contracted with by Owner/Developer, including Hobby Lobby, and whether such damage shall accrue or be discovered before or after termination of this Covenant, including, but not limited to, Owner/Developer's failure to pay, if required, prevailing wages on the construction and development of the Hobby Lobby Facility. Owner/Developer shall be solely responsible for determining and effectuating compliance with prevailing wage laws, and the City makes no representation as to the applicability or non-applicability of any of such laws to the development and construction of the Hobby Lobby Facility or any part thereof. Owner hereby expressly acknowledges and agrees that the City has not previously affirmatively represented to Owner/Developer or its contractor(s), in writing or otherwise, in a call for bids or otherwise, that the development or construction of the Hobby Lobby Facility or the Site is not a "public work," as defined in Section 1720 of the Labor Code.

3.7 Use of Covenant Payments.

3.7.1 Amounts for Specific Improvements at the Center. For any and all Covenant Payments received by the Owner/Developer pursuant to Section 4.1.1 of this Covenant, Owner/Developer shall use the received Covenant Payments according to the following:

(a) One Hundred Fifty Thousand Dollars (\$150,000) shall be used for pedestrian walkway improvements associated with the construction of the Hobby Lobby Facility and adjacent developable pad sites to improve pedestrian connectivity and flow at the Center.

(b) One Hundred Twenty Thousand Dollars (\$120,000) shall be used for the acquisition by Owner/Developer of an easement or other appropriate interest in real property necessary or appropriate for the installation and use of a traffic signal and access to the Center from the intersection of Adams Street and Corporate Center Drive in the City.

(c) Fifty Thousand Dollars (\$50,000) shall be used for on-site improvements at the Center associated with the installation and use of a traffic signal at the intersection of Adams Street and Corporate Center Drive in the City.

(d) Fifty Five Thousand Dollars (\$55,000) shall be used for future signage and aesthetic improvements for the benefit of the Center and its economic development.

(e) Twenty Five Thousand Dollars (\$25,000) shall be used for remaining landscaping improvements at the Center.

3.7.2 Owner/Developer Obligation to Keep Records for Covenant Payments. Owner/Developer shall keep and maintain, commencing on the Commencement Date and ending on the date that is one year after the Termination Date, financial books and records of all Covenant Payments received by Owner/Developer under this Covenant, and the use set forth in Section 3.7.1 of this Covenant to which the received Covenant Payments were used. The City shall have the right to request review of Owner/Developer's books and records pursuant to Section 4.1.4 of this Covenant. If the City has evidence and, based thereon, the City reasonably suspects that there has been an improper use by Owner/Developer of received Covenant Payments, the City may, in its reasonable discretion, require Owner/Developer to undergo an audit of its books and records to verify the receipt and use of the received Covenant Payments. Any audit performed pursuant to this section shall be completed by an independent auditor or accountant licensed to conduct such an audit in the State of California, and the costs of any such audit shall be split equally (50%/50%) by Owner/Developer and City unless, after the completion of the audit, the evidence shows willful misconduct or gross negligence by Owner/Developer with the ultimate use of the received Covenant Payments, in which case Owner/Developer shall pay all costs (100%) of any such audit.

3.7.3 Allocation of Covenant Payments if Cap Amount Not Reached. If the Covenant Payments Cap Amount is not reached pursuant to subdivision (b), (c), or (d) of Section 4.1.1 of this Covenant, Owner/Developer shall use its best efforts to use the received Covenant Payments on a pro-rated, proportionate amount based on the amounts and uses identified in subdivisions (a)-(e) of Section 3.7.1 above; provided, however, that Owner/Developer shall not be in default of this Covenant for failure to use the received Covenant Payments on such a pro-rated, proportionate amount as set forth in this section as long as Owner/Developer has not exceeded the amount identified for the corresponding use set forth in subdivisions (a)-(e) of Section 3.7.1 above.



