



Community Redevelopment Agency  
Staff Report

DATE: November 18, 2009

CONSENT CALENDAR

SUBJECT: APPROVE THE LEASE AGREEMENT WITH THE AGUA CALIENTE BAND OF CAHUILLA INDIANS, FOR USE OF THE AGENCY OWNED VISITOR CENTER LOCATED AT 2901 NORTH PALM CANYON DRIVE FOR THE PURPOSE OF PROMOTING TOURISM

FROM: David H. Ready, Executive Director

BY: Community & Economic Development Department

---

SUMMARY

The Lease Agreement is for use of the Agency owned Visitor Center at 2901 North Palm Canyon Drive by the Agua Caliente Band of Cahuilla Indians. The approval of this Lease Agreement will allow the Tribe to use a portion of the facility for the purpose of operating a visitor information desk to promote the cultural and economic enterprises connected with the Agua Caliente Band of Cahuilla Indians. The Tribe operates this service to provide information to tourists and local residents.

RECOMMENDATION

1. Approve a Lease Agreement between the Agua Caliente Band of Cahuilla Indians and the Community Redevelopment Agency of the City of Palm Springs for non-exclusive use of the Agency owned Visitor Center at 2901 North Palm Canyon Drive for the purpose of promoting tourism;
2. Authorize the Executive Director or his designee to execute all the necessary documents.

BACKGROUND

The Tribe has leased the space from the Agency since 1999 for the purpose of operating a visitor information desk at the City's Visitor Center. In November of 2003, upon completion of the new Visitor Center located at 2901 North Palm Canyon Drive, the Tribe relocated its staff to the current location. The information facility is used to promote the Agua Caliente Cultural Museum, Indian Canyons, Tahquitz Canyon and Spa Resort and Casino.

ITEM NO. 2.J.

promote the Agua Caliente Cultural Museum, Indian Canyons, Tahquitz Canyon and Spa Resort and Casino.


The Tribe desires to renew the Lease Agreement with the Agency, for use of a portion of the Visitor Center. The Tribe has continued to pay the Agency rent based on the amount established in the original agreement which expired on June 30, 2008. The prior lease had a monthly rental rate \$1,000.

Staff recommends entering a new three (3) year lease agreement with a rental rate of \$1,000 per month and an option to extend the lease term for a period of two (2) years at a new negotiated rate. The new lease will allow the Tribe to continue to operate in an efficient manner promoting the cultural and economic enterprises that it offers to tourists and the local community.

FISCAL IMPACT

The Lease Agreement would provide the Agency revenue of \$1,000 per month to help offset costs it currently bears in utilities and water as a result of operating the Visitor Center.

  
\_\_\_\_\_  
Jennifer Henning  
Arts and Special Projects Coordinator

  
\_\_\_\_\_  
Thomas J. Wilson,  
Assistant City Manager

  
\_\_\_\_\_  
David H. Ready, Esq., Ph.D.  
Executive Director

Attachments:

Agua Caliente Band of Cahuilla Indians Lease Agreement

LEASE  
By and Between  
THE COMMUNITY REDEVELOPMENT AGENCY  
OF THE  
CITY OF PALM SPRINGS  
And  
AGUA CALIENTE BAND OF CAHUILLA INDIANS

## LEASE

THIS LEASE ("Lease") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by and between the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, a California municipal corporation, a municipal corporation ("Agency"), and the AGUA CALIENTE BAND OF CAHUILLA INDIANS, ("Tenant").

