

RESOLUTION NO. [REDACTED]

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM DESERT, CALIFORNIA, APPROVING AN AGREEMENT FOR DISBURSEMENT AND USE OF FUNDS BY AND BETWEEN THE CITY OF PALM DESERT AND FINE QUALITY FOODS, INC. DBA PAPA DAN'S PIZZA AND PASTA AND FIND THAT THE ACTIVITY DOES NOT CONSTITUTE A PROJECT UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) AND ALTERNATIVELY IS CATEGORICALLY EXEMPT FROM REVIEW UNDER SECTION 15301.

WHEREAS, the City of Palm Desert ("City") and Fine Quality Foods, Inc., a Nevada corporation, d/b/a Papa Dan's Pizza and Pasta ("Papa Dan's") have negotiated an Agreement for Disbursement and Use of Funds ("Agreement") to disburse funds from the City's Invest Palm Desert Program to assist with rebuilding Papa Dan's restaurant at 73011 Country Club Drive F-1 in the City, which has operated within the City for over 40 years and recently burned down in a fire; and

WHEREAS, pursuant to that Agreement, Papa Dan's is committed to opening and to continue operating an Italian restaurant in the City for a five (5) year minimum period; and

WHEREAS, Papa Dan's has also covenanted to, among other things, use the funds to purchase equipment and services from local vendors based in the City; and

WHEREAS, based on information provided by City staff, and other such written and oral evidence, as presented to the City, the City finds and determines that the allocation of funds to Papa Dan's pursuant to the Agreement is reasonably related to a legitimate governmental purpose in that the retention of the restaurant will provide numerous public benefits including:

- Generating substantial revenue for the City through additional Local Sales Tax Revenue which may be used by the City for the funding of necessary public services and facilities, including but not limited to, public safety services and facilities, public improvements and recreational opportunities that otherwise may not be available to the community for many years; and
- Papa Dan's is a highly successful restaurant who will be committed to maintaining the restaurant in the City of Palm Desert which will ensure the retention and creation of jobs and provide opportunity for additional job growth throughout the term of this Agreement; and
- Entering into this Agreement and retaining the restaurant may attract additional businesses and investment in the community due to increased services and economic activity in the area; and

- Retaining this business within the City will create jobs, maintain economic diversity in the community and stimulate the economic recovery of the City by generating new opportunities for economic growth within the region; and
- Retaining Papa Dan's' operations within the City will generate substantial revenue for the City, allow for the retention of jobs, and result in community and public improvements that might not otherwise be available to the community for many years; and

WHEREAS, in accordance with Government Code Section 53083, the City provided certain information in written form to the public and on its website (the "Report") and held a noticed public hearing on February 27, 2025 to consider all written and oral comments on the Agreement and the Report and concluded said hearing on that same date, and the City subsequently accepted the Report by resolution; and

WHEREAS, all other legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Palm Desert as follows:

SECTION 1. Incorporation of Recitals. The foregoing recitals are true and correct, and are incorporated herein and made an operative part of this Resolution.

SECTION 2. Findings. The City Council additionally finds and determines that (a) there are identifiable public purposes fulfilled by the Agreement, as set forth in the Recitals, that outweigh the benefit to private persons; and (b) the findings set forth in this Resolution are based upon substantial written and oral evidence presented to the City Council.

SECTION 3. The City Council hereby finds that pursuant to the California Environmental Quality Act ("CEQA") (Pub. Res. Code, § 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs, tit. 14 § 15000 et seq.), approval of the Agreement is not a "project" for purposes of CEQA and therefore is not subject to CEQA review.

State CEQA Guidelines section 15378 defines a "project" as an activity that "has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." (State CEQA Guidelines, § 15378(a).) Here, the approval of an agreement to disburse funds to assist a restaurant with interior improvements will not result in any physical changes to the environment. Accordingly, it does not meet the definition of a "project" subject to CEQA. (State CEQA Guidelines, § 15060(c).) In addition, section 15378(b) explicitly excludes certain activities from the definition of a 'project.' Specifically, section 15378(b)(5) states that "organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment" are not considered projects. The approval of the Agreement is an administrative activity that does not result in physical changes to the environment and is therefore not subject to CEQA.

