



# CITY COUNCIL STAFF REPORT

DATE: November 3, 2010

NEW BUSINESS

SUBJECT: APPROVE A LEASE AGREEMENT BETWEEN THE CITY OF PALM SPRINGS AND THE COACHELLA VALLEY ECONOMIC PARTNERSHIP FOR 5,000 SQUARE FEET OF OFFICE SPACE AT A CITY OWNED BUILDING AT 3111 E. TAHQUITZ CANYON WAY.

FROM: David H. Ready, City Manager

BY: Community & Economic Development Department

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## SUMMARY

The Coachella Valley Economic Partnership (CVEP) and the City of Palm Springs are proposing the development of a regional economic development and business incubator facility at 3111 E. Tahquitz Canyon Way, Palm Springs. CVEP has proposed leasing 5,000 square feet of the 14,000 square foot building to house the organization's offices.

## RECOMMENDATION:

1. Approve the Lease Agreement between the City of Palm Springs and the Coachella Valley Economic Partnership for 5,000 square feet of office space at 3111 E. Tahquitz Canyon Way, Palm Springs, California.
2. Authorize the City Manager or his designee to execute all necessary documents.

## STAFF ANALYSIS:

The Coachella Valley Economic Partnership (CVEP) offices have been located in Palm Desert since the organization was established in 1994. Recently, the CVEP Executive Board authorized CVEP Staff to search for new office space since they have outgrown the 900+/- square feet at their current location. The initial search for office space concentrated on a central valley location. CVEP Staff reviewed several sites; however rent and tenant improvement costs for those sites exceeded the organization's budget.

City staff suggested CVEP look at the City owned facility at 3111 E. Tahquitz Canyon Way. The 3111 E. Tahquitz Canyon building consists of 14,000 square feet and is owned by the City of Palm Springs and it was the former Palm Springs Police Department facility, including the jail. The County of Riverside Health Services Department leased the building for 22 years prior to constructing their new Family Care

Center at Sunrise Way and Vista Chino. The building has been vacant for the last two years.

The suggestion to look at the 3111 E. Tahquitz Canyon building was made by City Staff because of the recent State of California Innovation Hub (iHub) designation – a tri-city partnership between Palm Springs, Cathedral City and Desert Hot Springs. The iHUB Program, which includes establishing incubator space for green technology businesses, will be housed in the same building. It is also the goal of the iHUB Program to provide shared office space for business resource agencies and support services to help emerging green tech businesses grow into larger facilities and create jobs. Housing the CVEP offices in the building made sense because of the “regional” approach of the Blueprint Strategy adopted by the CVEP Board (and Cities throughout the valley) and aligns with the iHUB Program and the City’s own business retention and attraction initiatives.

CVEP and the City have negotiated a lease structure based on CVEP’s non-profit status, regional economic development goals and the new iHUB initiative. The lease structure allows both parties an opportunity to improve the space for occupancy and expand services and programs for emerging green technology businesses.


The term of the lease is for five years with two five year options. The base gross rent of \$1.00 per square foot also includes utilities, which are provided by the City through its cogeneration facility.


As part of the lease, CVEP shall provide for the tenant improvements of its own space, the common area space (including conference rooms and restrooms) and the iHub offices. They will solicit and retain architectural services and undertake the construction of the space with City review and approval. CVEP’s tenant improvement costs, including the costs of the common areas and iHub, shall be credited against their monthly rental during the initial five-year term. The lease also contains a Leasehold Improvement Agreement which sets forth the approval process for the tenant improvements, as well as the rent rebate for the tenant improvement costs.

The City will retain responsibility for the building shell and exterior, including landscaping, the parking lot and roof, and shall be responsible for future leases with other building tenants.

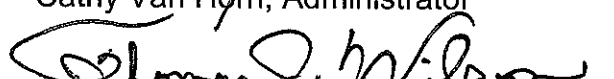
FISCAL IMPACT:

For the initial two to three years there will be no significant rent income generated due to the credit for the tenant improvement costs and a low rent structure to help new businesses grow and create jobs. Future income generated from the CVEP lease and other co-tenant leases will be used to further the goals of the iHUB Program and economic development initiatives established by the City Council.

  
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John Raymond, Director

  
\_\_\_\_\_  
David H. Ready, City Manager

  
\_\_\_\_\_  
Cathy Van Horn, Administrator

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

Attachments:

Lease Agreement

## LEASE AGREEMENT

THIS LEASE ("Lease") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the CITY OF PALM SPRINGS, a municipal corporation ("Lessor"), and the Coachella Valley Economic Partnership, a California non-profit corporation ("Lessee").

### RECITALS:

- A. Lessor is the owner of certain premises and improvements in the City of Palm Springs, County of Riverside, State of California, located at the 3111 Tahquitz Canyon Way ("Property"); and
- B. Lessee is a regional public-private economic development organization, of which Lessor is a member, and is charged with implementing a regional blueprint to make the Coachella Valley competitive in a number of key industries;
- C. Lessee desires to lease a portion of said Property to operate its regional economic development organization in said offices and facilities and partner with Lessor in the development of a business incubator at the Property.

1.0 LEASE SUMMARY. Certain fundamental lease provisions are presented in this Section and represent the agreement of the parties hereto, subject to further definition and elaboration in the respective referenced Sections and elsewhere in this Lease. In the event of any conflict between any fundamental lease provision and the balance of this Lease, the latter shall control. References to specific Sections are for convenience only and designate some of the Sections where references to the particular fundamental lease provisions may appear.

1.1 Property. The "Property" shall refer to that certain real property consisting of a 14,000 square foot building located in the County of Riverside, State of California, as more particularly described in Exhibit "A" hereof together with the improvements located thereon as depicted on the Plot Plan attached as Exhibit "B" hereof.

1.2 The Premises. The Premises shall consist of that certain portion of the building, as defined, herein, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly know as 3111 East Tahquitz Canyon Way, located in the City of Palm Springs, County of Riverside, State of California, also identified as Assessor Parcel Number 502-210-023 and generally described as office space consisting of approximately 5,000 square feet with 20 parking spaces, all as shown on the plot plan attached as Exhibit "B".

1.3 Lease Term. The Lease term shall be five (5) years commencing upon the completion of construction of the tenant improvements ("Commencement Date") and terminating five years hence from that date.

1.4 Extension Options. Two (2) options for a term of five (5) years each.

1.5 Monthly Rental. Rental payment shall be \$5,000 per month for the period of the term, less a credit for Eligible Lessee Improvements as described in Section 3.10. The Lessee Improvement Credit shall be applied against the Monthly Rental during the initial five year term under the terms described in Section 3.10 of this Agreement. If the extension option is exercised, the Monthly Rental shall be adjusted at the end of the initial five (5) years of the within term under the terms described in Section 3.2 of this Agreement.

1.6 Security Deposit. N/A

1.7 Use of Premises. Lessee shall use and occupy the Premises for the purpose of providing regional economic development services and coordination to the cities of the Coachella Valley, as well as specifically assisting the cities of Palm Springs, Cathedral City and Desert Hot Springs in the implementation of a State-designated Innovation Hub (IHUB) at the Property.

1.8 Address for Notices.

Lessee: Coachella Valley Economic Partnership  
Attn: Chief Operating Officer  
3111 East Tahquitz Canyon Way  
Palm Springs, California 92262

Lessor: City of Palm Springs  
Attn: City Manager  
3200 East Tahquitz Canyon Way  
Palm Springs, CA 92262

## 2.0 TERM

2.1 Term. The term of this Lease shall commence on the date specified in Section 1.3 ("Commencement Date") and shall continue for the period specified therein unless earlier terminated as provided herein.

2.2 Option Term. Lessee is given the option(s) to extend the term subject to all of the provisions contained in this Lease for the period specified in Section 1.4 ("Extension Options") commencing upon the expiration of the initial term or any other extended term properly exercised hereunder, by giving written notice of extension not less than (120) days but not more than six (6) months before the expiration of the initial term or any other extended term properly exercised hereunder. Provided that, if Lessee is in default on the date of giving the extension notice, the option notice shall be totally ineffective, or if Lessee is in default on the date the extended term is to commence, the extended term shall not commence and this Lease shall expire at the end of the initial term or properly exercised extended term.

2.3 Time. Time is of the essence of this Lease.

2.4 Force Majeure. If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, inability to procure materials, restrictive governmental laws or regulations or other cause without fault and beyond the control of the party obligated (financial inability excepted), performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay, provided such party provides the other party written notice of such event within ten (10) days of the commencement of the prompt payment of any rental or other charge required of Lessee hereunder except as may be expressly provided elsewhere in this Lease.