4. OBLIGATIONS OF CITY.

4.1 Covenant Payments to Owner/Developer.

4.1.1 Amount of Covenant Payments; Cap. In consideration for Owner/Developer's undertakings pursuant to this Covenant and the encumbrance of Owner/Developer's interest in the Site pursuant to this Covenant, City shall make the following Covenant Payments to Owner after the end of each Quarter (or part thereof) during the Operating Period:

(a) Subject to Section 4.1.3 and subparagraphs (b)-(d) of this section below, the Covenant Payments with respect to each Quarter shall be in an amount equal to fifty percent (50%) of the Sales Tax for that Quarter generated by the Hobby Lobby Retail Use in the Hobby Lobby Facility on the Site, except that in the Quarter during which the Termination Date occurs, the Covenant Payments shall be prorated such that City shall only pay to Owner 50% of Sales Tax for the period between the first day of such Quarter and the Termination Date.

(b) Notwithstanding any other provision set forth in this Covenant to the contrary, in no event shall the total amount of Covenant Payments made by City to Owner/Developer exceed the sum of Four Hundred Thousand Dollars (\$400,000) (the "Covenant Payments Cap Amount"). In this regard, it is understood and agreed that the Covenant Payments are in consideration of Owner/Developer's performance during each Quarter of the Operating Period and are not repayments of a loan. Upon payment of the Covenant Payments Cap Amount by the City to Owner/Developer, the City shall have no further obligation to make any Covenant Payments pursuant to Section 4.1.1(a) above.

(c) Notwithstanding any other provision set forth in this Covenant to the contrary, even in the event the Covenant Payments Cap Amount has not been reached at the end of the Operating Period, City shall have no further obligation after that time to make additional Covenant Payments.

(d) In the event that the Covenant Payments Cap Amount is not reached by the date that is five and one-half (5 ½) years following the Commencement Date and provided that this Covenant has not been otherwise terminated and provided further that the Owner/Developer is not in default under this Covenant, then this Covenant (and the Parties obligations hereunder) shall continue for an additional six (6) month period until the Covenant Payments Cap Amount is reached, but in no event shall the total duration of this Covenant exceed six (6) years from the Commencement Date.

4.1.2 Source of Payments. The Covenant Payments shall be payable from any source of funds legally available to City, including City's general fund. In this regard, it is understood and agreed that the Sales Tax that is generated from the Hobby Lobby Facility on the Site is being used merely as a measure of the amount of the Covenant Payments that are periodically owing by City to Owner/Developer, and that City is not pledging any portion of the Sales Tax generated from the Site to Owner/Developer.

4.1.3 Payment Procedure. Subject to the terms and conditions of this Covenant, not later than thirty (30) days after the Sales Tax for the Hobby Lobby Facility on the Site is

remitted to the City by the SBE for a Quarter during the Operating Period, the City shall pay the Covenant Payment for said Quarter, or portion thereof, to Owner/Developer. Each such payment shall be accompanied by a statement identifying (i) the amount of Sales Tax upon which the Covenant Payment amount was calculated, and (ii) a cumulative total comparing the amount of a Covenant Payment being paid, together with all prior Covenant Payments, with the Covenant Payment Cap Amount.

The amount of the City's quarterly Covenant Payments to Owner shall be based upon the amount of Sales Tax that the City actually received from the SBE within fifteen (15) days prior to the applicable payment date. If the City cannot confirm receipt of Sales Tax revenues from the Hobby Lobby Facility prior to that date, after and despite its exercise of reasonable diligence to confirm such receipt, the City shall have no obligation to make a payment to Owner/Developer for that Quarter unless and until the City confirms that it did receive Sales Tax revenues from the Hobby Lobby Facility. If and to the extent the City is able to confirm the receipt of such Sales Tax revenue, the City shall pay Owner/Developer its share of that Sales Tax revenue for that Quarter in the next succeeding payment cycle required to be made by the City to Owner/Developer pursuant to this Section 4.1.3.

If, after any such quarterly payment is made, either the City or Owner/Developer obtains information that the amount of City's payment was in error, the Party obtaining such information shall promptly notify the other Party and shall provide such detailed information as may be necessary to explain the discrepancy. The discrepancy shall be accounted for by means of an adjustment to the next quarterly payment to be made by the City (either an additional payment in the event City has underpaid a prior Covenant Payment that is due, or a credit against the subsequent Covenant Payment in the event City has overpaid); provided, however, that in the event an adjustment needs to be made in excess of Ten Thousand Dollars (\$10,000), the Party entitled to said sum shall be entitled to deliver a written notice to the other Party requesting an immediate adjustment and in such event the other Party shall make an appropriate payment within fifteen (15) days from receipt of said notice.

