

# CITY OF PALM DESERT

73-510 FRED WARING DRIVE  
PALM DESERT, CALIFORNIA 92260-2578  
TEL: 760 346-0611  
info@cityofpalmdesert.org

May 6, 2021

Mr. David Hatcher  
Artists Council  
149 La Cerra Drive  
Rancho Mirage, California 92270

Dear Mr. Hatcher:

**Subject: Contract No. C41250 – New Lease Between the City of Palm Desert and the Artists Council for Parcels 640-370-001 (Main Building) and 640-370-002 (Garden and Pavilion) Located at 72567 Highway 111, Palm Desert**

At its regular meeting of March 25, 2021, the Palm Desert City Council, by Minute Motion, authorized the City Manager to enter into a new lease agreement with the Artists Council for the former Palm Springs Art Museum Building located at 72567 Highway 111, Palm Desert.

Enclosed is a fully executed Lease Agreement for your records. If you have any questions or require additional information, please do not hesitate to contact us.

Sincerely,

M. GLORIA SANCHEZ  
ACTING CITY CLERK

MGS/srs

Enclosure (as noted)

cc/enc: Wayne Olson, Senior Development Analyst

LEASE

1. Basic Provisions ("Basic Provisions").

1.1 Parties. This Lease ("Lease"), dated April 1, 2021 for reference purposes only, is entered into by and between the CITY OF PALM DESERT, a public body, corporate and politic ("Lessor") and the ARTISTS COUNCIL, a California nonprofit public benefit corporation ("Lessee") (collectively the "Parties," or individually a "Party").

1.2 Premises. That certain land, including the building, and all improvements thereon (commonly known as 72-567 Highway 111, Palm Desert, CA 92260, and located in the County of Riverside, State of California, consisting of APN 640-370-004 ("Main Building Property") and APN 640-370-002 ("Garden Pavilion and Fountain"), and more particularly described on Exhibit "A" and Exhibit "A-1" (site plan) attached hereto (collectively, the "Premises").

1.3 Non-Exclusive Use Areas. That certain land and all improvements thereon (collectively, the "Non-Exclusive Use Areas"), adjacent to and/or near the Premises, comprising the following parcels: a. APN 640-370-008 ("Carriage Lane"); b. APN 640-370-001 (the "Sculpture Garden") and c. Parking spaces located on APN 640-370-009 ("Lot 9"), APN 640-370-010 ("Lot 10"), and APN 640-370-011 ("Lot 11") (collectively, the "Parking Spaces"). Said Non-Exclusive Use Areas are more particularly described on Exhibit "A" and Exhibits "A-1", "A-2", and "A-3" (site plan, parcel map, and aerial map) attached hereto. In the event there is any conflict between Exhibits A-1, A-2, and A-3, Exhibit A-2 (parcel map) shall govern.

1.4 Term.

(a) The initial term of this Lease shall be for three (3) years ("Initial Term"), commencing on April 1, 2021 ("Commencement Date") and ending on March 31, 2024 ("Expiration Date"). Subject to paragraph (b) below, and upon the mutual consent of the Parties following the procedure set forth below, the Term may be extended for up to two (2) successive one (1) year periods (the "Renewal Terms") on the same terms and conditions as set forth herein. Lessee shall notify Lessor in writing at least ninety (90) days (but not more than 150 days) before the Expiration Date or the expiration of the Renewal Term then in effect, as applicable, of its request to extend the Term (or the Renewal Term, as applicable), and Lessor shall notify Lessee of its consent to such Renewal Term or election not to consent to such Renewal Term not less than forty-five (45) days prior to the Expiration Date or the expiration of the Renewal Term then in effect, as applicable. In the event Lessor fails to notify Lessee of Lessor's consent to such Renewal Term or election not to consent to such Renewal Term within the time period specified above, Lessor shall be deemed to have elected not to consent to such Renewal Term.

(b) If following the first anniversary of the Commencement Date Lessor is concerned about lack of satisfactory performance by Lessee with respect to the Agreed Use (as defined below), including, but not limited to, Lessee's performance of the activities described on Exhibit B attached hereto, Lessor will give Lessee written notice outlining its concerns (the "Notice of Concerns"). Within thirty (30) days after receipt of such notice

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CITY CLERK'S OFFICE  
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Lessee shall submit to Lessor a written plan of action to address those concerns. If after ninety (90) days following receipt of the Notice of Concerns Lessor remains unsatisfied with Lessor's performance as described in the Notice of Concerns, Lessor may, at Lessor's option and in its sole and absolute discretion, give Lessee ninety (90) days' written notice to terminate this Lease, in which case this Lease shall terminate at the end of said time period and Lessee shall immediately thereafter surrender possession to Lessor.

1.5 **Base Rent.** \$1.00 per year ("**Base Rent**"), payable on April 1, 2021 and continuing thereafter on the first day of each April during the term of this lease.

1.6 **Agreed Use.** The Premises will be for public use as a destination for art, education and entertainment for residents and visitors, as well as a location for collaboration between art and civic organizations, educational institutions and area businesses, such as the types of uses set forth on Exhibit B attached hereto (the "**Agreed Use**"). The Agreed Use shall also include the development of educational programs for local K-12 schools to be held at the Premises.

1.7 **Lessee's Work.** Prior to commencement of tenant improvements, if any, Lessor and Lessee shall agree in writing as to the extent of permissible tenant improvements (the "Lessee's Work"). Lessee shall, at Lessee's cost and expense, make any approved tenant improvements and repairs.

1.8 **Fundraising.** Upon execution of this Lease by the Parties, Lessee shall have full access to the building located on the Main Building Property (the "**Building**") and shall have the right to use the Building for fundraising events.

## 2. Premises.

### 2.1 Letting.

(a) Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease.