2.5 Termination by Lessor. Lessor shall have the right to terminate this Lease effective on any anniversary of the Commencement Date, with or without cause, by providing Lessee with at least one hundred twenty (120) days advance written notice. With the exception of any unamortized balance of Leasehold Improvement Costs described in Section 3.10 of this Agreement, if Lessor terminates this Lease as provided in this Section, Lessee hereby waives any right to receive any other compensation from Lessor, including, but not limited to, the value of Lessee's leasehold interest, loss of goodwill and relocation benefits, inverse condemnation or the taking of property and Lessor shall have no obligation to pay Lessee therefor.

2.6 Holding Over. Any holding over after the expiration of the term of this Lease, with the consent of Lessor, express or implied, shall be construed to be a tenancy from month to month, cancelable upon thirty (30) days' written notice, and at a monthly rental equal to one hundred and fifty percent (150%) of the monthly rental in effect at the expiration of the term and upon terms and conditions as existed during the last year of the term hereof.

2.7 Termination by Lessee. Lessee shall have the right to terminate this Lease by providing Lessor with at least sixty (60) days advance written notice that Lessee has experienced a reduction in funding in an amount that would require a reduction in space greater than 60% of the current Premises, through staff reduction and reduced programming. If Lessee terminates this Lease as provided in this Section, Lessee hereby waives any right to receive any other compensation from Lessor, including, but not limited to, the unamortized value of Lessee's leasehold improvements, Lessee's leasehold interest, loss of goodwill and relocation benefits, inverse condemnation or the taking of property and Lessor shall have no obligation to pay Lessee therefor.

### 3.0 RENTAL

3.1 Monthly Rental. Lessee shall pay to Lessor, during the term of this Lease from and after the Commencement Date as monthly rental ("Monthly Rental") for the Premises the sum specified in Section 1.5 hereof, which sum shall be paid in advance on the first day of each calendar month. In the event the Commencement Date does not occur on the first day of a calendar month, the Lessee shall pay the rental for the fractional month on the Commencement Date on a per diem basis (calculated on a thirty-day month). All rental to be paid by Lessee to Lessor shall be in

lawful money of the United States of America and shall be paid without deduction or offset, prior notice or demand at the address designated in Section 1.8 hereof.

3.2 Cost of Living Adjustment. If the extension option is exercised, the Monthly Rental shall be adjusted at the end of the first five (5) years of the within term and adjusted upward at the end of each five (5) year period thereafter by the same percentage as the cost of living index has changed during the said five (5) year period with a maximum 15% increase for any adjustment period, provided that in no event shall the adjusted minimum rental be less than the original Monthly Rental provided for herein. The cost of living index to be used is that reflected by the Revised Consumer Price Index for Urban Wage Earners and Clerical Workers, all items, Los Angeles - Anaheim - Riverside, California (1982-84 = 100) published by the Bureau of Labor Statistics of the U.S. Department of Labor. If, for any reason whatsoever, there is any change in the method of calculation or formulation of said price index, or if that index shall no longer be published, then another index generally recognized as authoritative shall be substituted by agreement. In any event, the base used by any new index shall be reconciled to the 1982-84 Index. It is agreed for the purposes of this Lease, that the base index shall be the month of November, 2010.

3.3 Additional Rental. For the purposes of this Lease, all monetary obligations of Lessee under this Lease, including but not limited to, insurance premiums, property taxes, maintenance expenses, late charges and utility costs shall be deemed to be additional rental.

3.4 Real Property Taxes. Unless Lessee qualifies for an exemption from property taxes or possessory interest taxes due to its non-profit status, in addition to all rentals herein reserved, Lessee shall pay, at the election of Lessor, either directly to the taxing authority or to Lessor, annual real estate taxes and assessments levied upon the Premises (including any possessory interest taxes), as well as taxes of every kind and nature levied and assessed in lieu of, in substitution for, or in addition to, existing real property taxes. Such amount shall be paid on the date that is twenty (20) days prior to the delinquent date or, if Lessor receives the tax bill, ten (10) days after receipt of a copy of the tax bill from Lessor, whichever is later. Even though the term of this Lease has expired and Lessee has vacated the Premises, when the final determination is made of Lessee's share of such taxes and assessments, Lessee shall immediately pay to Lessor the amount of any additional sum owed.

3.5 Personal Property Taxes. Unless Lessee qualifies for an exemption from property taxes or possessory interest taxes due to its non-profit status, during the term hereof Lessee shall pay prior to delinquency all taxes assessed against and levied upon fixtures, furnishings, equipment and all other personal property of Lessee contained in the Premises, and when possible Lessee shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from the real property of Lessor.

3.6 Utilities. Lessor shall pay all charges for water, gas, heat, electricity, power and sewer, and all other services used in, upon, or about the Premises by Lessee or any of its sublessees, licensees, or concessionaires during the term of this

Lease. Lessee shall pay all telephone, internet, cable television, satellite, broadband and other telecommunications services, as well as trash removal.

3.7 Late Payment. Lessee hereby acknowledges that late payment by Lessee to Lessor of rental or other sums due hereunder will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which is extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges. Accordingly, any payment of any sum to be paid by Lessee not paid within ten (10) days of its due date shall be subject to a five percent (5%) late charge. Lessor and Lessee agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Lessor for its loss suffered by such late payment by Lessee. Sixty (60) days before the anniversary date each year the City shall notify the Lessee of any outstanding delinquency, which must be cured prior to the anniversary date or the City may exercise its right of termination under section 2.5 and terminate the lease.

3.8 Interest. Any sum to be paid pursuant to the terms of this Lease not paid when due shall bear interest from and after the due date until paid at a rate equal to three percent (3%) over the reference rate being charged by Bank of America, N.A. from time to time during such period so long as the rate does not exceed the maximum non-usurious rate permitted by law in which case interest shall be at the maximum non-usurious rate allowed by law at the time the sum became due.

3.9 Security Deposit. N/A

3.10 Lessee Improvement Credit. Lessee shall provide for the physical improvements of the Lessee's space, common area space including shared restrooms and conference rooms, and the core iHUB office space. The Lessee improvement costs for all areas would be credited to Lessee's Monthly Rental obligation. Lessee shall, at its sole cost and expense, and subject to reimbursement as hereinafter set forth, construct the improvements in the Premises (the "Leasehold Improvements") pursuant to those certain blueprints, floor and space plans, specification and finalize construction prices, collectively, the approved "Working Drawings" prepared by Lessee's architect. Lessee shall make no changes or modifications to the Approved Working Drawings without the prior written consent of Lessor, which consent may be withheld if such change or modification would directly or indirectly increase the cost of designing or constructing the Leasehold Improvements. Any changes or modifications required by the Lessor shall be at Lessee's sole cost and expense.

Lessor has designated its Director of Community & Economic Development or his designee as its sole representative with respect to the Leasehold Improvement matters set forth in this Agreement, who, until further notice to Lessee, shall have full authority and responsibility to act on behalf of the Lessor with respect to approval of Leasehold Improvements.

Leasehold Improvements includes work on major building systems such as electrical, plumbing, and HVAC, load-bearing or non-load-bearing walls, carpeting, ceilings, skylights, windows, doors, painting but does not include any modular or

movable office system or walls, cubicles, telecommunications or information systems, décor or office equipment.

Leasehold Improvement Credit shall be made by Lessor at a \$0.75 per square foot per month of the Lessee's Premises against Monthly Rental until the cost of such Leasehold Improvements has been reimbursed by Lessor to Lessee. The Lessee would pay the remaining \$0.25 per square foot per month as Monthly Rental during the Leasehold Improvement Credit period. The following examples are illustrative only:

(a) Lessee invests \$25.00 per square foot to improve Lessee's 5,000 sq.ft. Premises, and the negotiated (gross) rent is \$1.00 per square foot per month. The total Leasehold Improvement cost would be \$125,000. Credit against the \$5,000 Monthly Rental would yield a rent credit of \$0.75/sf for 33.33 months and a rent payment of \$1,250 per month (\$0.25/sf) for 33.33 months; or

(b) Lessee invests \$25.00 per square foot to improve Lessee's 5,000 sq.ft. Premises, plus \$20.00 per square foot to improve the 2,000 sq.ft. common area, yielding a total Leasehold Improvement cost of \$165,000. The gross rent on the Premises only (Lessee's 5,000 s.f.) is \$1.00 per square foot per month. Credit against the \$5,000 Monthly Rental would yield a rent credit of \$0.75/sf for 44 months and a rent payment of \$1,250 per month (\$0.25/sf) for 44 months.