4.1.4 Books and Records. Upon the written request of either Party, the other Party shall make available for inspection (at City Hall in the event of a review of City records and at Owner's place of business in La Quinta in the event of a review of Owner's records) its books and records as the requesting Party may reasonably determine must be reviewed in order to determine whether the correct amount of Covenant Payments have been made or are being made hereunder. Notwithstanding the foregoing, the City shall not be required to produce any books or records that, by applicable law, the City is permitted to withhold from disclosure or prohibited from producing, and Owner shall not be required to produce information that violates the statutorily prescribed privacy rights of individual customers.

4.1.5 No Acceleration; Prepayment Permitted. It is acknowledged by the Parties that any payments by City provided for in this Covenant are in consideration for the performance by Owner during the time period(s) for which payments are due. Therefore, City's failure to timely make any payments or City's failure to perform any of its other obligations hereunder shall not cause the acceleration of any anticipated future Covenant Payments by City to Owner. The City shall be permitted to prepay any of the Covenant Payments at any time without penalty; provided, however, that such prepayment shall be refunded by

Owner/Developer to the City if Owner/Developer fails to continue to perform or Defaults under this Covenant during the period for which the City's prepayment was intended to cover.

4.2 Additional Condition Precedent to City's Obligations. In addition to the provisions set forth in Section 2 of this Covenant, City's obligation to make the Covenant Payments pursuant to Section 4.1 of this Covenant for any Quarter during the Operating Period shall be contingent and conditional upon Owner's performance of its obligations set forth in Section 3 of this Covenant during such Quarter.

4.3 Provision of Sales Tax Statements to City. Upon the written request of City, Owner/Developer shall deliver to City, and shall cause Hobby Lobby to deliver to the City, true and correct copies of all reports that Owner/Developer and Hobby Lobby files with the SBE with regard to taxable sales transactions occurring on, generated from and with respect to the Hobby Lobby Retail Use, Hobby Lobby Facility, and the Site (the "Sales Tax Statements"). Such reports shall be delivered to City within ten (10) days of the City's request. In the event that there is any private business or customer information on the Sales Tax Statement that is not reasonably necessary to enable City to verify the accuracy thereof for purposes of performing its obligations and enforcing its rights set forth in this Covenant, Owner shall be permitted to redact such information from the copy of the document provided to City.

## 5. DEFAULTS AND REMEDIES.

### 5.1 Defaults.

(a) Subject to Force Majeure (Section 6.6), the occurrence of any of the following shall constitute a Default:

(i) Subject to permitted delays for nonpayment set forth in this Covenant, the failure by either Party to perform any obligation of such Party for the payment of money under this Covenant if such failure is not cured within fifteen (15) calendar days after the nonperforming Party's receipt of written notice from the other Party that such obligation was not performed when due; or

(ii) The failure by either Party to perform any of its obligations (other than obligations described in clause (i) of this Section 5.1) set forth in this Covenant, if such failure is not cured within thirty (30) days after the nonperforming Party's receipt of written notice from the other Party or, if such failure is of a nature that cannot reasonably be cured within thirty (30) days, the failure by such Party to commence such cure within thirty (30) days and thereafter diligently and continuously prosecutes such cure to completion, with said completion of cure not to exceed ninety (90) days after the commencement date for the cure of the Default; or

(iii) Any representation or warranty by a Party set forth in this Covenant proves to have been incorrect in any material respect when made; or

(iv) The Hobby Lobby Facility is materially damaged or destroyed by fire or other casualty during the Operating Period and Owner/Developer fails to commence restoration, or fails to cause and allow for the commencement of restoration by

Hobby Lobby, of the improvements on the Site within a six (6) months or thereafter fails to diligently and continuously proceed to complete such restoration in accordance with this Covenant; or

(v) Owner/Developer or Hobby Lobby is enjoined or otherwise prohibited by any governmental agency from occupying the Site during the Operating Period and such injunction or prohibition continues without stay for ninety (90) days or more for any reason; or