Even if the action were considered a “project” under CEQA, it would still qualify for a categorical exemption under State CEQA Guidelines section 15301, Class 1 (Existing Facilities). Class 1 includes the “operation, repair, maintenance, or minor alteration of existing private structures ... involving negligible or no expansion of existing or former use.” While section 15301 provides examples, such as “interior or exterior alterations,” it does not limit the scope of eligible projects to those examples. The approval of the agreement involves modifications to the interior of a private structure. The improvements are confined to the existing space and do not introduce new uses or intensify current operations. Therefore, the project meets the criteria for the Class 1 categorical exemption.

Further, none of the exceptions outlined in CEQA Guidelines section 15300.2 apply. There is no potential for significant cumulative impacts, as staff does not anticipate other similar projects at the project site or in the surrounding area. The property does not present any unusual circumstances, such as unique environmental resources, an unusual location, or physical characteristics that could result in significant impacts. The project area is fully developed and does not contain environmentally sensitive areas. The project would not damage any scenic resources, including trees, historic buildings, rock outcroppings, or similar features, within a highway officially designated as a state scenic highway. The project site is not located on a hazardous waste site or any other site included on a list compiled pursuant to Government Code section 65962.5. Lastly, the proposed project will not cause a substantial adverse change in the significance of a historical resource, as no such resources are present near the project site that could be impacted.

Staff is directed to prepare, execute, and file a Notice of Exemption with the County Clerk and the State Clearinghouse within five (5) working days of the project’s approval and adoption of this resolution..

SECTION 4. Approve Agreement. The City Council hereby approves the Agreement in substantially the form attached to this Resolution as Exhibit A. The City Council hereby authorizes the City Manager, or designee, with concurrence of the City Attorney, to execute said Agreement. The City Manager is hereby authorized to take any additional steps necessary to facilitate the intent of this action.

SECTION 4. Implementation. The City Manager or designee is hereby authorized and directed to, on behalf of the City, execute any and all documents in accordance with this Resolution and applicable law.

SECTION 5. Custodian of Records. The documents and materials associated with this Resolution that constitute the record of proceedings on which these findings are based are located at Palm Desert City Hall 73510 Fred Waring Drive Palm Desert, CA 92260. The City Clerk is the custodian of records for the record of proceedings.

SECTION 6. Severability. If any provision of this Resolution is held invalid, the remainder of this Resolution shall not be affected by such invalidity, and the provisions of this Resolution are severable.

SECTION 7. Effective Date. This Resolution shall become effective immediately upon its adoption.

The City Clerk of the City of Palm Desert shall certify as to the adoption of this Resolution.

PASSED, APPROVED, AND ADOPTED this 27th day of February 2025.

JAN HARNIK, MAYOR

ATTEST:

ANTHONY MEJIA, CITY CLERK

APPROVED AS TO LEGAL FORM:

BEST BEST & KRIEGER LLP
CITY ATTORNEY

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE CITY OF)
PALM DESERT)

I, ANTHONY MEJIA, City Clerk of the City of Palm Desert, DO HEREBY CERTIFY that foregoing Resolution No. 2025-XX was duly passed and adopted by the City Council of the City of Palm Desert at their regular meeting held February 27, 2025 by the following roll call vote, to wit:

AYES: COUNCIL MEMBERS:

NOES: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ANTHONY MEJIA, CITY CLERK

(SEAL)

The foregoing is the original of Resolution No. 2025-## duly passed and adopted by the Palm Desert City Council at their regular meeting held February 27, 2025.

ANTHONY MEJIA, CITY CLERK

(SEAL)

EXHIBIT A
AGREEMENT FOR DISBURSEMENT AND USE OF FUNDS

[Attached behind this cover page]

**AGREEMENT FOR DISBURSEMENT AND USE OF FUNDS
BETWEEN THE CITY OF PALM DESERT AND FINE QUALITY FOODS,
INC. DBA PAPA DAN’S PIZZA AND PASTA**

This Agreement for Disbursement and Use of Funds (“Agreement”) is entered into this 27 day of February, 2025, by and between the CITY OF PALM DESERT (“City”) and Fine Quality Foods Inc. dba Papa Dan’s Pizza and Pasta, a corporation, (“Recipient”). City and Recipient are sometimes referred to individually as Party and collectively as Parties.