#### 4.0 USE OF THE PREMISES

4.1 Permitted Use. The Lessor hereby leases to Lessee and Lessee leases from Lessor the Premises with appurtenances as defined herein, for the purpose of conducting thereon only the use specified in Section 1.7 of this Lease and for no other use.

4.2 Prohibited Uses. Lessee shall not sell or permit to be kept, used, displayed or sold in or about the Premises (a) pornographic or sexually explicit books, magazines, literature, films or other printed material, sexual paraphernalia, or other material which would be considered lewd, obscene or licentious, (b) any article which may be prohibited by standard forms of fire insurance policies, or (c) any alcoholic beverages unless expressly permitted by Section 1.7 hereof.

4.3 Compliance with Laws. Lessee shall, at his own cost and expense, comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of the Premises, and shall faithfully observe in said use all municipal ordinances, including, but not limited to, the General Plan and zoning ordinances, state and federal statutes, or other governmental regulations now in force or which shall hereinafter be in force. Lessee's violation of law shall constitute an incurable default under this Lease. The judgment of any court of competent jurisdiction, or the admission of Lessee in any action or proceeding against Lessee, whether Lessor is a party thereto or not, that Lessee has violated any such order or statute in said use, shall be conclusive of that fact as between the Lessor and Lessee.

Lessee shall not engage in any activity on or about the Premises that violates any Environmental Law, and shall promptly, at Lessee's sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any Hazardous Material created or caused directly or indirectly by Lessee. The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Demised Premises, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601 et seq.; (ii) the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901 et seq.; (iii) California Health and Safety Code Sections 25100 et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.; (v) California Health and Safety Code Section 25359.7; (vi) California Health and Safety Code Section 25915; (vii) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317 et seq.; (viii) California Water Code Section 1300 et seq.; and (ix) California Civil Code Section 3479 et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the parties hereto to construe the terms "Hazardous Materials" and "Environmental Laws" in their broadest sense. Lessee shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq. Lessee shall provide prompt written notice to Lessor of the existence of Hazardous Substances on the premises and all notices of violation of the Environmental Laws received by Lessee.

4.4 Signs. Lessee shall not place or permit to be placed any sign that is not in compliance with the sign ordinance of the Lessor upon the exterior or in the windows of the Premises. Any sign not constructed in accordance therewith shall be immediately removed by Lessee and, if said sign is not removed by Lessee within ten (10) days of written notice from Lessor to Lessee, then Lessor may remove and destroy said sign without Lessee's approval and without any liability to Lessee.

4.5 Parking and Common Areas. During the term of this Lease and any extension thereof, Lessor gives to Lessee for the use and benefit of Lessee, its agents, employees, customers, licensees and sublessees a nonexclusive license in common with Lessor and other present and future owners and Lessees of the Property and their agents, employees, customers, licensees and sublessees, and others authorized by Lessor to use the automobile parking areas, roadways, walkways, landscaped areas, service areas, of the Property for ingress, egress and automobile parking, provided that the condemnation or other taking by any public authority, or sale in lieu of condemnation, of any or all of such parking and common areas shall not constitute a violation of this covenant. Nothing herein contained shall be deemed to prevent Lessor

from using or authorizing others to use said parking and common areas.

4.6 Maintenance and Landscaping. During the entire term hereof, Lessor shall keep or cause to be kept the parking and landscaped areas in a good, neat, clean and orderly condition, properly lighted and landscaped, and shall repair any damage to the facilities thereof as well as the exterior walls and roof of the Premises as provided in Article 11.

4.7 Hours of Business. Subject to the provisions of Section 7.0 hereof, Lessee shall continuously during the entire term hereof conduct and carry on Lessee's business in the Premises and shall keep the Premises open for business and cause Lessee's business to be conducted therein during the Lessee's usual business hours of each and every business day.

4.8 Rules and Regulations. Lessee shall faithfully observe and comply with the rules and regulations that Lessor shall from time to time promulgate and/or modify. The rules and regulations, if any, are attached hereto as Exhibit "D" ("Rules and Regulations"). Any amendment or modification of the Rules and Regulations shall be binding upon the Lessee upon delivery of a copy of such amendment or modification to Lessee. Lessor shall not be responsible to Lessee for the nonperformance of any said rules and regulations by any other Lessees or occupants. The Rules and Regulations shall apply and be enforced as to all Lessees in the Premises on a uniform basis.

## 5.0 ALTERATIONS AND REPAIRS.

5.1 Alterations and Fixtures. Lessee shall not make, or suffer to be made, any alterations to the Premises, or any part thereof, without the prior written consent of Lessor, and any alterations to the Premises, except movable furniture and trade fixtures, shall become at once a part of the realty and shall at the expiration or earlier termination of this Lease belong to Lessor. Lessee shall not in any event make any changes to the exterior of the Premises. Any such alterations shall be in conformance with the requirements of all municipal, state, federal, and other governmental authorities, including requirements pertaining to the health, welfare or safety of employees or the public and in conformance with reasonable rules and regulations of Lessor. Any damage occasioned by such removal shall be repaired at Lessee's expense so that the Premises can be surrendered in a good, clean and sanitary condition as required by Section 5.2 hereof. Any and all fixtures and appurtenances installed by Lessee shall conform with the requirements of all municipal, state, federal, and governmental authorities, including requirements pertaining to the health, welfare, or safety of employees or the public. Upon completion of construction of the alterations, Lessee shall submit to Lessor evidence satisfactory to Lessor of the cost of said alterations ("Improvement Costs").

5.2 Maintenance and Repair. Lessee shall, subject to Lessor's obligations hereinafter provided, at all times during the term hereof, and at Lessee's sole cost and expense, keep, maintain and repair the Premises, and other improvements within the Premises in good and sanitary order, condition, and repair

(except as hereinafter provided), including, without limitation, the maintenance and repair of any store front, doors, window casements, walls, glazing, heating and air conditioning system, plumbing, pipes, electrical wiring and conduits. Lessee shall also at its sole cost and expense be responsible for any alterations or improvements to the Premises necessitated as a result of the requirement of any municipal, state or federal authority. Lessee hereby waives all right to make repairs at the expense of Lessor, and Lessee hereby waives all rights provided for by the Civil Code of the State of California to make said repairs. By entering into the Premises, Lessee shall be deemed to have accepted the Premises as being in good and sanitary order, condition and repair, and Lessee agrees on the last day of said term or sooner termination of this Lease to surrender the Premises with appurtenances, in the same condition as when received and in a good, clean and sanitary condition, reasonable use and wear thereof and damage by fire, act of God or by the elements excepted. Lessee shall periodically sweep and clean the sidewalks adjacent to the Premises, as needed. Upon Lessee's possession of the Premises, Lessee shall be deemed to have accepted the Premises as being in good condition and repair.

Lessee agrees that it will not, nor will it authorize any person to, go onto the roof of the building of which the Premises are a part without the prior written consent of Lessor. Said consent will be given only upon Lessor's satisfaction that any repairs necessitated as a result of Lessee's action will be made by Lessee at Lessee's expense and will be made in such a manner so as not to invalidate any guarantee relating to said roof.

5.3 Free from Liens. Lessee shall keep the Premises free from any liens arising out of any work performed, material furnished, or obligation incurred by Lessee or alleged to have been incurred by Lessee.

5.4 Additional Consideration for Lease. City shall furnish Lessee, and Lessee shall accept exclusively from City, thermal and electrical energy under the terms and conditions as set forth in that certain document entitled "AGREEMENT FOR EXCLUSIVE PURCHASE OF THERMAL ENERGY AND ELECTRICITY", which is attached hereto as Exhibit "E". Such terms and conditions as specified in Exhibit "E" are to remain irrevocably in force so long as this lease shall be in effect.

## 6.0 INSURANCE AND INDEMNIFICATION.

6.1 Insurance Provided by Lessor. Lessor shall maintain fire and extended coverage insurance throughout the term of this Lease in an amount equal to at least ninety percent (90%) of the replacement value of the building containing the Premises, together with such other insurance, coverages and endorsements as may be required by Lessor's lender, or as Lessor may determine in its sole discretion. Lessee hereby waives any right of recovery from Lessor, its officers and employees, and Lessor hereby waives any right of loss or damage (including consequential loss) resulting from any of the perils insured against as a result of said insurance. Lessee agrees to pay to Lessor its pro rata share of the cost of said insurance to be determined by the relationship that the gross floor area of the Premises bears to the total gross leasable

floor area of the building or buildings for which such policy relates.