(vi) Owner/Developer or Hobby Lobby defaults on, and fails to timely cure, any mortgage, deed of trust, or other security interest recorded against the Site; or

(vii) The voluntary or involuntary suspension or termination of the Hobby Lobby Retail Use on the Site that is not a Permitted Closure; or

(viii) A court having jurisdiction shall have made or entered any decree or order (A) adjudging Owner/Developer or Hobby Lobby to be bankrupt or insolvent, (B) approving as properly filed a petition seeking reorganization of either Owner/Developer or Hobby Lobby, or seeking any arrangement for either Owner/Developer or Hobby Lobby under the bankruptcy law or any other applicable debtor's relief law or statute of the United States or any state or other jurisdiction, (C) appointing a receiver, trustee, liquidator, or assignee of either Owner/Developer or Hobby Lobby in bankruptcy or insolvency or for any of their properties or business operations, or (D) directing the winding up or liquidation of Owner/Developer or Hobby Lobby, if any such decree or order described in subclauses (A) to (D), inclusive, shall have continued without stay or without being discharged for a period of sixty (60) days, unless a lesser time period is permitted for cure under any other mortgage or deed of trust held by any Holder and recorded against the Site, in which event such lesser time period will apply under this clause (viii) as well; or either Owner/Developer or Hobby Lobby shall have admitted in writing its inability to pay its debts as they fall due or shall have voluntarily submitted to or filed a petition seeking any decree or order of the nature described in clauses (A) to (D), inclusive.

(b) For each mortgage, deed of trust, or other security interest recorded against the Site, Owner/Developer shall record, and Owner/Developer shall cause Hobby Lobby to record, for the benefit of the City, a Request for Notice under Civil Code Section 2924b in a form substantially similar to Exhibit "B" attached hereto and incorporated by reference (the "Request for Notice"), with Owner/Developer to cause each recorded Request for Notice to be delivered to the City by the Holder of any mortgage, deed of trust, or other security interest recorded against the Site to secure any payment and/or performance obligation of either Owner/Developer or Hobby Lobby. In the event Owner/Developer fails to perform any of its obligations under this Covenant and City sends a notice of such failure to Owner/Developer, concurrently therewith City shall send a copy of such notice to any mortgagee or deed of trust holder with respect to the Site (herein the "Holder") (the name and address of which Holder shall be furnished by Owner/Developer or such Holder to City) and the Holder shall have the same period of time as is available to Owner/Developer to remedy such breach or failure under this Covenant. City shall accept any proper cure of a breach or failure tendered by the Holder. In the event the Site is subject to foreclosure or a deed in lieu of foreclosure, this Covenant shall automatically terminate, if not previously terminated pursuant to Section 5.1(a)(vi), and shall be

of no further force and effect immediately upon the commencement of any proceeding to foreclose on the Site or process a deed in lieu thereof, and Owner/Developer shall not be entitled to any unpaid Covenant Payments from and after the date of commencement of any proceeding to foreclose or process a deed in lieu thereof.

5.2 City's Remedies Upon Default by Owner. Upon the occurrence of any Default by Owner/Developer, and after Owner/Developer's receipt of written notice of default and expiration of the time for Owner/Developer to cure such Default as provided in Section 5.1, City may at its option:

(i) Suspend the payment of Covenant Payments otherwise due and payable to Owner/Developer under this Covenant for the period that Owner/Developer remains in Default. If City has so suspended its payments in accordance with the terms of this clause (i), then upon Owner/Developer's cure of such Default, City shall resume its payment obligations, but shall have no obligation to make payments for any Quarter or portion thereof during which City's obligation to make payments was so suspended; or

(ii) if the Default continues uninterrupted for a period of six (6) months, City may terminate this Covenant, in which case City's obligation to make payments to Owner/Developer for any period of time after the occurrence of the Default shall be finally terminated and discharged.