(b) Lessee acknowledges that the Sculpture Garden is presently leased to the Palm Springs Art Museum, Inc., a California nonprofit public benefit corporation (the "**Sculpture Garden Lessee**") under a lease between the Lessor and the Sculpture Garden Lessee (the "**Sculpture Garden Lease**"). Pursuant to the terms of the Sculpture Garden Lease, Lessee may request from time to time to use the Sculpture Garden on an exclusive basis in connection with a party or other special event to be held at the Premises. Any request for the exclusive use of the Sculpture Garden for a party or other special event by the Lessee shall be made to the Sculpture Garden Lessee not less than twenty-one (21) days prior to the proposed date of exclusive use, and shall be subject to the written consent of the Sculpture Garden Lessee, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Additionally, Lessor hereby grants to Lessee a nonexclusive license to use Nonexclusive Use Areas in a manner complementary to Agreed Use of the Premises,

and subject to conditions and approvals required herein, as follows: (a) Sculpture Garden. The use of the Sculpture Garden shall be subject to the terms of Paragraph 2.1(b) above. (b) Carriage Lane. Lessee shall manage and supervise the use of Carriage Lane jointly with the Sculpture Garden Lessee. Any request for the exclusive use of Carriage Lane for a special event by either the Lessee or the Sculpture Garden Lessee shall be made to the other party not less than twenty-one (21) days prior to the proposed date of exclusive use, and shall be subject to the written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. (c) Parking Spaces. The parking spaces in the Nonexclusive Use Area shall be for the nonexclusive use of Lessee and its guests, subject to any exclusive-use rights granted by Lessor to other persons or entities. (d) Lessor agrees to restrict vehicular access at both ends of Carriage Lane, with access available only to Lessor, the fire department, the police department, the Sculpture Garden Lessee and Lessee as approved by the Fire Marshall and City Engineer. It is intended that Carriage Lane will be used, except in limited circumstances, solely for pedestrians.

(d) Additionally, Lessee acknowledges that Lessor has granted to Sculpture Garden Lessee a license to enter on to the Premises for the purpose of cleaning and maintaining the four sculptures located thereon as of the date of this Lease, and Lessee acknowledges that this Lease is subject to such license. Lessee further acknowledges and agrees that Lessor and Sculpture Garden Lessee shall have the right to enter on to the Premises during normal operating hours to access the server room and the equipment therein, including, but not limited to, the security camera recordings.

**2.2 Condition; Compliance with Laws.** Lessee shall lease the Premises in their "AS-IS" condition, without representation or warranty, express or implied, and Lessee hereby acknowledges that in no event shall Lessor be obligated to make any alterations, repairs or improvements to the Premises, except as otherwise provided herein.

Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor. In addition, Lessee hereby expressly acknowledges that Lessee has had full opportunity to inspect the Premises (including, without limitation the presence/absence of hazardous materials, the condition of fixtures and equipment, and whether the improvements comply with law). Lessor hereby agrees to make any changes to the Premises required by existing laws or by amendments to existing laws or by new laws.

**2.3 Sculpture Garden, Carriage Lane and Parking Spaces.** Lessee and Lessor acknowledge that the Sculpture Garden Lessee shall be responsible for all cleaning and ongoing maintenance of the four sculptures located on the Main Building Property as of the date of this Lease. Lessor shall be responsible for all exterior landscaping, landscape and other maintenance, exterior cleaning and trash removal, irrigation and other related expenses to maintain the Premises, Sculpture Garden, Carriage Lane and Parking Spaces at no less than their current level of maintenance quality and to maintain the roads and parking areas surrounding the Premises.

**3. Possession.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance under

Paragraph 6, but such failure to provide evidence of insurance shall not extend or delay the Commencement Date.

**4. Use.**

4.1 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties.

4.2 **Hazardous Substances.**

(a) **Definitions.** The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either: (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties.

(b) **Use Requires Consent.** Lessee shall not engage in any activity in or on the Premises, which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, so long as such use is in compliance with all Applicable Requirements, does not negate LEED status, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements).

(c) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice,

claim or other documentation which it has concerning the presence of such Hazardous Substance.

(d) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under, or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(e) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. **No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.**

(f) **Investigations and Remediations.** Lessee shall have the responsibility to pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises as a result of Lessee's use (including the Lessee's Work and the "Alterations", as defined in Paragraph 5.3(a) below) of the Premises.

(g) **Lease Continuation.** If a Hazardous Substance Condition (see Paragraph 7.1(e)) occurs during the term of this Lease, Lessee shall investigate and remediate it as required by the Applicable Requirements and this Lease shall continue in full force and effect.

4.3 **Inspection; Compliance.** Lessor and Lessor's consultants shall have the right to enter into Premises at any time for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease. The cost of any such inspections shall be paid by Lessor, unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see Paragraph 4.2) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority.

5. **Maintenance; Repairs; Utility Installations; Trade Fixtures; and Alterations.**