6.2 Insurance Provided by Lessee.

(a) Lessee to Provide Personal Property Insurance. Lessee, at its expense, shall maintain fire and extended coverage insurance written on a per occurrence basis on its trade fixtures, equipment, personal property and inventory within the Premises from loss or damage to the extent of their full replacement value and shall provide plate glass coverage.

(b) Lessee to Provide Liability Insurance. During the entire term of this Lease, the Lessee shall, at the Lessee's sole cost and expense, but for the mutual benefit of Lessor and Lessee, maintain comprehensive general liability insurance insuring against claims for bodily injury, death or property damage occurring in, upon or about the Premises and on any sidewalks directly adjacent to the Premises written on a per occurrence basis in a combined single limit of ONE MILLION DOLLARS (\$1,000,000.00) for bodily injury, death, and property damage or provided, however, if Lessor so elects Lessor may provide such insurance and, in such event, Lessee agrees to pay its pro rata share of the cost of said insurance on the same basis as provided in Section 6.1 above.

(c) Lessee to Provide Workers' Compensation Insurance. Lessee shall, at the Lessee's sole cost and expense, maintain a policy of workers' compensation insurance in an amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Lessee and the Lessor against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Lessee in the course of conducting Lessee's business in the Premises.

(d) General Provisions Applicable to Lessee's Insurance. All of the policies of insurance required to be procured by Lessee pursuant to this Section 6.2 shall be primary insurance and shall name the Lessor, its officers, employees and agents as additional insureds. The insurers shall waive all rights of subrogation and contribution they may have against the Lessor, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing thirty (30) days' prior written notice by registered mail to the Lessor. Prior to the Commencement Date or such earlier date as Lessee takes possession of the Premises for any purpose; and at least thirty (30) days prior to the expiration of any insurance policy, Lessee shall provide Lessor with endorsements evidencing the above insurance coverages written by insurance companies acceptable to Lessor, licensed to do business in the state where the Premises are located and rated A:VII or better by Best's Insurance Guide. In the event the Risk Manager of Lessor ("Risk Manager") determines that (i) the Lessee's activities in the Premises creates an increased or decreased risk of loss to the Lessor, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverages be obtained, Lessee agrees that the minimum limits of any insurance policy required to be obtained by Lessee may be changed

accordingly upon receipt of written notice from the Risk Manager; provided that Lessee shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of Lessor within ten (10) days of receipt of notice from the Risk Manager. Lessor and Lessee hereby waive any rights each may have against the other on account of any loss or damage occasioned by property damage to the Premises, its contents, or Lessee's trade fixtures, equipment, personal property or inventory arising from any risk generally covered by insurance against the perils of fire, extended coverage, vandalism, malicious mischief, theft, sprinkler damage or leakage, and earthquake. Each of the parties, on behalf of their respective insurance companies insuring such property of either Lessor or Lessee against such loss, waives any right of subrogation that it may have against the other. The foregoing waivers of subrogation shall be operative only so long as lawful in California and provided further that no policy is invalidated thereby.

6.3 Indemnification of Lessor. Lessee, as a material part of the consideration to be rendered to Lessor under this Lease, hereby waives all claims against Lessor for damage to equipment or other personal property, trade fixtures, leasehold improvements, goods, wares, inventory and merchandise, in, upon or about the Premises and for injuries to persons in or about the Premises, from any cause arising at any time. Lessee agrees to indemnify the Lessor, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities of Lessee, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the use of the Premises or the parking and common areas by Lessee or its employees and customers, or arising from the failure of Lessee to keep the Premises in good condition and repair, as herein provided, or arising from the negligent acts or omissions of Lessee hereunder, or arising from Lessee's negligent performance of or failure to perform any term, provision, covenant or condition of this Lease, whether or not there is concurrent passive or active negligence on the part of the Lessor, its officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the Lessor, its officers, agents or employees, who are directly responsible to the Lessor, and in connection therewith:

(a) Lessee will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Lessee will promptly pay any judgment rendered against the Lessor, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Lessee hereunder; and Lessee agrees to save and hold the Lessor, its officers, agents, and employees harmless therefrom;

(c) In the event the Lessor, its officers, agents or employees is

made a party to any action or proceeding filed or prosecuted against Lessee for such damages or other claims arising out of, or in connection with, the negligent performance of or failure to perform the work, operation or activities of Lessee hereunder, Lessee agrees to pay to the Lessor, its officers, agents or employees, any and all costs and expenses incurred by the Lessor, its officers, agents or employees in such action or proceeding, including, but not limited to, legal costs and attorneys' fees.

## 7.0 ABANDONMENT AND SURRENDER.

7.1 Abandonment. Lessee shall not vacate or abandon the Premises at any time during the term of this Lease; and if Lessee shall abandon, vacate or surrender the Premises or be dispossessed by process of law, or otherwise, any personal property belonging to Lessee and left on the Premises shall be deemed to be abandoned, at the option of Lessor, except such property as may be mortgaged to Lessor.

7.2 Surrender of Lease. The voluntary or other surrender of this Lease by Lessee, or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Lessor, terminate all or any existing subleases or sub-tenancies, or may, at the option of Lessor, operate as an assignment to it of any or all of such subleases or sub-tenancies.

8.0 DAMAGE AND DESTRUCTION OF PREMISES. In the event of (a) partial or total destruction of the Premises during the term of this Lease which requires repairs to the Premises, or (b) the Premises being declared unsafe or unfit for occupancy by any authorized public authority for any reason other than Lessee's act, use or occupation, which declaration requires repairs to the Premises, Lessor shall forthwith make said repairs provided Lessee gives to Lessor thirty (30) days' written notice of the necessity therefor. No such partial destruction (including any destruction necessary in order to make repairs required by any declaration made by any public authority) shall in any way annul or void this Lease except that Lessee shall be entitled to a proportionate reduction of Monthly Rental while such repairs are being made, such proportionate reduction to be based upon the extent to which the making of such repairs shall interfere with the business carried on by Lessee in the Premises. However, if during the last two (2) years of the term of this Lease the Premises are damaged as a result of fire or any other insured casualty to an extent in excess of twenty-five percent (25%) of the then replacement cost (excluding foundations), Lessor may within thirty (30) days following the date such damage occurs terminate this Lease by written notice to Lessee. If Lessor, however, elects to make said repairs, and provided Lessor uses due diligence in making said repairs, this Lease shall continue in full force and effect, and the Monthly Rental shall be proportionately reduced while such repairs are being made as hereinabove provided. Nothing in the foregoing to the contrary withstanding, if the Premises or said building is damaged or destroyed at any time during the term hereof to an extent of more than twenty-five percent (25%) of the then replacement cost (excluding foundations) as a result of a casualty not insured against, Lessor may within thirty (30) days following the date of such destruction terminate this Lease upon written notice to Lessee. If Lessor does not elect to terminate because of said uninsured casualty, Lessor shall promptly rebuild and repair the Premises and/or the building and

the Monthly Rental shall be proportionately reduced while such repairs are being made as hereinabove provided. If Lessor elects to terminate this Lease, all rentals shall be prorated between Lessor and Lessee as of the date of such destruction. In respect to any partial or total destruction (including any destruction necessary in order to make repairs required by any such declaration of any authorized public authority) which Lessor is obligated to repair or may elect to repair under the terms of this Section, Lessee waives any statutory right it may have to cancel this Lease as a result of such destruction.

9.0 ASSIGNMENT AND SUBLETTING. Lessee shall not assign this Lease or sublet all or a portion of the Premises without the prior written consent of Lessor, which consent shall not be unreasonably withheld. For purposes of this Lease, an assignment shall be deemed to include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Lessee, taking all transfers into account on a cumulative basis. Lessor may withhold its consent to an assignment or sublease to a proposed assignee or sub-Lessee, and Lessee agrees that Lessor shall not be unreasonable for doing so, unless all the following criteria are met: (a) The proposed assignee's or sub-Lessee's general financial condition, including liquidity and net worth, verified by audited financial statements prepared by a Certified Public Accountant in conformity with Generally Accepted Accounting Principles is equal to or greater than that of Lessee; (b) the proposed assignee or sub-Lessee has a demonstrated merchandising capability equal to or greater than that of Lessee as to the use for which the Premises are leased; (c) the proposed assignee or sub-Lessee is morally and financially responsible; and (d) the failure of Lessee's use of the Premises to fit the business plan of Lessor to promote tourism to the City of Palm Springs; and (e) the proposed assignee or sub-Lessee is exempt from federal income taxation pursuant to Internal Revenue Code Sections 501(c) (1) and/or 501(c) (3) and the proposed assignee's or sub-Lessee's proposed use of the Premises is a tax exempt function. Any such assignment shall be subject to all of the terms and conditions of this Lease and the proposed assignee shall assume the obligations of Lessee under this Lease in writing in form satisfactory to Lessor. The proposed assignee shall simultaneously provide to Lessor an estoppel certificate in the form described in Section 12.3 hereafter. Consent by Lessor to one assignment, subletting, occupation or use by another person shall not be deemed to be consent to any subsequent assignment, subletting, occupation or use by another person. Any assignment or subletting without the prior written consent of Lessor shall be void, shall constitute a material breach of this Lease, and shall, at the option of Lessor, terminate this Lease. Neither this Lease nor any interest therein shall be assignable as to the interest of Lessee by operation of law.