In no event, however, shall City have the right (A) to specifically enforce Owner/Developer's covenants set forth in Section 3 of this Covenant, (B) to seek damages other than by offset of future Covenant Payments otherwise due hereunder, (C) to prevent Owner/Developer's conversion of the Site to another lawful use (even if such use would be inconsistent with this Covenant), or (D) to sue Owner/Developer or to recover from Owner/Developer any amount that is actually or allegedly attributable to loss of anticipated Sales Tax or other revenues, whether because the amount of Sales Tax generated from the Site is less than projected by Owner/Developer, Hobby Lobby, or City, or because Owner Developer does not allow for the operation of, or Hobby Lobby does not operate, the Hobby Lobby Facility on the Site for the entire Operating Period.

5.3 Owner/Developer's Remedies Upon Default by City. Upon the occurrence of any Default by City, and after City's receipt of written notice of Default from Owner/Developer and expiration of the time for City to cure such Default as provided in Section 5.1, Owner/Developer may initiate a judicial proceeding seeking an order for the City to continue to perform under this Covenant, or the Owner/Developer may terminate this Covenant by written notice to City and may seek unpaid Covenant Payments due and owing to Owner/Developer up until the date of the Default, subject to the provisions of Section 4.1.5. Notwithstanding any provisions in this Covenant to the contrary, Owner/Developer's exclusive remedies in equity and at law, including all monetary damages and compensation, are set forth in this Section 5.3, and Owner/Developer shall have no right to claim or receive any other compensatory, punitive, incidental, or other monetary damages.

5.4 Cumulative Remedies; No Waiver. Except as expressly provided herein, the nondefaulting Party's rights and remedies hereunder are cumulative and in addition to all rights

and remedies provided by law from time to time and the exercise by the nondefaulting Party of any right or remedy shall not prejudice such Party in the exercise of any other right or remedy. None of the provisions of this Covenant shall be considered waived by either Party except when such waiver is delivered in writing. No waiver of any Default shall be implied from any omission by City to take action on account of such Default if such Default persists or is repeated. No waiver of any Default shall affect any Default other than the Default expressly waived, and any such waiver shall be operative only for the time and to the extent stated. No waiver of any provision of this Covenant shall be construed as a waiver of any subsequent breach of the same provision. A Party's consent to or approval of any act by the other Party requiring further consent or approval shall not be deemed to waive or render unnecessary the consenting Party's consent to or approval of any subsequent act. A Party's acceptance of the late performance of any obligation shall not constitute a waiver by such Party of the right to require prompt performance of all further obligations. A Party's acceptance of any performance following the sending or filing of any notice of Default shall not constitute a waiver of that Party's right to proceed with the exercise of its remedies for any unfulfilled obligations. A Party's acceptance of any partial performance shall not constitute a waiver by that Party of any rights relating to the unfulfilled portion of the applicable obligation.

5.5 Limitations on City's Liability. Owner/Developer acknowledges and agrees that: (i) this Covenant shall not be deemed or construed as creating a partnership, joint venture, or similar association between Owner/Developer and City, the relationship between Owner/Developer and City pursuant to this Covenant is and shall remain solely that of contracting Parties, that the development and operation of the Hobby Lobby Facility is a private undertaking, and City neither undertakes nor assumes any responsibility, other than as expressly provided for in this Covenant or as may be granted the City pursuant to its police power under state and City law, to review, inspect, supervise, approve, or inform Owner/Developer or Hobby Lobby of any matter in connection with the development or operation of the Hobby Lobby Facility on the Site, including matters relating to architects, designers, suppliers, or the materials used by any of them; and Owner/Developer shall rely entirely on its own judgment or that of Hobby Lobby with respect to such matters; (ii) by virtue of this Covenant, City shall not be directly or indirectly liable or responsible for any loss or injury of any kind to any person or property resulting from any construction on, or occupancy or use of, the Site, whether arising from: (A) any defect in any building, grading, landscaping, or other onsite or offsite improvement; (B) any act or omission of Owner/Developer or Hobby Lobby, and any of their respective agents, employees, independent contractors, licensees, lessees, or invitees; or (C) any accident on the Site or any fire or other casualty or hazard thereon; and (iii) by accepting or approving anything required to be performed or given to City under this Covenant, including any certificate, survey, appraisal, or insurance policy, City shall not be deemed to have warranted or represented the sufficiency or legal effect of the same, and no such acceptance or approval shall constitute a warranty or representation by City to anyone.

