



# City of La Quinta

**CITY / SA / HA / FA MEETING DATE:** March 3, 2015

**ITEM TITLE:** AUTHORIZE CITY MANAGER TO EXECUTE AN AMENDMENT TO PURCHASE AND SALE AGREEMENT AND MEMORANDUM OF UNDERSTANDING WITH MARVIN INVESTMENTS, INC. FOR SALE AND FUTURE DEVELOPMENT OF CERTAIN PROPERTIES LOCATED IN THE LA QUINTA VILLAGE

**AGENDA CATEGORY:**

**BUSINESS SESSION:**

**CONSENT CALENDAR:** 5

**STUDY SESSION:**

**PUBLIC HEARING:**

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## **RECOMMENDED ACTION:**

Authorize the City Manager to execute an amendment to a purchase and sale agreement and memorandum of understanding with Marvin Investments, Inc. for the sale and future development of approximately three acres of vacant land within the La Quinta Village.

## **EXECUTIVE SUMMARY:**

- The City purchased properties in March 2011 for the purpose of enhancing the Village by combining many smaller parcels into larger parcels that may accommodate the desired development.
- The City entered into a purchase and sale agreement (Agreement) with Marvin Investments, Inc. in January 2014 for 3.4 acres of these properties. The purchase offer included a development proposal that envisions mixed-use, residential, office and retail development.
- Site design work for the subject property has resulted in the need to amend the existing Agreement and establish a memorandum of understanding (Amendment). The Amendment addresses off-site retention on adjacent City-owned property, commitment to certain parking improvements, and a revised performance schedule.

## **FISCAL IMPACT:**

The Amendment slightly reduces the amount of acreage Marvin Investments, Inc. would acquire, resulting in a land sale income reduction of \$225,000 from the original \$1,900,305 (to \$1,675,305). However, the Amendment facilitates a

parking in-lieu payment of \$370,000 for certain parking improvements to be made on adjacent City-owned property.

### **BACKGROUND/ANALYSIS:**

Mr. Wells Marvin of Marvin Investments, Inc. approached staff in May 2013 expressing interest in purchasing two City-owned Village properties west of the Library and Wellness Center. He presented a development proposal that represents a mixed-use development of retail and multi-family residential.

The Agreement was established in January 2014, which identified the purchase price for the subject property, generally described the proposed development and provided a performance schedule.

Over the past year, Mr. Marvin has been working on site and architectural design for the project. Last July he approached staff with a proposal to utilize a landscape area west of the Wellness Center for stormwater retention serving his project. Subsequent discussion included expansion and renovation of the existing Library parking lot to serve the Library as well as a portion of Mr. Marvin's project. This has resulted in an 18,000 square-foot reduction in property Marvin Investments, Inc. will acquire and a commitment for a parking in-lieu payment to be made to the City in the amount of \$370,000.

The Amendment represents the aforementioned items and also includes a revision to the performance schedule. The updated schedule provides greater definition of key steps in the entitlement and acquisition process. In addition, the schedule also represents the project in two phases of development versus the original plan for three phases. Though certain time periods have changed and the number of phases has been reduced, the overall time period of six years represented in the original Agreement is represented in the Amendment.

### **ALTERNATIVES:**

The Amendment incorporates the revised terms and conditions that the City and Marvin Investments have agreed upon. Thus, staff does not recommend any alternatives. Council may elect to not enter into an Amendment or provide direction to staff regarding any changes to the terms of the purchase and sale agreement.

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

Attachment: 1. Amendment to a Purchase and Sale Agreement and  
Memorandum of Understanding

**AMENDMENT TO PURCHASE AND SALE AGREEMENT  
AND  
MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY OF LA QUINTA  
AND  
MARVIN INVESTMENTS, INC.**

This Amendment to Purchase and Sale Agreement and Memorandum of Understanding (the "Amendment & MOU") is made by and between the CITY OF LA QUINTA, a municipal corporation and charter city ("Seller"), and MARVIN INVESTMENTS, INC., a California corporation ("Buyer") as of \_\_\_\_\_, 2015 ("Amendment Effective Date"). Seller and Buyer may sometimes be referred to collectively as the "Parties" or individually as a "Party."