Lessor shall be under no obligation to consider a request for Lessor's consent to an assignment until Lessee shall have submitted in writing to Lessor a request for Lessor's consent to such assignment together with audited financial statements of Lessee and the proposed assignee, a history of the proposed assignee's business experience and such other information as required by Lessor to verify that the criteria for assignment as set forth herein are met. If Lessor approves such assignment, Lessee shall pay to Lessor one-half (1/2) of any consideration received by Lessee for such

assignment. In addition, if Lessor determines that the Monthly Rent payable to Lessor under this Lease is less than the fair market rental value, as determined by Lessor, Lessor shall have the right to condition its approval to an assignment or subletting on the increase of Monthly Rent to the fair market rental value.

#### 10.0 DEFAULT AND REMEDIES.

10.1 Default by Lessee. In addition to the defaults described in Section 9.0 hereinabove, the occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee: (a) the failure to pay any rental or other payment required hereunder to or on behalf of Lessor more than three (3) days after written notice from Lessor to Lessee that Lessee has failed to pay rent when due; (b) the failure to perform any of Lessee's agreements or obligations hereunder (exclusive of a default in the payment of money) where such default shall continue for a period of thirty (30) days after written notice thereof from Lessor to Lessee which notice shall be deemed to be the statutory notice so long as such notice complies with statutory requirements; (c) the vacation or abandonment of the Premises by Lessee; (d) the making by Lessee of a general assignment for the benefit of creditors; (e) the filing by Lessee of a voluntary petition in bankruptcy or the adjudication of Lessee as a bankrupt; (f) the appointment of a receiver to take possession of all or substantially all the assets of Lessee located at the Premises or of Lessee's leasehold interest in the Premises; (g) the filing by any creditor of Lessee of an involuntary petition in bankruptcy which is not dismissed within sixty (60) days after filing; or (h) the attachment, execution or other judicial seizure of all or substantially all of the assets of Lessee or Lessee's leasehold where such an attachment, execution or seizure is not discharged within sixty (60) days. Any repetitive failure by Lessee to perform its agreements and obligations hereunder, though intermittently cured, shall be deemed an incurable default. Two (2) breaches of the same covenant within a sixty (60) day period, a notice having been given pursuant to (a) or (b) above for the first breach, or three (3) of the same or different breaches at any time during the term of this Lease for which notices pursuant to (a) or (b) above were given for the first two (2) breaches shall conclusively be deemed to be an incurable repetitive failure by Lessee to perform its obligations hereunder.

In the event of any such default or breach by Lessee, Lessor may at any time thereafter, without further notice or demand, rectify or cure such default, and any sums expended by Lessor for such purposes shall be paid by Lessee to Lessor upon demand and as additional rental hereunder. In the event of any such default or breach by Lessee, Lessor shall have the right (i) to continue the lease in full force and effect and enforce all of its rights and remedies under this Lease, including the right to recover the rental as it becomes due under this Lease, or (ii) Lessor shall have the right at any time thereafter to elect to terminate the Lease and Lessee's right to possession thereunder. Upon such termination, Lessor shall have the right to recover from Lessee:

(i) The worth at the time of award of the unpaid rental which had been earned at the time of termination;

(ii) The worth at the time of award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided;

(iii) The worth at the time of award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; and

(iv) Any other amount necessary to compensate the Lessor for all the detriment proximately caused by Lessee's failure to perform its obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in subparagraphs (i) and (ii) above shall be computed by allowing interest at three percent (3%) over the prime rate then being charged by Bank of America, N.A. but in no event greater than the maximum rate permitted by law. The worth at the time of award of the amount referred to in subparagraph (iii) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but in no event greater than ten percent (10%).

As used herein "rental" shall include the Monthly Rental, other sums payable hereunder which are designated "rental" or "additional rental" and any other sums payable hereunder on a regular basis such as reimbursement for real estate taxes.

Such efforts as Lessor may make to mitigate the damages caused by Lessee's breach of this Lease shall not constitute a waiver of Lessor's right to recover damages against Lessee hereunder, nor shall anything herein contained affect Lessor's right to indemnification against Lessee for any liability arising prior to the termination of this Lease for personal injuries or property damage, and Lessee hereby agrees to indemnify and hold Lessor harmless from any such injuries and damages, including all attorneys' fees and costs incurred by Lessor in defending any action brought against Lessor for any recovery thereof, and in enforcing the terms and provisions of this indemnification against Lessee.

Notwithstanding any of the foregoing, the breach of this Lease by Lessee, or an abandonment of the Premises by Lessee, shall not constitute a termination of this Lease, or of Lessee's right of possession hereunder, unless and until Lessor elects to do so, and until such time Lessor shall have the right to enforce all of its rights and remedies under this Lease, including the right to recover rent, and all other payments to be made by Lessee hereunder, as they become due. Failure of Lessor to terminate this Lease shall not prevent Lessor from later terminating this Lease or constitute a waiver of Lessor's right to do so.

10.2 No Waiver. Acceptance of rental hereunder shall not be deemed a waiver of any default or a waiver of any of Lessor's remedies.

10.3 Lessor's Default. Lessor shall not be in default unless Lessor fails to perform obligations required of Lessor within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Lessor and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Lessee in writing, specifying wherein Lessor has failed to perform such obligation; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are required for performance then Lessor shall not be deemed in default if Lessor commences performance within a (30) day period and thereafter diligently prosecutes the same to completion. In no event shall Lessee have the right to terminate this Lease as a result of Lessor's default and Lessee's remedies shall be limited to damages and/or an injunction.

11.0 CONDEMNATION. In the event a condemnation or a transfer in lieu thereof results in a taking of any portion of the Premises, Lessor may, or in the event a condemnation or a transfer in lieu thereof results in a taking of twenty-five percent (25%) or more of the Premises, Lessee may, upon written notice given within thirty (30) days after such taking or transfer in lieu thereof, terminate this Lease. Lessee shall not be entitled to share in any portion of the award and Lessee hereby expressly waives any right or claim to any part thereof. Lessee shall, however, have the right to claim and recover, only from the condemning authority (but not from Lessor), any amounts necessary to reimburse Lessee for the cost of removing stock and fixtures. If this Lease is not terminated as above provided, Lessor shall use a portion of the condemnation award to restore the Premises.

12.0 MISCELLANEOUS.

12.1 Reservation of Right to Modify Property. Lessor hereby reserves the right (but not the obligation) to renovate, modernize, rehabilitate, expand, reduce, reconfigure, enclose and/or otherwise alter all or any portion of the Premises (collectively "Modifications"), in such manner and at such time or times, throughout the term of this Lease, as Lessor may, in its sole and absolute discretion, deem to be in the best interests of the Property. Such Modifications may include, without limitation, the right to construct new buildings on the Property for additional uses, to remove, renovate, repair, add to, modernize or otherwise alter the building in which the Premises are situated as well as other buildings, facilities, structures, malls, walkways, landscaping, parking and common areas or other areas within the Property. In connection with any and all such Modifications, Lessor may enter the Premises to the extent reasonably required by Lessor to pursue and complete such Modifications. In addition, Lessor may temporarily close portions of the parking and common areas and cause temporary obstructions in connection with any Modifications. Lessee agrees that under no circumstances shall the Modifications as to any portion of the Property or the construction activity that takes place in the course of making the Modifications, or any aspect thereof, including Lessor's entry into the Premises, constitute an eviction or partial eviction of Lessee or a breach of Lessee's right to quiet enjoyment or of any other provision of this Lease, nor entitle Lessee to damages, injunctive relief or other equitable relief, nor entitle Lessee to any abatement or reduction in the Monthly Rental, additional rental or other charges or sums due under this Lease; provided Lessor uses

reasonable efforts to mitigate any adverse effects on Lessee caused by the Modifications.