RECITALS

A. City has created the Invest Palm Desert Program (“Program”) which establishes a Program fund and allows businesses to apply for money for capital improvements and emergency assistance from the City’s Program fund. The Program’s goals are to enhance the City’s ability to promote economic development, facilitate the growth of businesses that provide high-quality jobs, ensure a strong economic base to support services to City residents, aid in the diversification of the City’s economy, and promote an improved quality of life within the City.

C. Recipient has owned and operated an Italian restaurant in the City for forty years, however, in 2024 a fire destroyed Recipient’s restaurant. Recipient has secured a new tenant space located at 73011 Country Club Drive F-1, Palm Desert, CA 92270 (“Property”), within the same shopping center as the prior restaurant’s location, and Recipient seeks to re-establish Recipient’s restaurant within the City.

D. Recipient has submitted a request to City for disbursement of Program funds, to be used only for such capital improvements as specified in Exhibit “A”, attached hereto and incorporated herein by reference.

D. City has considered Recipient’s request and desires to approve the disbursement of Two Hundred Thousand Dollars (\$200,000.00) of Program funds (the “Funds”) to Recipient, to be used only for such capital improvements as specified in Exhibit “A”, subject to the terms and conditions set forth herein.

E. The City has determined this Agreement serves a public purpose because the continued operation of the Property will enhance economic development in the City, facilitate the growth of a business that provides high-quality jobs to residents, ensure a strong economic base to support services to City residents, aid in the diversification of the City’s economy, promote an improved quality of life within the City, and provide additional tax revenue to the City that will assist the City in providing services to its residents. The City has further determined that the public benefit derived from this Agreement outweighs any private benefit derived from this Agreement.

AGREEMENT

1. Disbursement and Use of Funds. Subject to the terms and conditions of this Agreement, within 30 days of City's receipt of an invoice from Recipient, City shall disburse the Funds to Recipient in a manner convenient to City. Recipient shall use the Funds only for such capital improvements as specified in Exhibit "A", at Recipient's new Italian restaurant located at the Property (the "Business"), and shall not use the Funds for any other purpose.

2. Conditions Precedent to Disbursement. City's obligation to perform under this Agreement and to disburse the Funds is subject to the following conditions being satisfied and the City's receipt and approval of the following certifications, documents or materials, each of which shall be in a form and substance satisfactory to the City in its sole and absolute discretion:

a. Recipient shall have made a request to City for the Funds via an invoice detailing how Funds will be used and allocated, which vendors are being purchased from, hired, or otherwise utilized in compliance with Section 3, and containing a signed certification from Recipient that invoices have not been submitted, and will not be submitted, for payment or reimbursement of those particular uses from any other source;

b. Recipient shall have provided certification to City that Recipient has incurred expenses to obtain the capital improvements the Funds will be used for, or is otherwise contractually bound to incur such expenses;

c. Recipient shall have provided evidence to City that Recipient is in compliance with Section 4 of this Agreement; and

d. No Default or Event of Default has occurred and remains uncured. "Default" means any event or condition which, with the passage of time or the giving of notice or both, would constitute an Event of Default (as defined below). The occurrence of any of the following shall be deemed to be a default hereunder (each an "Event of Default"):

i. any default or breach of any of the terms, provisions, and obligations of the Recipient pursuant to this Agreement, and such default or breach is not cured by Recipient within fifteen (15) days from receipt of written notice thereof from City;

ii. commencement of any case under the Bankruptcy Code, Title 11 of the United States Code, or commencement of any other bankruptcy arrangement, reorganization, receivership, custodianship, or similar proceeding under any federal, state, or foreign law by or against Recipient and with respect to any such case or proceeding that is involuntary, and such case or proceeding is not dismissed within sixty (60) days of the filing thereof;

iii. Recipient shall fail to make any payment in respect of any of its indebtedness when due (whether at maturity or upon acceleration) or within any applicable grace period, or any other event or condition shall occur which results in acceleration of the maturity of such indebtedness;