## 6. GENERAL PROVISIONS.

6.1 Integration and Amendment. This Covenant and the Agreement constitute the entire agreement by and between the Parties pertaining to the subject matter hereof, and supersede all prior agreements and understandings of the Parties with respect thereto. This

Covenant may not be modified, amended, supplemented, or otherwise changed except by a writing executed by both Parties.

6.2 Captions. Section headings used in this Covenant are for convenience of reference only and shall not affect the construction of any provisions of this Covenant.

6.3 Binding Effect; Successors and Assigns; Assignments. This Covenant shall run with the land and shall be binding upon and inure to the benefit of, the Parties and their respective successors and assigns, as limited by this Section 6.3. Except as such assignment relates to Permitted Assigns or a Holder, the Owner/Developer shall not assign, hypothecate, encumber or otherwise transfer, either voluntarily, involuntarily or by operation of law, its rights or obligations as set forth in this Covenant without first obtaining the City's prior written consent, which may be given or denied or conditioned in the City's sole and absolute discretion. For any Permitted Assign, Owner/Developer shall deliver to the City no later than ten (10) days after the execution of an assignment and assumption or other similar agreement notice of such assignment, copy of the agreement memorializing the assignment, the name and address(es) for notices to be delivered to the Permitted Assign by the City pursuant to this Covenant, and any documents or other evidence that the City may request, in its reasonable discretion, to verify that the assignee of the Owner/Developer's rights and obligations under this Covenant is to a Permitted Assign(s). In the event of any assignment that is consented to in writing by the City or that is to a Permitted Assign(s), the references in this Covenant to "Owner/Developer" shall be deemed to refer to the assignee.

6.4 Counterparts. This Covenant may be executed in two or more counterparts, each of which when so executed and delivered shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument.

6.5 Governing Law. This Covenant shall be governed by and construed in accordance with the internal laws of the State of California without regard to conflict of law principles.

6.6 Force Majeure. Notwithstanding any other provision set forth in this Covenant to the contrary, in no event shall a Party be deemed to be in Default of its obligations set forth herein where delays or failures to perform are caused by circumstances without the fault and beyond the reasonable control of such Party, which circumstances shall include, without limitation, fire/casualty losses; strikes; litigation not related to the performance of the Parties under this Covenant; unusually severe weather; inability to secure necessary labor, materials, or tools; delays of any contractor, subcontractor, or supplier; litigation by third parties challenging the validity or enforceability of the Agreement or this Covenant or the Entitlements; and acts of God (collectively, "force majeure"). Adverse market conditions or Owner/Developer's and/or Hobby Lobby's inability to obtain financing or approval to operate the Hobby Lobby Facility shall not constitute events of force majeure. In the event of an event of force majeure, the Party so delayed shall notify the other Party of the circumstances and cause of the delay within a reasonable time period after commencement of the delay, it shall keep the other Party informed at reasonable intervals upon request regarding the status of its efforts to overcome said delay, and it shall exercise commercially reasonable diligence to perform as soon as practicable thereafter.

6.7 Notices. Notices to be given by City or Owner/Developer hereunder may be delivered personally or may be delivered by certified mail or by reputable overnight delivery service providing a delivery confirmation receipt, with mailed notices to be addressed to the appropriate address(es) hereinafter set forth or to such other address(es) that a Party may hereafter designate by written notice. If served by overnight delivery service or certified mail, service will be considered completed and binding on the Party served on the date set forth in the confirmation or certification receipt.

If notice is to City:                      City of La Quinta  
78-495 Calle Tampico  
P.O. Box 1504  
La Quinta, CA 92253  
Attention: City Manager

with a copy to:                              Rutan & Tucker, LLP  
611 Anton Blvd., Suite 1400  
Costa Mesa, CA 92626  
Attention: William H. Ihrke, Esq.

If to Owner/Developer:                      One Eleven La Quinta, LLC  
71084 Tamarisk Lane  
Rancho Mirage, CA 92270  
Attention: Mr. Michael Shovlin

6.8 Further Acts. Each Party agrees to take such further actions and to execute such other documents as may be reasonable and necessary in the performance of its obligations hereunder; reserving to City, however, its lawful discretionary and police power authority. Without limiting the generality of the foregoing, upon the expiration or termination of the Operating Period, City shall execute and deliver such instruments as may be prepared by Owner/Developer at Owner/Developer's expense to release the cloud upon title to the Site created by this Covenant; provided, however, that any such document shall be in a form reasonably acceptable to the City Attorney of City.