12.2 Entry and Inspection. Lessee shall permit Lessor and his agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining the Premises as required by the terms of this Lease or for the purpose of posting notices of non-liability for alterations, additions or repairs, or for the purpose of placing upon the property in which the Premises are located any usual or ordinary "For Sale" signs or any signs for public safety as determined by Lessor. Lessor shall be permitted to do any of the above without any rebate of rent and without any liability to Lessee for any loss of occupation or quiet enjoyment of the Premises thereby occasioned. Lessee shall permit Lessor, at any time within six (6) months prior to the expiration of this Lease, to place upon the Premises any usual or ordinary "For Lease" signs, and during such (6) month period Lessor or his agents may, during normal business hours, enter upon said Premises and exhibit same to prospective Lessees.

12.3 Estoppel Certificate. If, as a result of a proposed sale, assignment, or hypothecation of the Premises or the land thereunder by Lessor, or at any other time, an estoppel certificate shall be requested of Lessee; Lessee agrees, within ten (10) days thereafter, to deliver such estoppel certificate in the form attached hereto as Exhibit "C" addressed to any existing or proposed mortgagee or proposed purchaser, and to the Lessor. Lessee shall be liable for any loss or liability resulting from any incorrect information certified, and such mortgagee and purchaser shall have the right to rely on such estoppel certificate and financial statement.

12.4 Jurisdiction and Venue. The parties hereto agree that the State of California is the proper jurisdiction for litigation of any matters relating to this Lease, and service mailed to the address of Lessees set forth herein shall be adequate service for such litigation. The parties further agree that Riverside County, California is the proper place for venue as to any such litigation and Lessee agrees to submit to the personal jurisdiction of such court in the event of such litigation.

12.5 Partial Invalidity. If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.

12.6 Successors in Interest. The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.

12.7 No Oral Agreements. This (i) Lease covers in full each and every agreement of every kind or nature whatsoever between the parties hereto concerning this Lease, (ii) supersedes any and all previous obligations, agreements and understandings, if any, between the parties, oral or written, and (iii) merges all

preliminary negotiations and agreements of whatsoever kind or nature herein. Lessee acknowledges that no representations or warranties of any kind or nature not specifically set forth herein have been made by Lessor or its agents or representatives.

12.8 Authority. In the event that Lessee is a corporation or a partnership, each individual executing this Lease on behalf of said corporation or said partnership, as the case may be, represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation or partnership, in accordance with a duly adopted resolution of the Board of Directors, if a corporation, or in accordance with the Partnership Agreement, if a partnership, and that this Lease is binding upon said corporation or partnership in accordance with its terms. Lessee represents and warrants to Lessor that the entering into this Lease does not violate any provisions of any other agreement to which Lessee is bound.

12.9 Relationship of Parties. The relationship of the parties hereto is that of Lessor and Lessee, and it is expressly understood and agreed that Lessor does not in any way or for any purpose become a partner of Lessee in the conduct of Lessee's business or otherwise, or a joint-venture with Lessee, and that the provisions of this Lease and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method whereby rental payments are to be measured and ascertained.

12.10 Nondiscrimination. Lessee herein covenants by and for itself, its heirs, executors, administrators and assigns and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, sex, marital status, color, creed, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Premises herein leased, nor shall the Lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of Lessees, Lessees, sub-Lessees, sublessees or vendees in the Premises.

12.11 Notices. Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either party to this Lease to or on the other, such notice or demand shall be given or served in writing and shall not be deemed to have been duly given or served unless in writing, and personally served or forwarded by certified mail, postage prepaid, addressed, if to Lessor, as specified in Section 1.9. Either party may change the address set forth herein by written notice by certified mail to the other. Any notice or demand given by certified mail shall be effective one (1) day subsequent to mailing.

12.12 Waiver. No delay or omission in the exercise of any right or remedy by a non-defaulting party shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any

default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease.

12.13 Exhibits and Addenda. The Exhibits and Addenda attached to this Lease are made a part hereof as if fully set forth herein. In the event of a conflict between the terms and provisions of Addenda and the terms and provisions of this Lease, the terms and provisions of the Addenda shall prevail.

IN WITNESS WHEREOF, the parties have duly executed this Lease together with the herein referred to Exhibits which are attached hereto, on the day and year first above written in Palm Springs, California.

"City"

ATTEST:

CITY OF PALM SPRINGS, a municipal Corporation

By: \_\_\_\_\_  
James Thompson, City Clerk

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

Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Douglas Holland, City Attorney

"Lessee"

Coachella Valley Economic Partnership

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PREMISES

Being that portion of Parcel 2 of the map entitled "Parcel Map No. 15576, being a subdivision of a portion of Lot 17, Section 13, Township 4, South, Range 4 East, San Bernardino Base Meridian, per map of Palm Valley Colony Lands on file in map book 14, page 652, records of San Diego County, State of California, filed for record August 13, 1980 in Map Book 81, Pages 37 and 38, Records of Riverside County, described as follows:

Beginning at a point on the South right-of-way line of Tahquitz-McCallum Way, said point being the Northeast corner of said Parcel 2;

Thence leaving the South right-of-way line of Tahquitz-McCallum Way, South  $00^{\circ}12'58''$  West 303.00 feet along the East line of said Parcel 2;

Thence leaving the East line of said Parcel 2, North  $89^{\circ}59'28''$  West 200.34 feet;

Thence South  $00^{\circ}12'58''$  West 7.00 feet;

Thence North  $89^{\circ}59'28''$  West 83.00 feet to the West line of said Parcel 2;

Thence along the West line of said Parcel 2, North  $00^{\circ}09'50''$  East 290.00 feet, to the beginning of a curve concave to the Southeast having a radius of 20.00 feet;

Thence Northeasterly 31.36 feet along said curve through a central angle of  $89^{\circ}50'42''$  to a point on the South right-of-way line of Tahquitz-McCallum Way;

Thence along the South right-of-way line of Tahquitz-McCallum Way, South  $89^{\circ}59'28''$  East 263.38 feet to the POINT OF BEGINNING.

Reserving an Easement for the existing Tower and any necessary devices and appurtenances being used for radio communication and the right of ingress and egress over, under, along and across the South boundary of the above described parcel of land, to maintain, repair, and replace said Tower and any necessary devices and appurtenances.

Also, reserving easements for the existing utility facilities together with the right-of-ingress and egress over, under, along and across the South boundary of the above described parcel of land, to maintain, repair, and replace any of the utility facilities as needed.

EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

EXHIBIT "B"

PLOT PLAN OF DEMISED PREMISES

EXHIBIT "B"  
PLOT PLAN OF DEMISED PREMISES

EXHIBIT "C"

ESTOPPEL CERTIFICATE

Lessee: COACHELLA VALLEY ECONOMIC PARTNERSHIP  
Lessor: THE CITY OF PALM SPRINGS, a municipal corporation  
Date of Lease: \_\_\_\_\_  
Premises: 3111 E. TAHQUITZ CANYON WAY, PALM SPRINGS CA 92292  
To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The undersigned hereby certifies as follows:

1. The undersigned is the Lessee ("Lessee") under the above-referenced lease ("Lease") covering the above-referenced premises ("Premises").
2. The Lease constitutes the entire agreement between Lessor and Lessee with respect to the Premises and the Lease has not been modified, changed, altered or amended in any respect except as set forth above.
3. The term of the Lease commenced on \_\_\_\_\_, 201\_\_ and, including any presently exercised option or renewal term, will expire on \_\_\_\_\_ 201\_\_\_\_\_. Lessee has accepted possession of the Premises and is the actual occupant in possession thereof and has not sublet, assigned or hypothecated its leasehold interest. All improvements to be constructed on the Premises by Lessee have been completed and accepted by Lessor and any Lessee construction allowances have been paid in full.
4. As of this date, to the best of Lessee's knowledge, there exists no breach or default, nor state of facts which, with notice, the passage of time, or both, would result in a breach or default on the part of either Lessee or Lessor. To the best of Lessee's knowledge, no claim, controversy, dispute, quarrel or disagreement exists between Lessee and Lessor.
5. Lessee is currently obligated to pay Annual Rent in installments of \$ \_\_\_\_\_ per month, and such monthly installments have been paid not more than one month in advance. To the best of Lessee's knowledge, no other rent has been paid in advance and Lessee has no claim or defense against Lessor under the Lease and is asserting no offsets or credits against either the rent or Lessor. Lessee has no claim against Lessor for any security or other deposits except \$ \_\_\_\_\_ which was paid pursuant to the Lease.
6. Lessee has no option or preferential right to lease or occupy additional

space within the Property of which the Premises are a part. Lessee has no option or preferential right to purchase all of any part of the Premises nor any right or interest with respect to the Premises other than as Lessee under the Lease. Lessee has no right to renew or extend the term of the Lease except as set forth in the Lease.