iv. A judgment or order for the payment of money shall be rendered against Recipient, which would have a material adverse effect on Recipient, or any of its business or operations and such judgment or order shall continue unsatisfied and unstayed for a period of thirty (30) days;

v. the occurrence of any event (including, without limitation, a change in the financial condition, business, or operations of Recipient for any reason whatsoever) that materially and adversely affects the ability of Recipient to perform any of its obligations under this Agreement;

vi. commencement of any action or proceeding which seeks as one of its remedies the dissolution of Recipient which is not being defended diligently and in good faith by Recipient, but in any event such action or proceeding must be terminated within ninety (90) days following its commencement; or

vii. A material portion of the property of Recipient is attached, levied upon, or otherwise seized by legal process, and such attachment, levy, or seizure is not quashed, stayed, or released within thirty (30) days of the date thereof.

3. Local Contracting Requirement. Recipient shall only contract with businesses located in the City of Palm Desert in the course of Recipient's utilization of the Funds for the purposes allowed by this Agreement. Recipient shall not spend the Funds with any business which is not located in the City of Palm Desert. Failure to comply with this section will, in addition to other applicable legal and equitable consequences, result in Recipient's ineligibility for future City funding.

4. Minimum Investment. Recipient shall invest a minimum of One Million, Two Hundred Thousand Dollars (\$1,200,000.00) into Recipient's Business. Prior to submitting an invoice for disbursement of Funds, Recipient shall submit evidence satisfactory to City in City's sole and absolute discretion that Recipient has complied, or will comply, with this Section. Recipient shall not be eligible to receive Funds and City shall not be obligated to disburse the Funds until City has received such evidence and determined it is satisfied that Recipient has complied or will comply with this Section. Failure to comply with this section will, in addition to other applicable legal and equitable consequences, result in Recipient's ineligibility for future City funding.

5. Five Year Operating Requirement. Recipient covenants and agrees for itself, its successors, assigns, and every successor in interest to Recipient's Business:

a. To commence operations of the Business at the Property in such a manner as to generate sales tax by July 1, 2025.

b. To continuously use and operate the Business for a period of at least five years from the date of the Businesses's opening to the public. The Business shall be open for a full day's regular business hours twelve months per year, and at least five days every week. The Business may be closed on federal holidays.

c. **Damages for Failure to Comply.** If the Business fails to commence operations by the time period set forth in Section 5.a., or in any way or for any period of time ceases continuous operations in City's sole judgment within five years from the date of the Businesses's opening, then City may demand repayment of, and Recipient shall immediately refund to City, One Hundred Thousand Dollars (\$100,000.00) of the Funds (the "Clawback Amount"). The Clawback Amount will be secured by that certain security agreement executed concurrently herewith and in a form attached hereto as Exhibit "B".

d. **Recipient's Covenant to Use Property In Accordance With Agreement.** Recipient covenants and agrees for itself, its successors and assigns and all voluntary and involuntary successors in interest to Recipient's interest in the Business or the Property or any part thereof, that the Property shall, for the Term, be put to no use other than operation of the Business.

6. **Maintenance of Records.** Recipient shall keep, preserve, and maintain, for a period of at least six years commencing on the date of City's initial disbursement of Funds to Recipient, all documents and records of any kind relating to Recipient's use of the Funds.

7. **Right to Inspect and Audit.** The City may inspect and audit all of Recipient's documents and records relating to the Recipient's use of the Funds to ensure compliance with this Agreement and to ensure Recipient uses the Funds for authorized purposes. Recipient shall make such documents and records available to City, at the place and in the manner and form specified by City, within 15 days following City's request for such documents and records. Recipient shall furthermore grant City's employees or agents access to any land, facilities, or improvements relating to Recipient's use of the Funds, within a reasonable amount of time after City issues written notice to Recipient requesting such access.