**RECITALS**

**WHEREAS**, the Seller and Buyer entered into that certain Agreement for Purchase and Sale and Escrow Instructions, dated January 6, 2014 ("Purchase/Sale Agreement" and, together with this Amendment & MOU, the "Agreement"), for unimproved real property owned by the Seller located in the "Village" area of the City of La Quinta, County of Riverside, State of California, commonly identified as Assessor's Parcel Numbers (APNs) 770-123-011 and 770-120-010 (referred to in the Purchase/Sale Agreement as the "Property" and referred to in this Amendment & MOU as "Existing City Property"); and

**WHEREAS**, Buyer and Seller negotiated a purchase price of \$12.50 per gross square foot of land area as set forth in the Purchase/Sale Agreement. Buyer has expressed a conceptual mixed use development. As originally contemplated in the Purchase/Sale Agreement, the concept generally consisted of (i) first floor retail space located in multiple buildings, (ii) multi-family residential units located above the first floor retail space, (iii) surface level parking lots, and (iv) an independent building containing multi-family residential units with underground parking; as of the date of this Amendment & MOU, the conceptual mixed use development generally may consist of the foregoing uses (the mixed use development concept as of the date of this Amendment & MOU is referred to as the "Mixed Use Concept"); and

**WHEREAS**, Buyer and Seller initially intended to have the entire Existing City Property conveyed to Buyer in three (3) phases, but now desire to amend the Purchase/Sale Agreement so that the Existing City Property excluding that portion that constitutes the Library Parking Lot Parcel (as defined herein) will be conveyed in two (2) phases (each described individually as "Phase One" or "Phase Two" and collectively "Phases") as more particularly set forth in this Amendment & MOU; and

**WHEREAS**, the Seller and Buyer agree to enter this Amendment & MOU to amend other provisions of the Purchase/Sale Agreement, as more particularly set forth herein, and for the mutual benefit of the Parties and to memorialize their understanding with respect to the subject matter contained herein and to set forth the terms of their respective obligations.

## **AMENDMENT & MEMORANDUM OF UNDERSTANDING**

NOW, THEREFORE, in consideration of the mutual promises, obligations and covenants set forth herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**1.0 INCORPORATION OF RECITALS; DEFINED TERMS.** The foregoing recitals are true and correct and are hereby incorporated herein by this reference and expressly made a part of this Amendment & MOU. Except as modified or defined in this Amendment & MOU, capitalized terms shall have the same meaning set forth in the Purchase/Sale Agreement.

### **2.0 PROPERTY TO BE PURCHASED AND PROJECT.**

**2.1** Notwithstanding any provision in the Purchase/Sale Agreement to the contrary, the "Property" to be conveyed by Seller and acquired by Buyer shall be the Existing City Property (as defined in this Amendment & MOU) less the "Library Parking Lot Parcel" as described in Article 5 of this Amendment & MOU. The term "Property" as used in the Purchase/Sale Agreement, this Amendment & MOU, and any escrow instructions and other implementing documents for the purchase and sale for the subject real property shall be as defined in this Section 2.0 of the Amendment & MOU unless redefined by future amendment to the Agreement.

**2.2** Notwithstanding any provision in the Purchase/Sale Agreement to the contrary, the term "Project" as used in the Purchase/Sale Agreement, this Amendment & MOU, and any escrow instructions and other implementing documents for the purchase and sale for the subject real property, shall mean the following: (a) until such date as the SP/Entitlements Application (as defined in Section 4.2 below) has been submitted by Buyer to Seller, "Project" shall mean the Mixed Use Concept described in the Second Recital of this Amendment & MOU; (b) commencing on the date Buyer submits to Seller the SP/Entitlements Application until the date of approval by Seller (if approved) of the SP/Entitlements Application in accordance with applicable law, "Project" shall mean the development submitted by Buyer as part of the SP/Entitlements Application; and (c) on and after the date of approval by Seller (if approved) of the SP/Entitlements Application in accordance with applicable law, "Project" shall mean the development approved by Seller, in accordance with applicable law, as part of the Specific Plan and Entitlements with conditions reasonably acceptable to Buyer that must be satisfied as one of Buyer's Conditions to Closing (as provided in Section 8.1(a) of the Purchase/Sale Agreement). Neither the Purchase/Sale Agreement nor this Amendment & MOU shall be construed or interpreted that either Buyer or Seller has committed the development of the Mixed Use Concept as described in the Recitals of the Purchase/Sale Agreement and this Amendment & MOU.