**5.1 Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraphs 2.3 (Sculpture Garden, Carriage Lane and Parking Spaces), Paragraph 5.1 (Lessee's Obligations), 5.2 (Lessor's Obligations), 7 (Damage or Destruction), and 12 (Condemnation), Lessee shall comply with the specific lease terms and conditions (Exhibit "B"), at Lessee's sole expense, and keep the Premises, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Lessee's Work and Alterations in good order, condition and repair (whether or not the portion of the Premises requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or the age of such portion of the Premises), including, but not limited to, plumbing, electrical, lighting facilities, boilers, pressure vessels, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass and signs located at the Premises. Lessee, in keeping the Premises in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Paragraph 5.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Building in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity (excluding any obligation to paint the Building). Notwithstanding the foregoing, Lessor shall be responsible for and maintain and when necessary replace (or reimburse Lessee for Lessee's maintenance and replacement as provided for in Paragraph 5.2), at its cost and expense, the Building's roof, roof drainage, solar (including the photovoltaic panels), any future solar-based energy system, and HVAC systems (including the humidification system), fire protection system (including the alarm and pipe-sprinkler system), the painting of the exterior of the Building, and the exterior roadways, parkways, pathways and sidewalks. Lessee will maintain or hire janitorial service, at Lessee expense, sufficient to maintain the interior in a clean, well maintained condition, necessary to eliminate odors, all visible dust, dirt, litter, trash, stains, etc. to the greatest practical degree possible.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises: (i) boiler and pressure vessels, (ii) clarifiers, (iii) basic utility feed to the perimeter of the Building, and (iv) any other equipment which is the responsibility of Lessee, if reasonably required by Lessor.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 5.1, Lessor may enter upon the Premises after 30 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof.

**5.2 Lessor's Obligations.** Subject to the provisions of Paragraphs 2.3 (Sculpture Garden, Carriage Lane and Parking Spaces), 5.1 (Lessee's Obligations), 5.2 (Lessor's Obligations), 7 (Damage or Destruction) and 12 (Condemnation), and except as otherwise provided herein, it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee. Lessor shall, however, have the obligation to maintain and when necessary replace, at its cost and expense, the Building's roof, roof drainage, solar (including the photovoltaic panels), any future solar-based energy system, the HVAC systems (including the humidification system), fire protection system (including the alarm and pipe-sprinkler system), the painting of the exterior of the building and the exterior roadways, parkways, pathways, and sidewalks. Any replacement of the solar system shall be comparable to or better than the existing solar system. At Lessor's option, Lessor may require Lessee, by written notice, to maintain and when necessary to replace all or any portion of the Building's roof, roof drainage, the HVAC systems, and the fire protection system, subject to Lessor's obligation to reimburse Lessee all reasonable expenses incurred therein. It shall also be the obligation of Lessor to maintain on a regular basis as needed the Nonexclusive Use Areas. Lessee shall reasonably cooperate in that maintenance and shall timely report to Lessor any circumstances requiring attention. It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

**5.3 Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term "**Utility Installations**" refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises. The term "**Trade Fixtures**" shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises. The term "**Alterations**" shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures, whether by addition or deletion, and includes placement of art, statuary or other alterations in Nonexclusive Priority Use Areas. "**Lessee Owned Alterations and/or Utility Installations**" are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 5.4(a).

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises or Nonexclusive Use Areas without Lessor's prior written consent. Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented



to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner. The Lessee's Work shall commence and be completed only upon satisfaction of the conditions in (i), (ii) and (iii) above. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. Lessor may condition its consent upon Lessee providing a completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation.

**5.4 Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises. Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations. Unless otherwise instructed per Paragraph 5.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises. However, notwithstanding anything to the contrary in this Lease, all art, statuary, and electronic equipment owned, leased, borrowed or controlled by Lessee shall at all times be and remain the sole property of Lessee.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not later than six months prior to the end of the term of this Lease (as it may be extended), Lessor may require that any or all Lessee Owned Alterations and Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Lessee Owned Alterations and Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises and Nonexclusive Use Areas by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practice. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Lessee owned Alterations and/or Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall completely remove from the Premises any and all Hazardous Substances brought onto the Premises by or for Lessee, or any third party (except Hazardous Substances which were deposited via underground migration from areas outside of the Premises) even if such removal would require Lessee to perform or pay for work that exceeds statutory requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as

Lessor may desire. The failure by Lessee to timely vacate the Premises pursuant to this Paragraph 5.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Paragraph 22 below.

**6. Insurance; Indemnity.**

**6.1 Liability Insurance.**

(a) **Premises - Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$2,000,000 per occurrence with an annual aggregate of not less than \$5,000,000, an "Additional Insured-Managers or Lessors of Premises Endorsement" and contain the "Amendment of the Pollution Exclusion Endorsement" for damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. The policy must provide for the payment of defense costs in addition to the coverage amounts stated therein. All insurance carried by Lessee shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only. The certificate of insurance and additional insured endorsement is subject to approval of Lessor, which approval shall not be unreasonably withheld.

(b) **Premises - Carried by Lessor.** Lessor may maintain, at its sole cost and expense, liability insurance as described in Paragraph 6.1(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

(c) **Nonexclusive Use Areas - Carried by Lessor.** Lessor shall obtain and keep in force an insurance program equivalent to a Commercial General Liability policy of insurance protecting Lessor and Lessee as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Nonexclusive Use Areas. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than \$2,000,000 per occurrence with an annual aggregate of not less than \$5,000,000, an "Additional Insured-Managers or Lessors of Premises Endorsement". The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessor's obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessor nor relieve Lessor of any obligation hereunder. The policy must provide for the payment of defense costs in addition to the coverage amounts stated therein. All insurance carried by Lessor shall be primary to and not contributory with any similar insurance carried by Lessee, whose insurance shall be considered excess insurance only. The certificate of insurance and additional

insured endorsement, or equivalent, is subject to approval of Lessee, which approval shall not be unreasonably withheld.

(d) **Nonexclusive Use Areas - Carried by Lessee.** Lessee may maintain, at its sole cost and expense, liability insurance as described in Paragraph 6.1(c), in addition to, and not in lieu of, the insurance required to be maintained by Lessor. Lessor shall not be named as an additional insured therein.