1. Tenant Premises. The City will operate a Visitor Center located on City-owned property commonly known as 2901 N. Palm Canyon Drive in Palm Springs, California, and as shown on Exhibit A attached hereto ("Visitor Center Premises"). The "Tenant Premises" shall refer to the interior building space as identified on the Plot Plan attached hereto as Exhibit B. Tenant shall also have access to an additional portion of the main building's interior space as shown on Exhibit B and identified as the "Interior Private Common Areas" which includes an employee break room and restroom which shall be available for use by Tenant on a non-exclusive basis during normal operating hours. Other portions of the Visitor Center Premises operated by the Agency include portions of the main building's interior space as shown on Exhibit B and identified as the "Interior Public Common Areas", as well as the parking lot, a separate restroom building, sidewalks and other exterior areas of general access which shall be open to the general public during normal business operations, such areas to be known collectively as the "Parking and Public Common Areas". The Parking and Public Common Areas will be nonexclusive in their use by Tenant's employees and guests when accessing the Tenant Premises and other public areas of the Visitor Center Premises.
2. Term. The initial term of this Lease shall commence after October 1, 2009 when Tenant actually, takes possession of the Tenant Premises ("Commencement Date") and shall end on June 30, 2012, with an option to extend lease terms for a period of two (2) years at a new negotiated rate, unless earlier terminated. This Lease shall not become effective until approved by Tenant and the Agency, as evidenced by a resolution adopted by the City Council.
3. Rent. Tenant shall pay Agency \$1,000 ("Rent") per month as a monthly rental fee for its use of the Tenant Premises and the non-exclusive use of the Interior Private Common Areas and the Parking and Public Common Areas, the Rent represents the fair rental value of these areas. The Rent shall be paid in advance on a prorated monthly basis on the Commencement Date and in full on the first day of each calendar month thereafter. The Parties agree that Rent shall be adjusted every third anniversary of the Commencement Date by the percentage change in the Consumer Price Index for Los Angeles and Riverside County ("CPI") published for the month that is three (3) months preceding the adjustment date. In addition to this adjustment, at any time that Tenant exercises an option to extend the term, if any, the Tenant Premises shall be appraised to establish the current fair rental value, which amount shall be adopted as the Rent, subject to increases every three years as set forth in this Section.
4. Use of Tenant Premises. Tenant may use the Tenant Premises to operate a visitor information facility to promote cultural and economic enterprises connected with the Agua Caliente Band of Cahuilla Indians.
5. Tenant's Address for Notices.

Agua Caliente Band of Cahuilla Indians  
Attn: Margaret Park, Director of Planning & Natural Resources

5401 Dinah Shore Drive  
Palm Springs, CA 92264  
Telephone: 760.883.1326

With a copy to:

Agua Caliente Band of Cahuilla Indians  
Attn: Michelle Carr, In-House Counsel  
5401 Dinah Shore Drive  
Palm Springs, CA 92264  
Telephone: 699.6900

6. Early Termination. Either party may terminate this Lease by giving written notice to the other party ninety (90) days prior to the date of termination.
7. Holding Over. Any holding over after the expiration of the term of this Lease, with the consent of Agency, express or implied, shall be construed to be a tenancy from month to month, cancelable upon thirty (30) days written notice
8. Utilities. Agency shall provide utility services for water, gas, electricity, sewer (when applicable) and trash removal for the Visitor Center Premises during the term of this Lease; Tenant shall be responsible for, at its sole cost and expense, all other utilities to the Tenant Premises, including but not limited to telephone, cable, and Internet connection charges, if applicable, which shall be charged in the name of Tenant.
9. Compliance with Laws. Tenant shall comply with all of the requirements of all municipal, state and federal authorities now in force or which may hereafter be in force pertaining to the use of the Tenant Premises, and shall faithfully observe in said use all municipal ordinances, as well as the covenants, conditions and restrictions contained in this Lease now in force or which shall hereinafter be in force. Tenant's violation of law shall constitute an incurable default under this Lease.
10. Signs. Tenant shall not place or permit to be placed any sign that is not in compliance with the City's Municipal Code and the Rules and Regulations incorporated into this Lease upon the exterior or in the windows of the Visitor Center Premises. Any sign not constructed in accordance therewith shall be immediately removed by Tenant. If a nonconforming sign is not removed by Tenant within ten (10) days of written notice from Agency to Tenant, then Agency may remove and destroy said sign without Tenant's approval.
11. Rules and Regulations. Tenant shall observe and comply with the rules and regulations that Agency shall from time to time promulgate and/or modify. The current rules and regulations are attached hereto as Exhibit C ("Rules and Regulations"). Any amendment or modification of the Rules and Regulations shall be binding upon the Tenant upon delivery of a copy of such amendment or modification to Tenant.
12. Parking and Public Common Areas. The term "Parking and Public Common Areas" as used herein shall mean those portions of the Visitor Center Premises shown on Exhibit B and

established by City as vehicular parking areas, roadways, walkways, landscaped areas, service areas and the like. During the term of this Lease and any extension thereof, Agency gives to Tenant for the use and benefit of Tenant, its agents, employees, customers, licensees and subtenant's a non-exclusive license in common with Agency and other present and future owners and tenants of the Property and their agents, employees, customers, licensees and subtenants, and others authorized by Agency to use the Parking and Public Common Areas of the Visitor Center Premises for ingress, egress and vehicular parking, provided that the condemnation or other taking by any public authority, or sale in lieu of condemnation, of any or all of such parking and public common areas shall not constitute a violation of this covenant. Nothing herein contained shall be deemed to prevent Agency from using or authorizing others to use said Parking and Public Common Areas.