8. **Prevailing Wage Laws.** Recipient is aware of the requirements of California Labor Code Sections 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects. Recipient understands and agrees that it is Recipient's obligation to determine if Prevailing Wage Laws apply with regard to the Recipient's use of Funds under this Agreement. Recipient agrees to fully comply with such Prevailing Wage Laws, if applicable. Recipient shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claims, liabilities, costs, penalties or interest arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. It is the intent of the parties to effectuate the requirements of sections 1771, 1774, 1775, 1776, 1777.5, 1813, and 1815 of the Labor Code within this Agreement, and Recipient shall therefore comply with such Labor Code sections to fullest extent required by law. It shall be mandatory upon the Recipient and all of Recipient's contractors to comply with all California Labor Code provisions, which include but are not limited to prevailing wages, employment of apprentices, hours of labor and debarment of contractors and subcontractors.

9. **Indemnification.** The Recipient shall Indemnify the City, its elected and appointed officials, its officers and employees, attorneys, contractors, and volunteers (together, the "City

Indemnitees”) from and against any and all liabilities, including without limitation all claims, losses, damages, penalties, fines, and judgments, associated investigation and administrative expenses, and defense costs, including but not limited to reasonable attorneys’ fees, court costs and costs of alternative dispute resolution, (“Liabilities”) of any kind or nature relating to the subject matter of this Agreement or the implementation thereof, including without limitation, the obligations to proceed in accordance with applicable law as set forth in sections 8 and 10, and for any damages to property or injuries to persons, including accidental death (and attorney’s fees and costs), which may be caused by acts or omissions of the Recipient under this Agreement, whether such activities or performance thereof be by the Recipient or by anyone directly or indirectly employed or contracted by the Recipient and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Recipient shall not be liable for property damage or bodily injury if and to the extent such property damage or bodily injury is directly and proximately caused by the sole or gross negligence or willful misconduct of the City Indemnitees.

The Recipient shall have the obligation to defend any such action covered by this Section; provided, however, if and to the extent that Recipient determines in its reasonable discretion that such action is meritorious or that the interests of the parties justify a compromise or a settlement of such action, after consultation with and reasonable consent from the City, Recipient shall compromise or settle such action in a way that fully protects City from any Liabilities. In this regard, Recipient’s obligation to defend shall include the right to hire (subject to the reasonable written approval by the City) attorneys and experts necessary to defend, the right to process and settle reasonable claims, the right to enter into reasonable settlement agreements and pay amounts as required by the terms of such settlement, and the right to pay any judgments assessed against Recipient and/or City. If Recipient defends any such action, as set forth above, it shall Indemnify the City Indemnitees from and against any Liabilities assessed or awarded against any of them by way of judgment, order, decree, settlement, or stipulation.

All rights, duties and obligations of this indemnification shall survive the termination or expiration of this Agreement.

10. Compliance with Law. Recipient shall comply with all applicable laws, ordinances, codes and regulations of the federal, state and local government (including those of the City). If Recipient’s failure to comply with applicable laws, ordinances, codes, or regulations results in a claim for damage or liability to City, Recipient shall be responsible for defending, indemnifying, and holding the City harmless as provided in this Agreement.

11. Taxes. Recipient acknowledges and agrees that Recipient shall be responsible for any and all taxes that are associated in any way to the receipt or use of the Funds.

12. Authority to Enter Agreement. Recipient and City each respectively represent, covenant, and warrant that they are authorized to enter into and execute this Agreement and to bind each respective Party.

13. Entire Agreement. This Agreement contains the entire agreement between the Parties related to the matters specified herein, and supersedes any prior oral or written statements or agreements between the Parties related to such matters.

14. Agreement Binding on Successors. This Agreement, together with all obligations, terms, covenants, and conditions herein, shall be binding upon the heirs, executors, administrators, personal representatives, successors in interest and assigns of the Recipient. Whenever the term “Recipient” is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same agreement.

16. No Third Party Beneficiaries. All of the covenants contained in this Agreement are for the express benefit of each and all such Parties. This Agreement is not intended to benefit any third parties, and any such third party beneficiaries are expressly disclaimed.

17. Laws of California. This Agreement is made in the State of California, under the Constitution and laws of such State, and shall be construed and enforced in accordance with the laws of such State.