**3.0 PHASES OF PURCHASE OF THE PROPERTY.** Notwithstanding any provisions in the Purchase/Sale Agreement to the contrary, Seller's conveyance of the Property, and Buyer's acquisition of the Property, shall be completed in two (2) Phases instead of three (3) Phases; provided, however, in no event shall the closing of a Phase occur, if at

all, later than the date that is three (3) years after the Effective Date, for the first Phase, and six (6) years after the Effective Date for Phase 2 ("Outside Closing Date"). A portion of the Total Purchase Price shall be paid in connection with each Phase (each such portion, a "Phase Purchase Price") pursuant to the terms and conditions in the Purchase/Sale Agreement as applicable for each Phase.

**4.0 REVISED SCHEDULE FOR SPECIFIC PLAN AND ENTITLEMENTS.** Notwithstanding any provisions in Section 2.3 of the Purchase/Sale Agreement to the contrary, Buyer and Seller agree as follows:

- 4.1** The Due Diligence Period, as defined in Section 2 of the Purchase/Sale Agreement, has expired.
- 4.2** Except for permit and entitlement applications otherwise identified in this Article 4 of this Amendment & MOU, Buyer shall submit to Seller a complete application for the Specific Plan and Entitlements as defined in Section 2.3 of the Purchase/Sale Agreement ("SP/Entitlements Application") on or before March 15, 2015.
- 4.3** Seller shall complete or cause to be completed the review of the SP/Entitlements Application, and shall issue all permits that are approved by Seller in accordance with law that have been sought in connection with the SP/Entitlements Application (and that fall within the Seller's jurisdiction), within 120 days of the date that the SP/Entitlements Application is deemed complete by Seller or by operation of law.
- 4.4** Buyer shall deliver written notice to Seller of Buyer's approval or disapproval, in its sole discretion, of the Specific Plan and Entitlements as approved by Seller pursuant to Section 4.3 above within 30 days after Seller's approval of the SP/Entitlements Application. Buyer's failure to deliver such written notice shall be deemed Seller's approval of the Specific Plan and Entitlements and conditions of approval issued in connection therewith. If Buyer (i) delivers such written notice to Seller of its election to terminate this Agreement, or (ii) disapproves the Specific Plan and Entitlements and conditions of approval issued in connection therewith, the Agreement shall terminate, Escrow Holder shall disburse to Buyer the Earnest Money Deposit for the Phase One, and the parties shall have no further rights and obligations to one another, except for Buyer's indemnification obligations set forth in the Agreement and any other obligations that expressly survive termination of the Agreement. The square footage of each Parcel comprising the Property shall be determined through the Specific Plan and Entitlements process.
- 4.5** A building permit application ("BP Application") together with Grading and hydrology plans ("Grading/Hydrology Plans") for Phase One shall be submitted by Buyer to Seller within 180 days of Seller's approval of the SP/Entitlements Application pursuant to Section 4.3 above.
- 4.6** Issuance of a building permit by Seller to Buyer for Phase One shall occur within 100 days of the BP Application for Phase One being deemed complete by Seller

or by operation of law, subject to issuance being in accordance with applicable law.