6.9 Third Party Beneficiaries. With the exception of the specific provisions set forth in this Covenant for the benefit of Holder, there are no intended third party beneficiaries under this Covenant and no such other third parties shall have any rights or obligations hereunder.

6.10 Attorney's Fees. The prevailing party shall be entitled to recover its reasonable attorneys fees and costs, including any fees and costs incurred in any appeal and administrative proceeding, in connection with any breach or Default by the other Party under this Covenant.

[Signatures contained on next page.]



IN WITNESS WHEREOF, the Parties have executed this Covenant to be effective as of the Effective Date.

“City”

CITY OF LA QUINTA,  
a California municipal corporation

By: \_\_\_\_\_  
Frank Spevacek  
City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City Attorney

“Owner/Developer”

ONE ELEVEN LA QUINTA, LLC,  
a California limited liability company

By: \_\_\_\_\_  
Michael Shovlin  
Manager

State of California )  
 )  
County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(here insert name and title of the officer)  
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.

Signature \_\_\_\_\_

(seal)

State of California )  
 )  
County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(here insert name and title of the officer)  
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.

Signature \_\_\_\_\_

(seal)

**EXHIBIT "A"  
TO COVENANT**

**LEGAL DESCRIPTION OF SITE**

**[Attached]**

[REPLACE WITH LEGAL DESCRIPTION AND/OR DEPICTION OF THE SITE

**EXHIBIT “B”  
TO COVENANT**

**FORM OF “REQUEST FOR NOTICE”**

**[Attached]**

RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:

City of La Quinta  
78-495 Calle Tampico  
P.O. Box 1504  
La Quinta, CA 92253  
Attention: City Manager

[Space above for recorder.]  
(Exempt from Recordation Fee per Gov. Code § 27383)

**Request for Notice Under Civil Code Section 2924b**

In accordance with Section 2924b of the California Civil Code, request is hereby made that a copy of any Notice of Default and a copy of any Notice of Sale under the Deed of Trust recorded as instrument No. \_\_\_\_\_ on \_\_\_\_\_, 20\_\_\_\_, [in Book \_\_\_\_\_, Page \_\_\_\_\_,] Official Records of Orange County, California, and describing land therein as

See Attachment "1" attached hereto

executed by \_\_\_\_\_, as Trustor, in

which \_\_\_\_\_ is named as

Beneficiary, and \_\_\_\_\_, as Trustee, be

mailed to the CITY OF LA QUINTA, 78-495 Calle Tampico, P.O. Box 1504, La Quinta, California 92253, Attention: City Manager

**NOTICE: A COPY OF ANY NOTICE OF DEFAULT AND OF ANY NOTICE OF SALE WILL BE SENT ONLY TO THE ADDRESS CONTAINED THIS RECORDED REQUEST. IF YOUR ADDRESS CHANGES, A NEW REQUEST MUST BE RECORDED.**

CITY OF LA QUINTA,  
a California municipal corporation

By: \_\_\_\_\_  
City Manager

**ATTACHMENT "1" TO  
REQUEST FOR NOTICE UNDER CIVIL CODE SECTION 2924b**

**Legal Description of the Site**

**(Attached)**

[REPLACE WITH LEGAL DESCRIPTION [AND DEPICTION] OF THE SITE



State of California        )  
                                      )  
County of \_\_\_\_\_)

On \_\_\_\_\_, before me, \_\_\_\_\_, Notary Public,  
(here insert name and title of the officer)  
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.