18. Assignment. The rights, obligations, and interests of Recipient shall not be assignable or transferable without the prior written consent of the City. Any attempted assignment without the prior written consent of the City shall be null and void.

19. Severability. If any section, clause or phrase of this Agreement or the application thereof to any Party or any other person or circumstance is for any reason held to be invalid by a court of competent jurisdiction, it shall be deemed severable, and the remainder of the Agreement or the application of such provisions to any other Party or to other persons or circumstances shall not be affected thereby. Each Party hereby declares that it would have entered into this Agreement, and each subsection, sentence, clause and phrase thereof, irrespective that one or more sections, subsections sentences, clauses or phrases or the application thereof might be held invalid.

20. Recipient’s Covenant Not to Discriminate. Recipient covenants by and for itself, himself or herself, its, his or her heirs, executors, administrators, and assigns, and all Persons claiming under or through it, him or her, and this Agreement is made and accepted upon and subject to the following conditions:

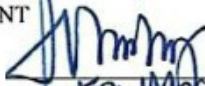
That there shall be no discrimination against or segregation of any Person or group of Persons, on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the Property nor shall Recipient, itself, himself or herself, or any Person claiming under or through it, 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 Property.

21. Relationship Between City and Recipient. It is hereby acknowledged that the relationship between the City and the Recipient is not that of a partnership or joint venture and

that the City and the Recipient shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the City shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Business. The Recipient agrees to indemnify, hold harmless and defend the City, to the same extent as set forth in Section 9 above, from any claim made against the City arising from a claimed relationship of partnership or joint venture between the City and the Recipient with respect to the development, operation, maintenance or management of the Property or the Business.

[signatures on the following page]

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

Fine Quality
RECIPIENT
By: 
Name: Ira Moskley
Title: President

CITY OF PALM DESERT

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
Isra Shah
City Attorney

EXHIBIT A

Approved Use of Funds

(Attachment Behind This Page)

Expense	Amount	Source
Cornerstone Restaurant Supply and Design	\$397,730.84	
Signarama	\$12,770.07	
Placencia Mirror and Glass	\$44,770.00	
Picard	\$71,954.72	Insurance/Private Equity
S&G Plumbing Services	\$38,500.00	
Innovation Building and Design	\$874,380.00	Insurance/Private Equity
Total	\$1,440,105.63	

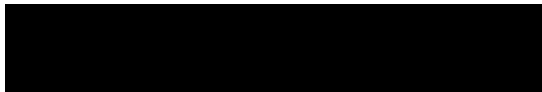
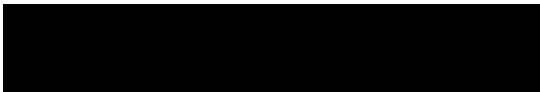


EXHIBIT B

Form of Security Agreement

(Attachment Behind This Page)



SECURITY AGREEMENT

This Security Agreement ("Agreement") is made and entered into as of the ___ day of _____, 20___, by and between _____ ("Debtor"), and the City of Palm Desert ("Secured Party"), as follows:

For value received, the Debtor grants to the Secured Party a security interest in (i) the property and interests in property described on Exhibit A attached hereto and incorporated herein by reference, and (ii) all proceeds thereof (such personal property and proceeds are referred to herein collectively as the "Collateral").

This security interest is granted for the purpose of securing the obligations of the Debtor pursuant to that certain Agreement for Disbursement and Use of Funds, of even date herewith, executed by Debtor and Secured Party (the "Funding Agreement"), pursuant to which the Debtor is required to pay the Secured Party a clawback amount of One Hundred Thousand Dollars (\$100,000.00) if Debtor fails to comply with the requirements set forth in the Funding Agreement (the "Obligations").

The Debtor warrants, covenants, and agrees as follows:

1. Title. Except for the security interest granted by this Agreement or as otherwise permitted in writing by Secured Party, the Debtor has, or on acquisition will have, full title to the Collateral free from any lien, security interest, encumbrance, or claim, and the Debtor will, at the Debtor's cost and expense, defend any action that may affect the Secured Party's security interest in, or the Debtor's title to, the Collateral.