- 4.7** Close of Escrow (as defined in Section 4.1 of the Purchase/Sale Agreement) for Phase One shall occur on the same date as issuance of the building permit for Phase One pursuant to Section 4.6 above.
- 4.8** Buyers shall submit to Seller an application (the “Phase Two Entitlements Application”) for any and all use permits, variances, further subdivision maps, and any other discretionary approvals and entitlements from Seller that are necessary or proper for the development of Phase Two, which have not already been issued (or have expired) as part of the Specific Plan and Entitlements approved pursuant to Sections 4.2 through 4.4 of this Amendment & MOU (the “Phase Two Entitlements”), together with Grading/Hydrology Plans for Phase Two within 120 days of the Close of Escrow for Phase One.
- 4.9** The process for reviewing and approving, for both Buyer and Seller, the Phase Two Entitlements Application and Phase Two Entitlements shall follow the same schedule set forth in Sections 4.3 and 4.4 above that applied to the SP/Entitlements Application.
- 4.10** A BP Application for Phase Two shall be submitted by Buyer to Seller within 120 days of Seller’s approval of the Phase Two Entitlements Application.
- 4.11** Issuance of a building permit by Seller to Buyer for Phase Two shall occur within 100 days of the BP Application for Phase Two being deemed complete by Seller or by operation of law, subject to issuance being in accordance with applicable law.
- 4.12** Close of Escrow (as defined in Section 4.1 of the Purchase/Sale Agreement) for Phase Two shall occur on the same date as issuance of the building permit for Phase Two.
- 4.13** The Specific Plan and Entitlements shall still designate and result in the subdivision of the Property with a legally separate parcel known as the “Library Parking Lot Parcel,” but the Library Parking Lot Parcel shall be governed pursuant to Article 5 of this Amendment & MOU.

**5.0 Library Parking Lot Parcel.** Notwithstanding any provisions in the Purchase/Sale Agreement to the contrary, Buyer and Seller agree as follows:

- 5.1** The “Library Parking Lot Parcel” shall be a portion of the Existing City Property consisting of approximately 18,000 gross square feet located immediately adjacent to the La Quinta Library and Wellness Center. The Library Parking Lot Parcel shall have approximately fifty-two (52) total standard vehicle parking spaces.
- 5.2** Seller shall retain ownership of the Library Parking Lot Parcel.

- 5.3** The “Total Purchase Price” as defined in Section 1.1 of the Purchase/Sale Agreement shall be reduced by the amount of the Total Purchase Price that would have been attributable to the Library Parking Lot Parcel. In explanation of the foregoing, the Total Purchase Price shall be calculated at \$12.50 per gross square foot of the Existing City Property conveyed by Seller and acquired by Buyer; because the Library Parking Lot Parcel constitutes approximately 18,000 gross square feet, the Total Purchase Price that Buyer must pay to Seller shall be reduced by approximately \$225,000 ( $\$12.50 \times 18,000\text{sq.ft.}$ ).
- 5.4** City shall design and construct or cause the design and completion of construction of the surface parking lot that will be located on the Library Parking Lot Parcel similar to the preliminary site plan prepared by Coachella Valley Engineers (July 2014), which site plan as it relates to the construction of the surface parking lot on the Library Parking Lot Parcel is attached to this Amendment & MOU as Exhibit “A” and incorporated by reference in this Amendment & MOU.
- 5.5** No later than issuance of the building permit for Phase Two as set forth in Article 4 above, Buyer shall pay to City Three Hundred Seventy Thousand Dollars (\$370,000) (the “Parking In-Lieu Fee”), which constitutes payment by Buyer to Seller for the City of La Quinta’s in-lieu parking fee program. City shall use the Parking In-Lieu Fee for the design and construction of the surface parking lot on the Library Parking Lot Parcel.
- 5.6** Provided Buyer pays the Parking In-Lieu Fee pursuant to this Amendment & MOU, Seller and Seller’s successors in interest shall have access to and a right to use, on a first come/first serve basis, no less than thirty-seven (37) standard vehicle parking spaces on the Library Parking Lot Parcel for uses consistent with those uses proposed by Buyer and approved by Seller as part of the Specific Plan and Entitlements and any other applicable approvals from the Seller for the use of the Property.
- 5.7** No later than the Close of Escrow for Phase Two, Buyer and Seller shall negotiate and execute an easement deed or other recordable document in a form acceptable to the La Quinta City Attorney that provides members of the public with the right, in perpetuity to access and use the parking stalls located on the Library Parking Lot Parcel in accordance with reasonable rules and regulations posted by Buyer and applicable thereto, allows for Seller and Seller’s successors in interest to have access to and a right to use, on a first come/first serve basis, thirty-seven (37) standard vehicle parking spaces pursuant to Section 5.6 above, and provides for the payment of ordinary maintenance fees by Buyer or Buyer’s successor and assigns for the authorized uses of the Library Parking Lot Parcel (the “Parking Deed”). The “Parking Deed” as referred to in Section 4.2.1 of the Purchase/Sale Agreement shall be amended to be defined as set forth in this Amendment & MOU.