7. Lessee has made no agreements with Lessor or its agent or employees concerning free rent, partial rent, rebate of rental payments or any other type of rent or other concession except as expressly set forth in the Lease.

8. There has not been filed by or against Lessee a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States, or any state thereof, or any other action brought under said bankruptcy laws with respect to Lessee.

9. All insurance which Lessee is required to maintain under the Lease has been obtained by Lessee and is in full force and effect and all premiums with respect thereto have been paid.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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

EXHIBIT "D"

RULES AND REGULATIONS

1. All loading and unloading of goods shall be done only at the times, in the areas and through the entrances reasonably designated for such purposes by Lessor.
2. The delivery or shipping of merchandise, supplies and fixtures to and from the Premises shall be subject to such rules and regulations as in the reasonable judgment of Lessor are necessary for the proper operation of the Premises or of the Property generally.
3. All of Lessee's refuse and rubbish shall be removed to central trash bins located in the Property, at Lessee's sole cost and expense.
4. No radio or television or other similar device audible outside the Premises shall be installed without obtaining in each instance the written consent of Lessor. No aerial shall be erected on the roof or exterior walls of the Premises or on the grounds of the Property without first obtaining in each instance the written consent of Lessor which consent shall not be unreasonably withheld or delayed. Any aerial so installed without such written consent shall be subject to removal without notice at any time.
5. No loudspeakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the Premises without first obtaining in each instance written consent of Lessor.
6. The outside sidewalks and loading areas immediately adjoining the Premises shall be kept clean and free from dirt and rubbish by Lessee to the reasonable satisfaction of Lessor, and Lessee shall not place or permit any obstructions or merchandise in such areas, except to the extent specifically permitted by the provisions of Lessee's Sublease.
7. Lessee shall not burn any trash or garbage of any kind in or about the Premises or the Property generally.
8. Lessee will not allow animals, except seeing-eye dogs, in, about or upon the Premises.
9. Lessee shall not use, and shall not allow anyone else to use, the Premises as a habitation. Such prohibition shall include, without limitation, sleeping, eating or bathing.
1. Lessee shall not place any rubbish or other matter outside any building within the Property, except in such containers as are authorized from time to time by Lessor.

EXHIBIT "E"  
AGREEMENT FOR EXCLUSIVE PURCHASE AND SALE OF  
THERMAL ENERGY AND ELECTRICITY

This Agreement to Purchase and Sell Thermal Energy and Electricity ("Agreement"), is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Palm Springs, California ("Palm Springs") and the Coachella Valley Economic Partnership ("CVEP").

Palm Springs has constructed a Cogeneration Facility for the production of, among other things, Thermal Energy and Electricity.

Palm Springs and CVEP now desire to agree with respect to the sale by Palm Springs to CVEP of a portion of the Thermal Energy and Electricity to be produced in the Municipal Complex Cogeneration Facility for use in heating, cooling and supplying electricity for the building located at 3111 E. Tahquitz Canyon Way, Palm Springs, California.

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3111 East Tahquitz Canyon Way

Palm Springs, California

This Leasehold Improvement Agreement shall set forth the terms and conditions relating to the construction of the Leasehold Improvements in the Premises. This Leasehold Improvement Agreement is essentially organized chronologically and addresses the issues of the construction of the Premises, in sequence, as such issues will arise during the actual construction of the Premises. All references in this Leasehold Improvement Agreement to Paragraphs or Sections of the "Lease" shall mean the relevant portion of that certain Lease to which this Leasehold Improvement Agreement is attached as Exhibit "F" and of which this Leasehold Improvement Agreement forms a part, and all references in the Lease to Sections of "Leasehold Improvement Agreement" shall mean the relevant portion of this Leasehold Improvement Agreement and all references in this Leasehold Improvement Agreement to Sections of this Leasehold Improvement Agreement shall mean the relevant portion of this Leasehold Improvement Agreement.

**SECTION 1- LESSOR'S OWNERSHIP OF PREMISES**

1.1 Lessor has constructed that certain free standing building described in Section 1.1 of the Lease, hereinafter referred to as the "Property."

**SECTION 2- CONSTRUCTION DRAWINGS FOR THE PREMISES**

2.1 Lessee shall, at its sole cost and expense, and subject to reimbursement as hereinafter set forth, construct the improvements in the Premises (the "Leasehold Improvements") pursuant to those certain blueprints, floor and space plans, specification and finalize construction prices, collectively, the approved "Working Drawings" prepared by Lessee's architect. Lessee shall make no changes or modifications to the Approved Working Drawings without the prior written consent of Lessor, which consent may be withheld if such change or modification would directly or indirectly delay the "Substantial Completion," as that term is defined in Section 8.1 of this Leasehold Improvement Agreement, of the Premises or increase the cost of designing or constructing the Leasehold Improvements. Any changes or modifications approved by the Lessor shall be at Lessee's sole cost and expense.

**SECTION 3 - CONSTRUCTION DRAWINGS**

3.1 Selection of Architect/Construction Drawings. Lessee shall retain an architect or space planner (the "Architect") to prepare the Construction Drawings. Lessee shall retain the engineering consultants (the "Engineers") to prepare all plans and engineering working drawings relating to the structural, mechanical, electrical, plumbing, HVAC, life safety, and sprinkler work of the Leasehold Improvements. The plans and drawings to be prepared by Architect and the Engineers hereunder shall be known collectively as the "Construction Drawings."

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All Construction Drawings shall comply with the drawing format and specifications as determined by Lessee, and shall be subject to Lessor's approval. Lessee and Architect shall verify, in the field, the dimensions and conditions as shown on the relevant portions of the Base Building Plans, and Lessee and Architect shall be solely responsible for the same, and Lessor shall have no responsibility in connection therewith. Lessor's review of the Construction Drawings as set forth in this Section 3, shall be for its sole purpose and shall not imply Lessor's review of the same, or obligate Lessee to review the same, for quality, design, Code compliance or other like matters. Accordingly, notwithstanding that any Construction Drawings are reviewed by Lessor or its agents and consultants, and notwithstanding any advice or assistance which may be rendered to Lessee by Lessor or Lessor's agents or consultants, Lessor shall have no liability whatsoever in connection therewith and shall not be responsible for any omissions or errors contained in the Construction Drawings, and Lessee's waiver and indemnity set forth in this Lease shall specifically apply to the Construction Drawings.

3.2 Final Space Plan. Prior to execution of the Lease by Lessor, Lessee and the Architect shall prepare the final space plan for Leasehold Improvements in the Premises (collectively, the "Final Space Plan"), which Final Space Plan shall include a layout and designation of all offices, rooms and other partitioning, their intended use, and equipment to be contained therein, and shall deliver the Final Space Plan Lessor for Lessor's approval.

3.3 Final Working Drawings. Within ten (10) working days after execution of the Lease by Lessor and delivery of a copy of the Lease to Lessee, Lessee, the Architect and the Engineers shall complete the architectural and engineering drawings for the Leasehold Improvements, and the final architectural working drawings in a form which is complete to allow subcontractors to perform the work and to obtain all applicable permits (collectively, the "Final Working Drawings") and shall submit the same to Lessor for Lessor's approval.

3.4 Permits. The Final Working Drawings shall be approved by Lessor (the "Approved Working Drawings") prior to the commencement of the construction of the Leasehold Improvements. Lessee shall immediately submit the Approved Working Drawings to the appropriate municipal authorities for all applicable building permits necessary to commence and fully complete the construction of the Leasehold Improvements (the "Permits"). Lessee hereby agrees that neither Lessor nor Lessor's agents or consultants shall be responsible for obtaining any building permit or certificate of occupancy for the Premises and that the obtaining of the same shall be Lessee's responsibility; provided however that Lessor shall, in any event, cooperate with Lessee in executing permit applications and performing other ministerial acts reasonably necessary to enable Lessee to obtain any such permit or certificate of occupancy. No changes, modifications or alterations in the Approved Working Drawings may be made without the prior written consent of Lessor, provided that Lessor may withhold its consent, in its sole discretion, to any change in the Approved Working Drawings if such change would directly or indirectly delay the "Substantial Completion" of the Premises as that term is defined in Section 6.1 of this Leasehold Improvement Agreement.