**6.2 Property Insurance — Building and Improvements.** Lessor shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, except to the extent coverage is required to be provided by Lessee below, covering the Premises, the Nonexclusive Use Areas and the statuary located on the Main Building Property. The amount of such insurance shall be equal to the full replacement cost of the Premises. Lessee Owned Alterations, Utility Installations, Trade Fixtures and Lessee's personal property shall be insured by Lessee under Paragraph 6.3. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss, theft, vandalism, or other damage including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, Lessee shall be liable for such deductible amount in the event of an Insured Loss caused by Lessee or Lessee's employees, agents, customers, or invitees.

**6.3 Lessee's Property.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations, and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed \$1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

**6.4 Workers' Compensation Insurance.** Lessee shall maintain Workers' Compensation Insurance (with statutory limits), and employer liability insurance (with limits of at least \$1,000,000 per occurrence) and naming the Lessor as an additional insured. Lessee shall provide to Lessor when requested the certificate of insurance evidencing such coverage, including a waiver of subrogation endorsement, in favor of the Lessor (including its officers, agents, employees and volunteers).

**6.5 Insurance Policies.** Insurance required of Lessee herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least B+, V, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Commencement Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 30 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one (1) year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same. Insurance requirements shall be reviewed every three years to ensure that all coverages are commercially reasonable.

**6.6 Waiver of Subrogation.** Without affecting any other rights or remedies, and unless otherwise required herein, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be.

**6.7 Indemnity.** Except for Lessor's negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

**6.8 Exemption of Lessor from Liability.** Lessor shall not be liable for injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, donors, or any other person at the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the real property of which the Premises are a part, or from other sources or places, and whether caused by Lessor's active negligence, passive negligence, or failure to perform its maintenance obligations. Notwithstanding

Lessor's negligence or breach of this Lease, Lessor shall under no circumstances be liable for injury to Lessee's business or for any loss of income or profit therefrom.

**7. Damage or Destruction.**

**7.1 Definitions.**

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations, which can reasonably be repaired in six (6) months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within thirty (30) days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations, which was caused by an event required to be covered by the insurance described in Paragraph 6.2, irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance as defined in Paragraph 4.2(a), in, on, or under the Premises which requires repair, remediation, or restoration.

**7.2 Partial Damage - Insured Loss.** If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is \$10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, Lessor shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or

adequate assurance thereof, within ten (10) days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said ten (10) day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within ten (10) days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate thirty (30) days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 7.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

**7.3 Partial Damage - Uninsured Loss.** If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within thirty (30) days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective sixty (60) days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within ten (10) days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within thirty (30) days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

**7.4 Total Destruction.** Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate sixty (60) days following such Destruction. If the damage or destruction was caused by the negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except to the extent actually covered by insurance.

**7.5 Lessee's Remedies.** If Lessor shall be obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within ninety (90) days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or restoration, give written notice to Lessor and to any Lenders of which Lessee has actual notice, of Lessee's election to terminate this Lease on a date not less than sixty (60) days following the giving of such notice. If Lessee gives such notice and such repair or restoration is not commenced within thirty (30) days thereafter, this Lease shall terminate as of the date specified in said notice. If the repair or restoration is commenced within such thirty (30) days, this Lease shall continue in full force and effect. "Commence" shall mean either the unconditional authorization of the preparation of the required plans, or the beginning of the actual work on the Premises, whichever first occurs.

**8. Taxes.** Unless Lessee is exempt from such taxes, Lessee shall pay, prior to delinquency, all possessory interest taxes assessed on Lessee's interest under this Lease, taxes assessed against and levied upon Lessee Owned Alterations, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within ten (10) days after receipt of a written statement setting forth the taxes applicable to Lessee's property. Lessee is currently a tax-exempt entity.

**9. Utilities and Services.** Lessee shall pay for all domestic water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

**10. Assignment and Subletting.**

**10.1 Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, "**assign or assignment**") or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent, which may be withheld in Lessor's sole and absolute discretion.

(b) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 11.1(d), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may terminate this Lease.

**11. Default; Breach; Remedies.**

**11.1 Default; Breach.** A "Default" is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. A "Breach" is defined as the occurrence of one or more of the following Defaults, and the failure of Lessee to cure such Default within any applicable grace period:

(a) The failure of Lessee to use the Premises as required by the Agreed Use.

(b) The vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 6.2 is jeopardized as a result thereof.

(c) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate, (v) a requested subordination, (vi) any material documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of thirty (30) days following written notice to Lessee.

(d) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or other than those described in subparagraphs 11.1(a), or (b), above, where such Default continues for a period of thirty (30) days after written notice; provided, however, that if the nature of Lessee's Default is such that more than thirty (30) days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said thirty (30) day period and thereafter diligently prosecutes such cure to completion.

(e) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a "**debtor**" as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph (d) is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

**11.2 Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within thirty (30) days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) the worth at the time of award of the amount by which the unpaid rent 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 rent 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 Lessor for all the detriment proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the



ordinary course of things would be likely to result therefrom, including but not limited to the cost of recovering possession of the Premises, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 11.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 11.1. In such case, the applicable grace period required by Paragraph 11.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

11.3 **Interest.** Any monetary payment due Lessor hereunder, charges, not received by Lessor, when due, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("**Interest**") charged shall be computed at the rate of ten percent (10%) per annum but shall not exceed the maximum rate allowed by law.

11.4 **Breach by Lessor.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than thirty (30) days after receipt by Lessor, and any Lender whose name and address shall have been furnished Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required

for its performance, then Lessor shall not be in breach if performance is commenced within such thirty (30) day period and thereafter diligently pursued to completion.

**12. Condemnation.** If the Premises or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises not occupied by any building, is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within ten (10) days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within ten (10) days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises caused by such Condemnation.

**13. Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any real estate broker, salesperson or finder in connection with this Lease. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such broker, salesperson, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

**14. Estoppel Certificates.** If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee shall deliver to any potential lender or purchaser designated by Lessor such estoppel statement and financial statements as may be reasonably required by such lender or purchaser.