13. Alterations and Fixtures. Tenant shall not make, or suffer to be made, any alterations to the Tenant Premises or Visitor Center Premises, or any part thereof, without the prior written consent of Agency, and any alterations to the Tenant Premises or Visitor Center Premises, except movable furniture and trade fixtures installed by Tenant, shall become at once a part of the realty and shall at the expiration or earlier termination of this Lease belong to Agency. Tenant shall not make any changes to the exterior of the Visitor Center Premises. Any alterations to the Tenant Premises shall be in conformance with the requirements of all municipal, state, federal, and other governmental authorities, including requirements pertaining to the health, welfare or safety of employees or the public and in conformance with reasonable rules and regulations of City. Agency may require that any such alterations be removed at or after the expiration of the term hereof. Any removal of alterations or furniture and trade fixtures shall be at Tenant's expense and accomplished in a good and workmanlike manner. Any damage occasioned by such removal shall be repaired at Tenant's expense so that the Tenant Premises can be surrendered in a good, clean and sanitary condition as required by Section 15 hereof.
14. Maintenance In General. Tenant shall, subject to Agency's obligations hereunder, at all times during the term hereof, and at Tenant's sole cost and expense, keep, maintain and repair the Tenant Premises, and other improvements within the Tenant Premises in good and sanitary order, condition, and repair (except as hereinafter provided). Tenant shall also, at its sole cost and expense, be responsible for any alterations or improvements to the Tenant Premises which Tenant believes are necessary or are necessary as a result of the requirement of any municipal, state or federal authority. All improvements must be approved by Agency in writing before installation. Tenant hereby waives all right to make repairs, at the expense of Agency, and Tenant hereby waives all rights provided for by the Civil Code of the State of California to make said repairs. By entering into the Tenant Premises, Tenant shall be deemed to have accepted the Tenant Premises as being in good and sanitary order, condition and repair, and Tenant agrees of the last day of said term or sooner termination of this Lease to surrender the Tenant Premises with appurtenances, in the same condition as when received and in a good, dean and sanitary condition, reasonable use and wear thereof and damage by fire, act of God or by the elements excepted.
15. Maintenance and Repair of Visitors Center Premises and Parking and Public Common Areas. Agency shall keep the Visitor Center Premises, including the Parking and Public Common Areas, in a good, neat, clean and orderly condition, including without imitation; the exterior

walls and roofs of all buildings included within the Visitor Center Premises.

16. Free From Liens. Tenant shall keep the Tenant Premises, the building containing the Tenant Premises, and the property on which the Tenant Premises are situated free from any liens arising out of any work performed, material furnished, or obligation incurred by Tenant, or alleged to have been incurred by Tenant.
17. Insurance Provided by City. City shall maintain fire and extended coverage insurance throughout the term of this Lease together with such other insurance, coverages and endorsements as City may determine in its sole discretion. Tenant hereby waives any right of recovery from City, its officers and employees, and City hereby waives any right of loss or damage (including consequential loss) resulting from any of the perils insured against as a result of said insurance.
18. Insurance Provided by Tenant.
  - a) Tenant to Provide Personal Property Insurance. During the entire term of this Lease, Tenant shall, at its sole cost and expense, maintain fire and extended coverage insurance written on a per occurrence basis on its trade fixtures, equipment, personal property and inventory within the Tenant Premises from loss or damage to the extent of their full replacement value.
  - b) Comprehensive general liability insurance, including, but not limited to, owned and non-owned vehicle liability, personal injury, blanket contractual, broad form property damage, and product/completed operations liability coverage shall be on a per occurrence basis and shall have limits of not less than \$1,000,000.00 (one million dollars) combined single limit per occurrence for bodily injury, personal injury and property damage liability.
  - c) Tenant to Provide Worker's Compensation Insurance. If applicable, Tenant shall, at the Tenant's sole cost and expense, maintain a policy of worker's compensation insurance which shall indemnify, insure and provide legal defense for both the Tenant and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Tenant in the course of conducting Tenant's business in the Visitor Center Premises.
  - d) General Provisions Applicable to Tenant's Insurance. All of the policies of insurance required to be procured by Tenant pursuant to this Section 6.2 shall be primary insurance and shall name the City, its officers, employees and agents as additional insureds. The insurers shall waive all rights of contribution they may have against the City, its officers, employees and agents and their respective insurers. All of said policies of insurance shall provide that said insurance may not be amended or cancelled without providing 30 days prior written notice by registered mail to the City. Prior to the Commencement Date or such earlier date as Tenant takes possession of the Tenant Premises for any purpose; and at least 30 days prior to the expiration of any insurance policy, Tenant shall provide City with certificates of insurance or appropriate insurance binders evidencing the above insurance coverages written by

insurance companies acceptable to City, licensed to do business in the state where the Tenant Premises are located and rated ANTI or better by Bests Insurance Guide.