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3.5 Cooperation. Lessor shall use its best, good faith, efforts and all due diligence to cooperate with the Architect, the Engineers, and Lessee to complete all phases of the Construction Drawings and the permitting process and to receive the permits, and approval of the "Construction Costs," as set forth in Section 7.1 below, as soon as possible after the execution of the Lease, and, in that regard, shall meet with Lessee on a scheduled basis to be determined by Lessor, to discuss Lessee's progress in connection with the same. Upon Lessor's execution of this Lease, Lessee shall provide Lessor with a construction schedule including time projections for planning, entitlement process, related preparation and construction of the Leasehold Improvements.

#### **SECTION 4-LESSEE COVENANTS**

4.1 Lessee recognizes, understands and covenants that any and all improvements shall be undertaken according to the City of Palm Springs codes

4.2 Lessee recognizes, understands and covenants that improvements contemplated herein may be subject to the provisions contained in the California Labor Code (commencing with Section 1720) relating to general prevailing wage rates and other pertinent provisions therein.

4.3 Lessee shall comply and stay current with all applicable building standards, which may change from time to time, including but not limited to, the Americans with Disabilities Act of 1990 and any regulations issued pursuant thereto in providing improvements contemplated herein.

#### **SECTION 5 - CONSTRUCTION**

5.1 Lessee shall diligently pursue the planning, entitlement process, related preparation and construction of the Leasehold Improvements. Lessee shall provide Lessor with periodic written progress reports, which reports shall contain, without limitation, updated information relative to permit approvals and construction.

5.2 Lessee shall notify Lessor, in writing, forthwith when such planning, entitlement process, related preparation and construction of the Leasehold Improvements have been completed, a Certificate of Occupancy has been issued by the City of Palm Springs, or if no new Certificate of Occupancy is required, then upon acceptance of the improvements by the City of Palm Springs upon final inspection, all required permits have been obtained and electrical power has been turned on.

5.3 In addition, immediately after the Substantial Completion of the Premises, Lessee shall have prepared and delivered to the Lessor (1) a complete set of "As-Built" drawings showing every detail, latent or otherwise, of such improvements, including but not limited to electrical circuitry and plumbing, and (2) the same complete set of "As-Built" drawings on a computer disk in a CADD format.

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#### **LEASEHOLD IMPROVEMENT AGREEMENT**

**SECTION 6 - COMPLETION OF THE LESSOR IMPROVEMENTS: LEASE COMMENCEMENT DATE**

6.1 For purposes of this Lease, "Substantial Completion" of the Premises shall occur upon the completion of construction of the Leasehold Improvements in the Premises pursuant to the Approved Working Drawings, with the exception of any punch list items and any Lessee fixtures, work-stations, built-in furniture, or equipment to be installed by Lessee, provided however, that such punch list items do not preclude the useful occupancy of the Premises. Useful occupancy herein defined as the Premises being safe, free of hazard, free of any risk to the safety of Lessee employees and available for the use set forth in the Lease.

6.2 The Lease Commencement Date shall occur as set forth in Section 1.3 of the Lease.

**SECTION 7 - CONSTRUCTION COSTS**

7.1 Prior to Lessor's execution of this Lease, Lessee shall provide Lessor an itemized cost breakdown of the construction costs of the leasehold improvements, attached hereto and made a part hereof as Addendum 1. The total costs of all the Leasehold Improvements subject to reimbursement including but not limited to fixtures, equipment architectural fees and permits, and as reflected in the cost breakdowns, shall not exceed the sum of \$ \_\_\_\_\_ which sum represents Lessee's estimate of such construction costs shown on Addendum 1 in the amount \$ \_\_\_\_\_ plus a contingency amount budgeted by the Lessee for the sole purpose of paying for extra items requested by Lessor during the course of construction or installation of leasehold improvements.

7.2 Upon completion of the Leasehold Improvements and within fourteen (14) days of Substantial Completion and acceptance of the Premises by Lessee, Lessee shall provide Lessor with an itemized statement, similar to the cost breakdown form attached as Addendum 1, of the actual costs of the Leasehold Improvements incurred by Lessee, accompanied by vendor, contractor, subcontractor, material man invoices if requested by the Lessor along with request for reimbursement of actual costs incurred.

**SECTION 8- REIMBURSEMENT FOR LEASEHOLD IMPROVEMENTS**

8.1 As a credit against the base rent as stated in the Lease, Lessor shall reimburse Lessee, as hereinafter set forth, the actual cost of the Leasehold Improvements as substantiated by the itemized statement required in Section 7.2 above and related supporting documentation as requested by the Lessor. In no event shall Lessee be reimbursed an amount in excess of actual costs pursuant to Section 7.2 nor in excess of the total amount set forth in Section 7.1, whichever is less.

8.2 Lessor shall credit Lessee an amount not to exceed \$ 3,750.00 per month for ( ) months as reimbursement for the actual costs of improvements made by Lessee. In no event shall Lessee be reimbursed any amount in excess of actual costs nor in excess of the total amount set forth in Sections 7.1 and 7.2 above.

8.3 In the event that Lessor terminates the Lease as provided in Section

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2.5 of the Lease, Lessor agrees to pay Lessee upon such termination the balance of all payments which would otherwise be due pursuant to Section 8.2 for Leasehold Improvements.

## **SECTION 9- MISCELLANEOUS**

9.1 Lessee's Entry Prior to Substantial Completion. Provided that Lessor and its agents do not interfere with Lessee's work in the Premises, Lessor shall allow Lessee access to the Premises prior to the Substantial Completion of the Premises for the purpose of Lessee installing standard equipment or fixtures (including Lessee's data and telephone equipment) in the Premises. Prior to Lessee's entry into the Premises as permitted by the terms of this Section 9.1, Lessee shall submit a schedule to Lessor, for approval, which schedule shall detail the timing and purpose of Lessee's entry. Lessee shall hold Lessor harmless from and indemnify, protect and defend Lessee against any loss or damage to the Premises and against injury to any persons caused by Lessee's actions pursuant to this Section 9.1.

9.2 Lessor's Representative. Lessor has designated its Director of Community & Economic Development as its sole representative with respect to the matters set forth in this Leasehold Improvement Agreement, who, until further notice to Lessee, shall have full authority and responsibility to act on behalf of the Lessor as required in this Leasehold Improvement Agreement.

9.3 Lessee's Representative. Lessee has designated its Chief Operating Officer as its sole representative with respect to the matters set forth in this Leasehold Improvement Agreement, who, until further notice to Lessor, shall have full authority and responsibility to act on behalf of the Lessee as required in this Leasehold Improvement Agreement.

9.4 Lessee's Agents. All subcontractors, laborers, material men, and suppliers retained directly by Lessee shall conduct their activities in and around the Premises, in a harmonious relationship with all other subcontractors, laborers, material men and suppliers at the Premises.

9.5 Time of the Essence in this Leasehold Improvement Agreement. Unless otherwise indicated, all references herein to a "number of days" shall mean and refer to calendar days. In all instances where Lessor is required to approve, if no written notice of approval is given within the stated time period, at the end of such period the item shall automatically be deemed not approved.

9.6 Lessee's Lease Default, Notwithstanding any provision to the contrary contained in this Lease, if an event of default by Lessee of this Leasehold Improvement Agreement, and said default has occurred at any time on or before the Substantial Completion of the Premises, then (i) in addition to all other rights and remedies granted to Lessor pursuant to the Lease, Lessor shall have the right to cause Lessee to cease the construction of the Leasehold Improvements and (ii) all other obligations of Lessor under the terms of this Leasehold Improvement Agreement shall be forgiven until such time as such default is cured pursuant to the terms of the Lease or this Leasehold Improvement Agreement.

### EXHIBIT "F"

#### LEASEHOLD IMPROVEMENT AGREEMENT

IN WITNESS WHEREOF, the parties have duly executed this Lease together with the herein referred to Exhibits which are attached hereto, on the day and year first above written in Palm Springs, California.

"City"

ATTEST:

CITY OF PALM SPRINGS, a municipal Corporation

By: \_\_\_\_\_  
James Thompson, City Clerk

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

Its: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
Douglas Holland, City Attorney

"Lessee"

Coachella Valley Economic Partnership

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

Its: \_\_\_\_\_

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

Its: \_\_\_\_\_