**15. Definition of Lessor.** The term "Lessor" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises, or, if this is a sublease, of the Lessee's interest in the prior lease. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

**16. Severability.** The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other provision hereof.

**17. Days.** Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

**18. Limitation on Liability.** The obligations of Lessor and Lessee under this Lease shall not constitute personal obligations of Lessor or Lessee or its board members, directors, officers or employees. Lessee shall look to the Premises, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's board members, directors, officers or employees, or any of their personal assets for such satisfaction.

**19. No Prior or Other Agreements; Broker Disclaimer.** This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective.

**20. Notices.**

**20.1 Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, and shall be deemed sufficiently given if served in a manner specified in this Paragraph. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises, the Premises shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

**20.2 Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 48 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

**21. Waivers.** No waiver by Lessor of the Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall

not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent. The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

**22. No Right To Holdover.** Lessee has no right to retain possession of the Premises or any part thereof beyond the expiration or termination of this Lease. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

**23. Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**24. Covenants and Conditions; Construction of Agreement.** All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

**25., Binding Effect; Choice of Law.** This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of the State of California. Any litigation between the Parties hereto concerning this Lease shall be initiated in Riverside County.

**26. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS AGREEMENT.**

**27. Attorneys' Fees.** If any Party brings an action or proceeding involving the Premises whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "**Prevailing Party**" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or resulting Breach (\$200 is a reasonable minimum per occurrence for such services and consultation).

**28. Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable five days prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

**29. Signs.** All exterior and off-premises signage shall require prior approval by Lessor.

**30. Termination; Merger.** Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within ten (10) days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

**31. Consents.** Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent to an assignment, a subletting or the presence or use of a Hazardous Substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within ten (10) business days following such request.

**32. Quiet Possession.** Subject to performance by Lessee of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises during the term hereof.

**33. Security Measures.** Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee

assumes all responsibility for the protection of the Premises, Lessee, its agents and invitees and their property from the acts of third parties.

**34. Reservations.** Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not conflict with any of the provisions of this lease or unreasonably interfere with Lessee's use of the Premises or the Nonexclusive Use Areas. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

**35. Performance Under Protest.** If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of such sum. If it shall be adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay.

**36. Authority; Multiple Parties; Execution.**

(a) Each individual executing this Lease on behalf of Lessee represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf, and Lessee shall deliver to the Lessor satisfactory evidence of such authority.

(b) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

**37. Amendments.** This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's obligations hereunder, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises.

**38. Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation. In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense.

**39. Nondiscrimination.** The Lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, 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, color, creed, religion, sex, marital status, national origin, or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the Lessee himself, or any person claiming under or through him or her, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy, of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

**40. Memorandum of Lease.** Upon written request by Lessor, Lessee shall execute, acknowledge and return to Lessor for recording Memorandum of Lease evidencing this Lease.

**ATTENTION: LESSEE SHOULD RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.**

**[Signatures on Following Page]**

The parties hereto have executed this Lease on the dates set forth opposite their respective signatures below.

Dated: 4/8/21

**LESSEE:**

**ARTISTS COUNCIL**, a California nonprofit public benefit corporation

By: David R Hatcher

Name: David R Hatcher

Title: Chair, Board of Directors

Dated: April 20, 2021

**LESSOR:**

**CITY OF PALM DESERT**, a California municipal corporation

By: [Signature]

Name: L. Todd Hileman

Title: City Manager

**Approved as to Form:**

CITY ATTORNEY

By: [Signature]  
Name: Robert Hargreaves of Best Best & Krieger LLP

**Attest**

**CITY CLERK**

By: [Signature]  
M. Gloria Sanchez  
Acting City Clerk



**CALIFORNIA ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

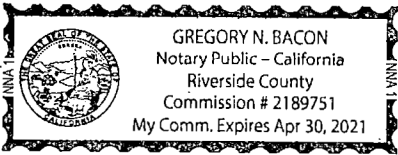
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }  
County of Riverside }

On April 8, 2021 before me, Gregory N. Bacon  
Date Here Insert Name and Title of the Officer

personally appeared David Hatcher  
Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature Gregory N. Bacon  
Signature of Notary Public

Place Notary Seal and/or Stamp Above

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Lease Agreement  
Document Date: April 8, 2021 Number of Pages: \_\_\_\_\_  
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: David Hatcher Signer's Name: \_\_\_\_\_  
 Corporate Officer – Title(s): Chairman  Corporate Officer – Title(s): \_\_\_\_\_  
 Partner –  Limited  General  Partner –  Limited  General  
 Individual  Attorney in Fact  Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  Other: \_\_\_\_\_  
Signer is Representing: Artists Council Signer is Representing: \_\_\_\_\_

DBH

# California Acknowledgment

The acknowledgment wording in this certificate is mandatory for all acknowledgments notarized and filed or recorded in California, whether the acknowledger is signing as an individual or a representative (partner, corporate officer, attorney in fact, trustee, etc.). State law requires the certificate wording to be used exactly as it appears in statute.

Law permits California Notaries to use an out-of-state acknowledgment form on a document that will be filed in that other state or U.S. jurisdiction, but only if "the form does not require the Notary to determine or certify

that the signer holds a particular representative capacity or to make other determinations and certifications not allowed by California law" (Civil Code Section 1189(c)).

The optional section at the bottom can deter alteration of the document or fraudulent reattachment of this form to an unintended document. The insertions in this section are not required by law. Failure to fill out this section will not affect the validity of the certificate.

## Instructions:

- 1 NAME OF COUNTY** where Notary performs notarization.
- 2 DATE OF NOTARIZATION.** Actual month, day and year in which signer(s) appear(s) before Notary.
- 3 NAME AND TITLE OF NOTARIZING OFFICER.** In the case of a Notary, "Notary Public" would be the title.