## **6.0 WATER RETENTION BASIN.**

- 6.1** Buyer acknowledges and agrees that Seller has represented and warranted that Seller owns unimproved real property located at the corner of Main Street and Avenida La Fonda, commonly identified as Assessor's Parcel Number 770-123-012 (the "City-Owned Retention Property"), and located adjacent to the Property. The City-Owned Retention Property shall not be conveyed to Buyer. Seller shall allow Buyer to design and construct or cause the design and completion of construction of a water retention basin ("Retention Basin") to receive storm water from the Project and the Library Parking Lot Parcel.
- 6.2** The Retention Basin shall be approximately three (3) to four (4) feet deep and shall be sloped to allow easy egress and ingress for pedestrians and pets in order to maintain this area as open space. The trees currently located on the site of the Retention Basin shall be stockpiled and re-installed after the Retention Basin is completed. The Retention Basin site shall either be returned to a lawn landscape or a less water intensive landscape in compliance with current Seller and Coachella Valley Water District standards.
- 6.3** Buyer shall have the obligation to pay all costs incurred by Buyer for the design and construction of the Retention Basin. Buyer shall complete or cause the completion of the Retention Basin no later than the Close of Escrow for Phase Two. Seller shall have the obligation to pay ongoing maintenance and operations costs for the Retention Basin upon completion of construction.

**7.0 TRAFFIC TABLE.** Seller, at its expense, shall install one "traffic table" with enhanced pavers as a crosswalk on Main Street to achieve the Seller's stated goals of a connected Civic Center campus with the Main Street shops and Old Town La Quinta. The traffic table shall be installed in substantially the same form and at the location indicated by Exhibit "B" incorporated into this Amendment & MOU by reference (the "Traffic Table"). Seller shall complete or cause the completion of the Traffic Table no later than the Close of Escrow for Phase Two. Seller shall have the obligation to pay ongoing maintenance and operations costs for the Traffic Table upon completion of construction.

**8.0 RIGHT OF WAY PARCEL.** Notwithstanding any provisions in the Purchase/Sale Agreement, Buyer and Seller agree that the Property shall include a portion of the public right of way identified on Exhibit C attached hereto (the "Right of Way Parcel"). Seller shall abandon/convey the Right of Way Parcel to Buyer and the "Total Purchase Price" as defined in Section 1.1 of the Purchase/Sale Agreement shall be increased by an amount equal to \$12,50 per gross square foot of area contained within the Right of Way Parcel.

**9.0 FURTHER ACTIONS.** Each Party agrees to take such actions, and to execute such certificates, documents, and other instruments, including those in recordable form, as may be necessary or appropriate to give effect to and carry out the provisions of this Amendment & MOU. Without limiting the foregoing, Buyer shall cooperate with Seller and furnish such information as may be reasonably requested by Seller to facilitate the processing of any permit necessary to construct the Project, Retention Basin, and other



improvements contemplated by this Amendment & MOU and the Purchase/Sale Agreement.