2. Financing Statement. No financing statement covering the Collateral or any part of it or any proceeds of it is on file in any public office (except for those approved by Secured Party in its sole discretion). The Debtor hereby authorizes the Secured Party to file such financing statements and continuation statements and other notices, instruments, documents, agreements or consents in such offices as are or shall be necessary or as the Secured Party may determine to be appropriate to create, perfect and establish the priority of the security interest granted by this Agreement in any and all of the Collateral. At the Secured Party's request, the Debtor will pay the filing fees required for all necessary financing statements in forms satisfactory to the Secured Party and will further execute all other instruments deemed necessary by the Secured Party.

3. Sale, Lease, or Disposition of Collateral. Except in the ordinary course of business, the Debtor will not, without the written consent of the Secured Party, sell, contract to sell, lease, encumber, or dispose of the Collateral or any interest in it until this Agreement and all Obligations secured by it have been fully satisfied.

4. Protection of Collateral. The Debtor will not use the Collateral in violation of any statute or ordinance.

5. Taxes and Assessments. The Debtor will pay promptly when due all taxes, assessments and fees on the Collateral, or any part of the Collateral.

6. Reimbursement of Expenses. At the option of the Secured Party, following not less

than ten (10) days written notice to Debtor (unless a shorter or longer period is otherwise expressly provided in any other agreement between the Secured Party and Debtor, or except in the case of an emergency) the Secured Party may discharge taxes, liens, interest, or perform or cause to be performed for and on behalf of the Debtor any actions and conditions, obligations, or covenants that the Debtor has failed or refused to perform, and may pay for any actions to preserve the Collateral, and may enter the premises where the Collateral or any part of it is located and cause to be performed as agent and on the account of the Debtor any acts that the Secured Party may deem necessary for the proper preservation of the Collateral or any part of it. Any and all sums expended by the Secured Party under this paragraph, including but not limited to, attorneys' fees, court costs, agent's fees, or commissions, or any other costs or expenses, shall bear interest from the date of payment at the rate of twelve percent (12%) per annum.

7. Payment & Termination. The Debtor will pay the Obligations secured by this Agreement if and as required in accordance with the terms and provisions of the Funding Agreement. This Agreement will terminate upon the performance of all obligations of Debtor to Secured Party and the termination of the Funding Agreement.

8. Change of Place of Business. The Debtor will promptly notify the Secured Party of any change of the Debtor's principal place of business, or place where records concerning the Collateral are kept.

9. Attorney-in-Fact. The Debtor appoints the Secured Party as the Debtor's attorney-in-fact to do each and every act that the Debtor is obligated by this Agreement to do, and to exercise all rights of the Debtor in the Collateral and to make collections and to execute any and all papers and instruments and to do all other things necessary to preserve and protect the Collateral and to make collections and to protect the Secured Party's security interest in the Collateral.

10. Time of Performance and Waiver. In performing any act under this Agreement and the Funding Agreement secured by it, time shall be of the essence. The Secured Party's acceptance of partial or delinquent payments, or the failure of the Secured Party to exercise any right or remedy, shall not constitute a waiver of any obligation of the Debtor or right of the Secured Party and shall not constitute a waiver of any other similar default that occurs later.

11. Default. The Debtor shall be in default under this Agreement on the occurrence of any of the following events or conditions:

- (a) Any default under the Funding Agreement;
- (b) Any warranty, representation, or statement made or furnished to the Secured Party by or on behalf of the Debtor proves to have been false in any material respect when made or furnished;
- (c) Sale or encumbrance to or of any of the Collateral in violation of this Agreement, or the making of any levy, seizure, or attachment of or on the Collateral; or
- (d) Failure of the security interest granted by this Agreement to create a valid and perfected security interest or lien.

12. Remedies. On the occurrence of any event of default, and at any later time, the

Secured Party may declare all obligations secured due and payable immediately, and may proceed to enforce payment and exercise any and all of the rights and remedies provided by the California Commercial Code as well as other rights and remedies either at law or in equity possessed by the Secured Party.