Signature\_\_\_\_\_

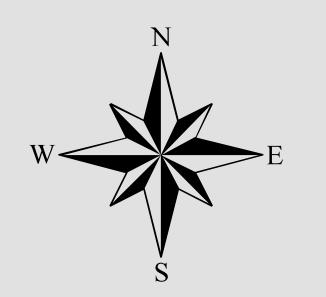
(seal)



One Eleven  
La Quinta Center  
**ATTACHMENT 1**



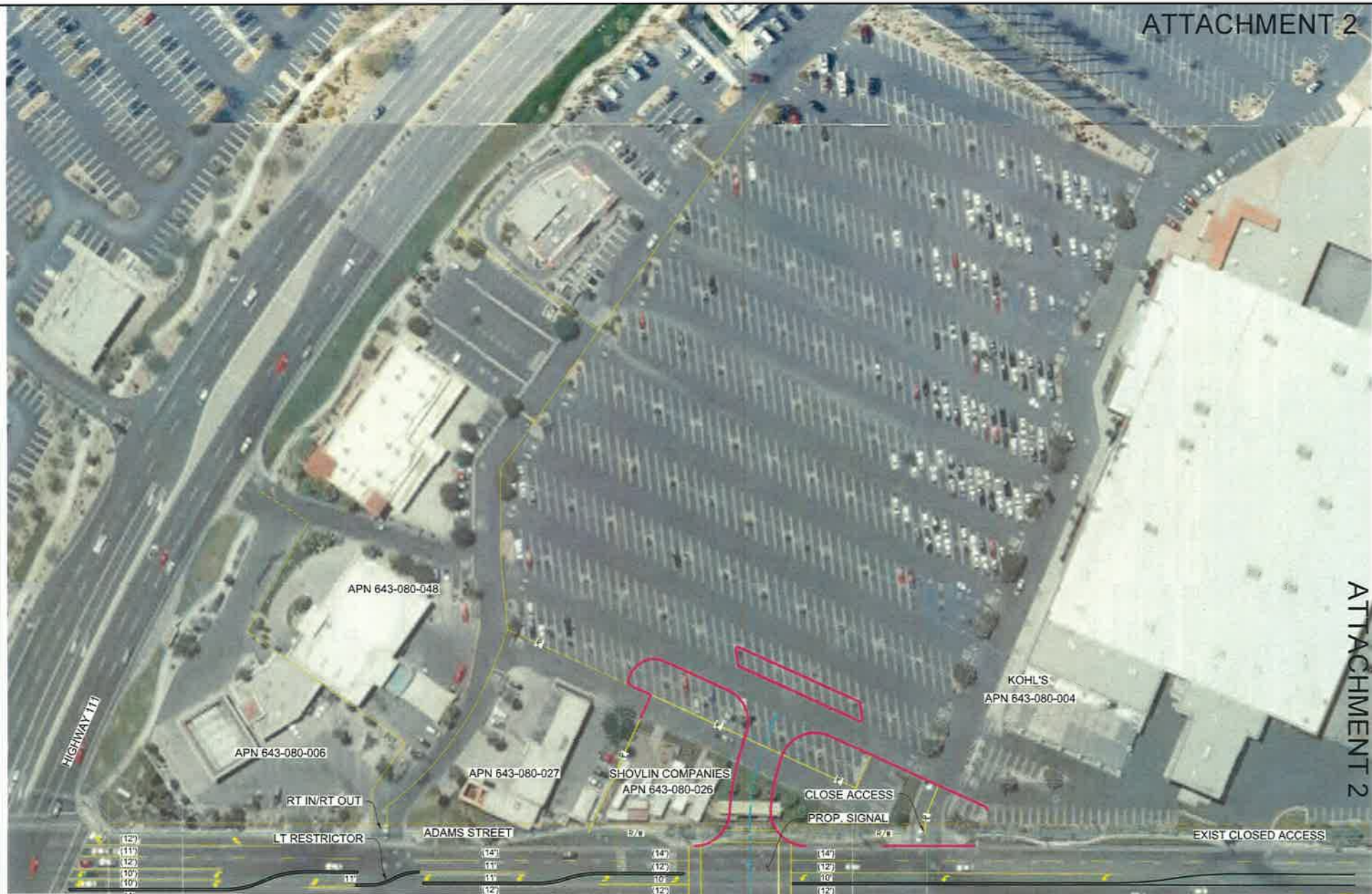
**ATTACHMENT 1**



May 28, 2014



**City of La Quinta**  
Planning Division  
Community Development Department



### ADAMS STREET SIGNAL AND STREET IMPROVEMENTS

CITY PROJECT #2012-01