**4 NAME(S) OF SIGNER(S)** appearing before Notary. Initials and spelling of name(s) should agree with name(s) signed on document and ID card. Line through any remaining space.

**5 SIGNATURE OF NOTARY** exactly as name appears on commissioning papers, in space 3 and in seal.

**6 NOTARY SEAL IMPRINT,** clearly and legibly affixed.

**SPACES 7-14 ARE OPTIONAL.** Omission of information here will not affect the document's validity. However, completing these spaces can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**7 TITLE OR TYPE OF DOCUMENT** notarized, such as "Grant Deed."

**8 DATE OF DOCUMENT** notarized. Most but not all documents will have a date, usually at the top or following the signature. If none, insert "No Date."

**9 NUMBER OF PAGES** in the notarized document. This may point out fraudulent addition or removal of pages. Do not count the certificate as a page. However, the certificate will be regarded as a page by recording officials in assessing recording fees.

**10 SIGNER(S) OTHER THAN NAMED IN SPACE 4.** Since all signers might not be named on the same notarial certificate, insert name(s) of signer(s) here that appear(s) or will appear on other certificates — as many as space allows. If there are a large number of signers, a notation such as "Mary Smith and 28 other signers" will suffice. If none, insert "no other signers."

**11 NAME(S) OF SIGNER(S)** from space 4 whose capacity and represented entity follow.

**12 CAPACITY CLAIMED BY SIGNER.** Check appropriate box to indicate whether signer is signing as individual (on his or her own behalf), or as corporate officer (indicate corporate title), partner (indicate whether "limited" or "general" partner), attorney in fact, trustee, guardian/conservator, or in another capacity.

**13 DESCRIPTION OF OTHER CAPACITY(IES).** A single capacity, such as "executor," may be indicated here; or a multiple capacity, such as "corporate officer signing for partnership in which corporation is partner."

**14 NAME OF PERSON OR LEGAL ENTITY** that signer is representing. It could, for example, be the name of an absent person represented by attorney in fact. It could be the name of a condominium association, such as "Blue Lagoon Condo Assn." Or it could be multiple entities, such as "XYZ Corp., partner in Mutual Enterprises, a partnership."

**CALIFORNIA ACKNOWLEDGMENT** CIVIL CODE § 1189

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A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California  
County of LOS ANGELES **1**


On July 19, 2018 before me Pat R. Jones, Notary Public  
Date Here Insert Name and Title of the Officer

personally appeared Michael T. Smith **4**  
Name(s) of Signer(s)

---

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

6



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

WITNESS my hand and official seal.

Place Notary Seal and/or Stamp Above

Signature Pat R. Jones **5**  
Signature of Notary Public

---

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document  
Title or Type of Document: Grant Deed **7**

Document Date: July 19, 2018 **8** Number of Pages: One **9**

Signer(s) Other Than Named Above: no other signers **10**

Capacity(ies) Claimed by Signer(s)  
Signer's Name: Michael T. Smith **11**

<input type="checkbox"/> Corporate Officer - Title(s) <input type="checkbox"/> Partner - <input type="checkbox"/> Limited <input type="checkbox"/> General <input checked="" type="checkbox"/> Individual <input type="checkbox"/> Attorney In Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____	<input type="checkbox"/> Corporate Officer - Title(s) <input type="checkbox"/> Partner - <input type="checkbox"/> Limited <input type="checkbox"/> General <input type="checkbox"/> Individual <input type="checkbox"/> Attorney In Fact <input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator <input type="checkbox"/> Other: _____
---	--

Signer is Representing: \_\_\_\_\_ **13**  
Signer is Representing: \_\_\_\_\_ **14**

©2019 National Notary Association



**NATIONAL  
NOTARY  
ASSOCIATION**

Exhibit "A"

LEGAL DESCRIPTION OF THE  
LAND COMPRISING PART OF THE PREMISES

Parcel 4 of Parcel Map No. 30226, in the City of Palm Desert, County of Riverside, State of California as per map filed in Book 203, Pages 16 to 19 inclusive of Parcel Maps in the office of the County Recorder of said county. APN: 640-370-004