- 10.0 INTEGRATION; INCORPORATION OF PURCHASE/SALE AGREEMENT.** This Amendment & MOU and the Purchase/Sale Agreement, and any other documents incorporated herein by specific reference, represent the entire and integrated agreement between Buyer and Seller with respect to the subject matter hereof. The terms and conditions in the Purchase/Sale Agreement, as modified by this Amendment & MOU, remain in full force and effect.
- 11.0 AMENDMENT.** This Amendment & MOU may not be amended, modified, or expanded except by a written instrument signed by the Party to be charged with complying with that amendment, modification, or expansion.
- 12.0 COMPLIANCE WITH LAWS.** Buyer shall comply with any and all applicable laws concerning the use and development of the Property, including but not limited to any prevailing wage laws or environmental remediation laws. Buyer expressly acknowledges and agrees that the Seller has not represented to Buyer in writing or otherwise that the acquisition of the Property or the development and construction of the Project or the Property, or any component thereof, is not a public work as defined under California law.
- 13.0 DISCRETIONARY APPROVAL REQUIRED.** The Parties expressly acknowledge that the Project must be reviewed by Seller in its governmental capacity. Nothing contained in this Amendment & MOU shall be construed to mean that Seller is agreeing or has agreed to exercise its discretionary authority in support of any approvals or entitlements that may be required to construct the Project that must be approved by the City Council, Planning Commission, or any other commission or City person or entity with discretionary approval authority pursuant to applicable law.
- 14.0 MUTUAL INDEMNIFICATION.** Each Party shall indemnify, hold harmless and defend the other Party, and any of its officials, officers, employees or agents, from any and all claims, liabilities, obligations and causes of action based on an alleged or actual violation of this Amendment & MOU or for injury to, or death of, any person (including officials, officers, invitees, employees, and agents of the Seller and Buyer), and for injury or damage to or destruction of property (including property of either Party), resulting from any and all negligent actions or willful misconduct of the indemnifying Party or any of its officials, officers, employees, agents, consultants, and licensees in the performance of its duties or obligations under this MOU.
- 15.0 ASSIGNMENT.** Buyer shall not assign its interest in this Amendment & MOU, or any portion hereof, without the prior written consent of the Seller, which consent may be granted or withheld in the Seller's sole discretion. Any purported attempt to make such an assignment without the prior consent of the Seller shall be null and void and of no effect.
- 16.0 INTERPRETATION.** This Amendment & MOU is deemed to have been prepared by all of the Parties hereto, after consulting with legal counsel, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such ambiguity

or uncertainty exists, shall be interpreted according to the applicable rules of interpretation of contracts under the law of the State of California.

- 17.0 AUTHORITY.** The persons signing this Amendment & MOU warrant that each of them has the authority to execute this Amendment & MOU on behalf of the party on whose behalf said person is purporting to execute this Amendment & MOU, and that this Amendment & MOU is a binding obligation of said Parties.
- 18.0 SEVERABILITY.** In the event that any provisions of this Amendment & MOU shall be held by a court of competent jurisdiction to be invalid or unenforceable, the same shall not affect, in any respect whatsoever, the validity of the remainder of this Amendment & MOU.
- 19.0 WAIVER.** No waiver or consent shall be implied from silence or any failure of a Party to act, except as otherwise specified by this Amendment & MOU. Either Party may specifically and expressly waive, in writing, any portion of this Amendment & MOU or any breach hereof, but no such waiver shall constitute a further or continuing waiver of any proceeding or succeeding breach of the same or any other provision.
- 20.0 COUNTERPARTS.** This Amendment & MOU may be executed in any number of counterparts, each of which shall be deemed an original, but all of which when taken together, shall constitute one and the same instrument. The signature page of any counterpart may be detached therefrom without impairing the legal affect of the signature(s) thereon, provided such signature page is attached to any other counterpart identical thereto.

— SIGNATURES BEGIN ON NEXT PAGE —

IN WITNESS WHEREOF, Buyer and Seller have executed this Amendment & MOU as evidenced by the signatures contained below:

**CITY OF LA QUINTA**

**MARVIN INVESTMENTS, INC.**

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

By: Wells M \_\_\_\_\_

Dated: \_\_\_\_\_

Name: Wells Marvin \_\_\_\_\_

**ATTEST:**

Title: President \_\_\_\_\_

By: \_\_\_\_\_  
Susan Maysels, City Clerk

Address: 78100 Main St. Suite 203

City, State, Zip: La Quinta, CA 92253

Email: WellsMarvin@gmail.com

Dated: 2/25/15 \_\_\_\_\_

**APPROVED AS TO FORM AND CONTENT:**

By: \_\_\_\_\_  
William H. Ihrke, City Attorney

Exhibit "A"

Coachella Valley Engineers (July 2014)

[attached]

Exhibit "B"

[Insert exhibit detailing location/improvements for traffic table]