The Secured Party may require the Debtor to assemble the Collateral, or the books, records and contracts relating to the Collateral and make it or them available to the Secured Party at any place to be designated by the Secured Party that is reasonably convenient to both parties. Unless the Collateral threatens to decline rapidly in value, the Secured Party will give the Debtor reasonable notice of the time and place of any public sale or of the time after which any private sale or any other intended disposition of the Collateral is to be made. The requirements of reasonable notice shall be met if the notice is mailed, postage prepaid, to the address of the Debtor shown at the beginning of this Agreement at least ten days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale, selling, or the like shall include the Secured Party's reasonable attorneys' fees and legal expenses.

13. Jury Waiver. TO THE EXTENT PERMITTED BY LAW, DEBTOR HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG DEBTOR AND SECURED PARTY ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR ANY OTHER RELATED DOCUMENT. THIS PROVISION IS A MATERIAL INDUCEMENT TO SECURED PARTY TO PROVIDE THE FINANCING DESCRIBED HEREIN OR IN THE OTHER FINANCING DOCUMENTS.

14. Miscellaneous Provisions.

(a) Governing Law; Venue: This Agreement is delivered in the State of California and governed by California law (without giving effect to its laws of conflicts). Any legal action or proceeding with respect this Agreement shall only be brought in a state or federal court located in Riverside County, California. By the execution and delivery of this Agreement, the Debtor submits to and accepts, for itself and in respect of its property, generally and unconditionally, the jurisdiction of such courts. The Debtor waives any claim that the State of California is not a convenient forum or the proper venue for any such legal action or proceeding.

(b) Parties Bound: This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, executors, administrators, legal representatives, successors, and assigns as permitted by this Agreement.

(c) Attorneys' Fees: Should any litigation or arbitration be commenced between the parties to this Agreement concerning the Collateral, this Agreement, or the rights and duties of either party in relation to them, the prevailing party shall be entitled to a reasonable sum as reimbursement for his or her attorneys' fees and legal expenses.

(d) Severability: In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability of that provision shall not affect any other provision of this Agreement, and this Agreement shall be construed as if the invalid,

illegal, or unenforceable provision had never been contained in it.

(e) Entire Agreement: This Agreement constitutes the only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this Agreement.


(f) Definitions: All terms used in this Agreement that are defined in the California Commercial Code shall have the same meaning in this Agreement as in the Code.

[SIGNATURES FOLLOW THIS PAGE]

The parties have signed this Agreement as of the day and year first above written.

"DEBTOR"

[INSERT]

By: 
Name: Ira Mosley
Title: PRESIDENT

"SECURED PARTY"

CITY OF PALM DESERT

By: _____
Name: _____
Title: _____



EXHIBIT A

Description of Personal Property Collateral

(a) All personal property (including, without limitation, all goods, supplies, equipment, furniture, furnishings, fixtures, machinery, machine tools, motors, equipment controls, attachments, parts, inventory, and chemicals) in which Debtor now or hereafter acquires an interest or right, together with any interest of Debtor in and to personal property which is leased or subject to any superior security interest, and all books, records, leases and other agreements, documents, and instruments of whatever kind or character;

(b) All fees, income, rents, issues, profits, earnings, receipts, royalties, and revenues which, after the date hereof and while any portion of the obligations of Debtor to Secured Party remains unpaid or unperformed, may accrue from such personal property or any part thereof, or which may be received or receivable by Debtor from any hiring, using, letting, leasing, subhiring, subletting, subleasing, occupancy, operation, or use thereof;

(c) All of Debtor's present and future rights to receive payments of money, services, or property, accounts and other accounts receivable, deposit accounts, chattel paper, notes, drafts, contract rights, instruments, general intangibles, payment intangibles, and principal, interest and payments due on account of goods sold or leased, services rendered, loans made or credit extended, together with title to or interest in all agreements, documents, and instruments, evidencing, securing or guarantying the same;

(d) Debtor's rights under all insurance policies covering any of the aforesaid collateral and all proceeds, loss payments, and premium refunds payable regarding the same;

(e) All causes of action, claims, compensation, and recoveries for any damage to, destruction of, or condemnation or taking of any of the aforesaid collateral; and

(f) All proceeds, increases, substitutions, replacements, additions, and accessions of the aforesaid collateral.