CONTRACT NO. C41250

HAHN RD

HWY 111

Parking Spaces

Garden Pavilion and Fountain

Parking Spaces

Main Building

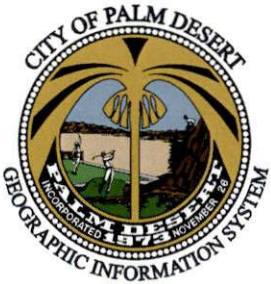
Carriage Lane

Sculpture Garden

PAINTERS PATH

Parking Spaces

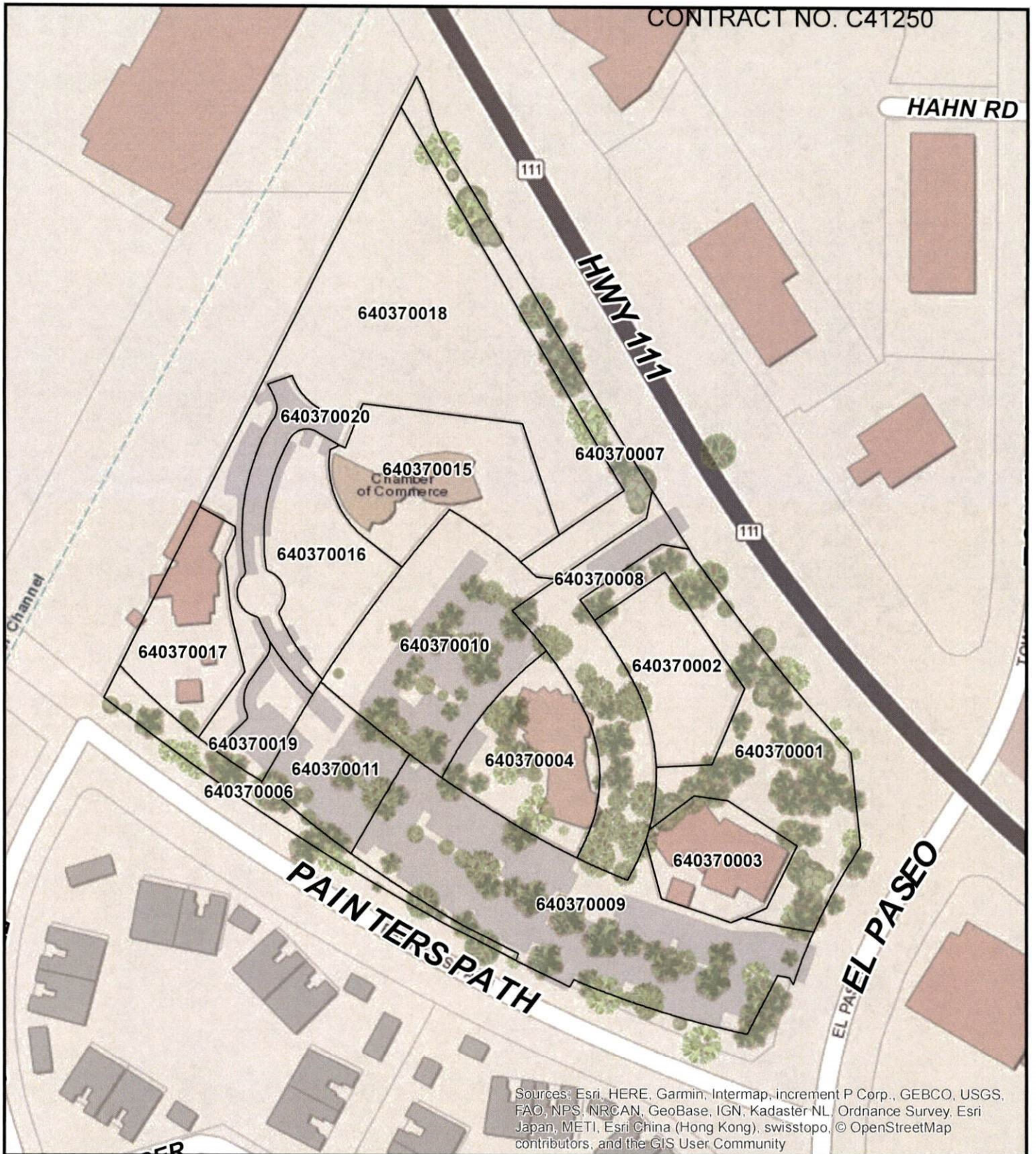
EL PASEO



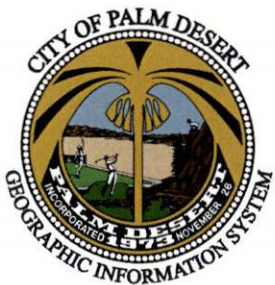
### Exhibit A-1 Site Plan



Date: 2020



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), swisstopo, © OpenStreetMap contributors, and the GIS User Community



### Exhibit A-2 Parcel Map



Date: 2020

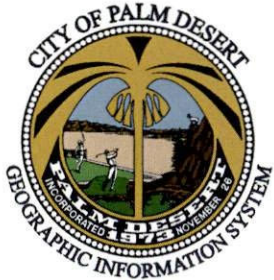
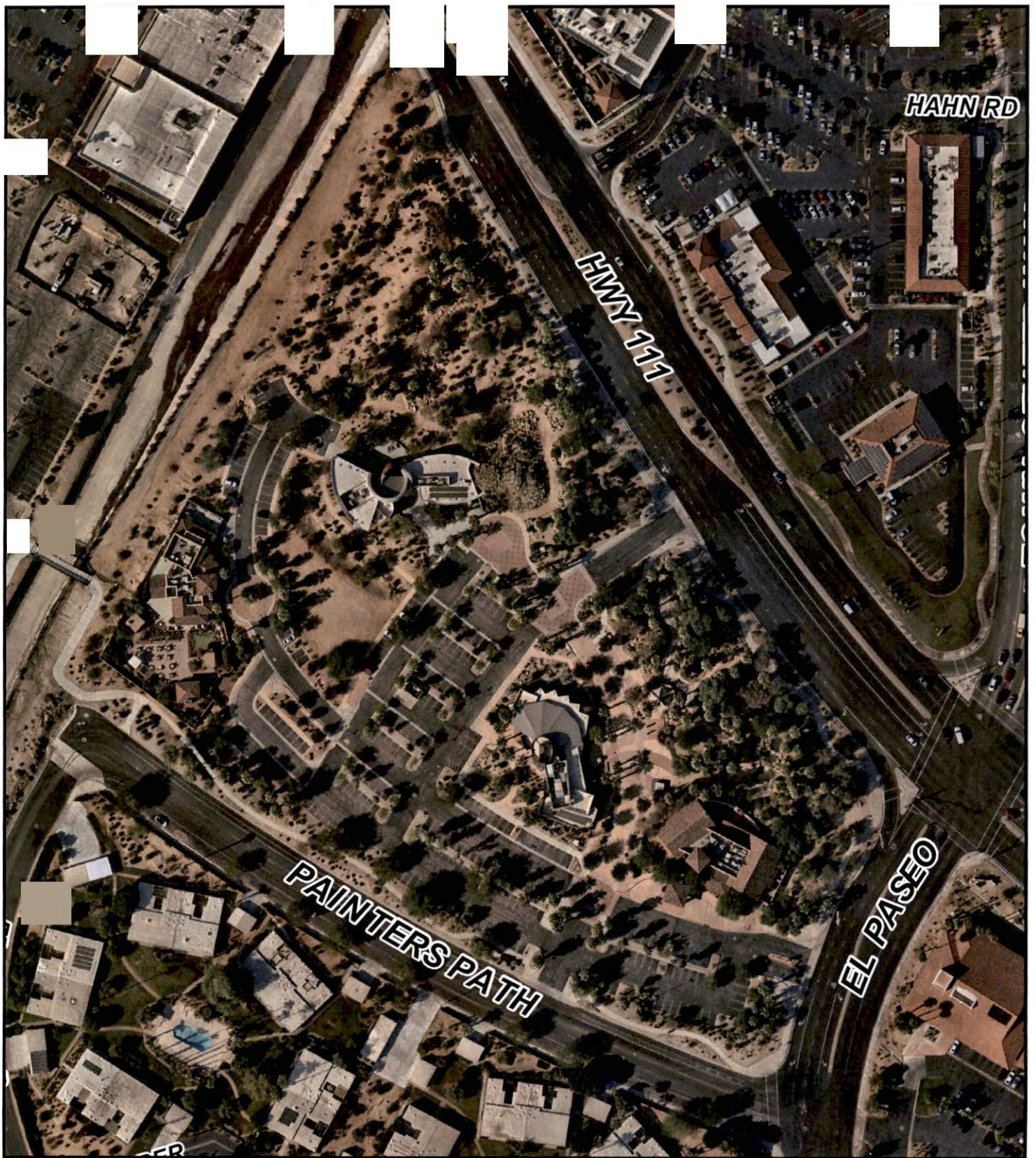


Exhibit A-3 Aerial Map



Date: 2020

**Exhibit "B"**

**Uses of Premises**

Envisioned activities at the Premises includes the following:

- a. High quality art exhibitions, large and small
- b. Opening receptions
- c. Classes and workshops
- d. Critiques, book clubs and discussion groups
- e. Speaker series
- f. Marketing roundtable
- g. Visiting artists in residence
- h. Art films
- i. "Sip and paint" evenings
- j. Salon for the arts
- k. Studio tours
- l. Plein-air days
- m. Exhibits with museums and galleries outside the Valley
- n. Joining with other area arts groups to put on workshops with nationally renowned instructors
- o. Expanding exhibitions into other media and areas (e.g., textiles, indigenous art)
- p. Hosting interdisciplinary events (art and music, dance, video, etc.)
- q. Offering other arts groups space for meetings
- r. Coordinating opening times with yoga sessions and produce market days

DRH

Exhibit "C"

SPECIFIC LEASE TERMS AND CONDITIONS

CITY OF PALM DESERT, LESSOR  
PALM SPRINGS ART MUSEUM, INC., LESSEE

1. Operating Expenses/CAM Charges: Lessee's share of operating and maintenance expenses shall be payable by Lessee on either a monthly or annual basis. The Common Area Maintenance (CAM) charges will be twenty three percent (23%) of the total operating and maintenance expenses relating to APNs 640-370-001 and 640-370-002. CAM charges consist of landscaping costs, water, electricity and parking lot sweeping, the monthly charges shall be estimated and adjusted (on the same pro rata basis) on an annual basis beginning on July 1st of each year.

2. LEED Certification: Lessee shall make no improvements and use only equipment and products that will not negate the LEED certification status of the building or its contents.

3. Site Modifications: Subject to the provisions of the Lease dealing with Lessor's consent and Lessee's rights, any and all modifications to the Premises by Lessee are subject to review and approval of Lessor prior to any modification taking place, which approval will not be unreasonably withheld.

4. Interior Maintenance: It will be the Lessee's responsibility to maintain the interior areas of the leased premises. Lessee will maintain or hire janitorial service, at Lessee expense, sufficient to maintain the interior in a clean, well maintained condition, necessary to eliminate odors, all visible dust, dirt, litter, trash, stains, etc. to the greatest practical degree possible.

5. City of Palm Desert Smoke Free Ordinance: The City of Palm Desert Ordinance No. 1007 prohibits smoking within certain public areas in the City of Palm Desert; indicated specifically by Section (B) Paragraph 3 (c) and Section (B) Paragraph 2. The Ordinance prohibits smoking within the office areas, conference rooms, atrium and forty (40) feet from the entrances and exits of the building. The Ordinance was approved and adopted on October 25, 2001 by the City Council of the City of Palm Desert.

6. Recycling: Per AB939, the City of Palm Desert is required to divert its waste from the landfill and implement diversion programs. In order to meet this mandate, the City, all City owned facilities, and contractors performing work for the City, are required to participate in recycling programs that relate to the business activity as well as recycling of other materials banned from landfills, (e.g. chemicals, batteries, electronic waste, construction and demolition waste, bottles, cans, paper, plastic, etc.) Therefore, the Lessee agrees to participate in the City of Palm Desert's recycling programs, (office recycling, household hazardous waste, etc.). The City shall provide recycling containers and education of staff/employees.

7. Business Related Expenses: It will be the Lessee's responsibility and expense to obtain any and all required licenses, permits, etc., relating to the operation of their business.

DRH



8. Real Property Taxes: Both Lessor and Lessee are property tax exempt entities. However, any real estate taxes or assessments which are assessed against the Premises, if any, are the responsibility of Lessee for payment.

9. Lessor to maintain all exterior landscaping and related irrigations systems on Premises and Nonexclusive Use Areas.

10. Lessee to reimburse Lessor for property insurance deductibles when damage to the Premises was caused by Lessee clients, customers, donors, etc. Lessee to reimburse Lessor fully for any damage caused by Lessee or its agents.

DRH