19. Indemnification of City. Tenant hereby waives all claims against City for damage to equipment or other personal property, in, upon, or about the Tenant Premises and for injuries to persons in or about the Tenant Premises, from any cause relating to the activities and use of the Tenant Premises by Tenant, its officers, agents, employees and invitees. Tenant agrees to indemnify City, its officers, agents, and employees against, and shall hold and save them and each of them harmless from any and all claims or liabilities that may be asserted or claimed by any persons, firm, or entity arising out of or in connection with the negligent acts or omissions of Tenant, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the use of the Tenant Premises, or arising from the failure of Tenant to keep the Tenant Premises in good condition and repair, or arising from Tenant's negligent performance of or failure to perform any term of this Lease.
20. Indemnification of Tribe. City hereby waives all claims against Tribe for damage to equipment or other personal property, in, upon, or about the City Premises and for injuries to persons in or about the City Premises, from any cause relating to the activities and use of the City Premises by City, its officers, agents, employees and invitees. City agrees to indemnify Tribe, its officers, agents, and employees against, and shall hold and save them and each of them harmless from any and all claims or liabilities that may be asserted or claimed by any persons, firm, or entity arising out of or in connection with the negligent acts or omissions of City, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the use of the City Premises, or arising from the failure of City to keep the City Premises in good condition and repair, or arising from City's negligent performance of or failure to perform any term of this Lease.
21. Assignment and Subletting. Tenant shall not assign this Lease or sublet the Tenant Premises, or any interest therein, without the prior written consent of City, which consent shall not be unreasonably withheld.
22. Default. Notwithstanding any of the foregoing, the breach of this Lease by Tenant, or an abandonment of the Tenant Premises by Tenant, shall not constitute a termination of this Lease, or of Tenant's right of possession hereunder, unless and until City elects to do so, and until such time City shall have the right to enforce all of its rights and remedies under this Lease, including the right to recover rent, and all other payments to be made by Tenant hereunder, as they become due. Failure of City to terminate this Lease shall not prevent City from later terminating this Lease or constitute a waiver of City's right to do so.
23. Condemnation. In the event a condemnation or a transfer in lieu thereof results in a taking of any portion of the Tenant Premises, City shall be entitled to the entire award, including, but not limited to, the compensation damages and interest, if any.
24. Entry and Inspection. Tenant shall permit City and its agents to enter into and upon the Tenant Premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining the Visitor Center.



25. Partial Invalidity. If any term, covenant, condition or provision of this Lease is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereof.
26. Successors in Interest. The covenants herein contained shall, subject to the provisions as to assignment, apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto; and all of the parties hereto shall be jointly and severally liable hereunder.
27. Sole Agreement. This Lease contains the entire understanding between the parties as to the specific subject matter hereof.
28. Authority. The persons executing this Lease on behalf of the parties hereto warrant that: (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Lease on behalf of said party, (iii) by so executing this Lease, such party is formally bound to the provisions of this Lease, and (iv) entering into this Lease does not violate any provisions of any other agreement to which said party is bound. The rights and obligations of Tenant shall inure to and be binding upon all heirs, successors and assignees.
29. Nondiscrimination. Tenant herein covenants by and for itself, its heirs, executors, administrators and assigns and all persons claiming under or through it, and this Lease is made and accepted upon and subject to the following conditions: That there shall be no discrimination against or segregation of any person or group of persons on account of race, sex, marital status, color, creed, national origin or ancestry, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the Tenant Premises herein leased, nor shall the Tenant itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessors, sublessees, subtenants or vendees in the Tenant Premises provided, however, that nothing in this paragraph prohibits Tenant from exercising Indian Preference with respect to hiring or selection of vendors.
30. Notices. Wherever in this Lease it shall be required or permitted that notice and demand be given or served by either party to this Lease to or on the other, such notice or demand shall be given or served in writing and shall not be deemed to have been duly given or served unless in writing, and personally served or forwarded by certified , mail, postage prepaid, addressed, if to:

Community Redevelopment Agency  
City of Palm Springs  
David H. Ready, Esq., Ph.D., Executive Director  
3200 East Tahquitz Canyon Way  
Palm Springs, CA 92264

With a copy to: Douglas C. Holland,  
Woodruff, Spradlin & Smart  
555 Anton Boulevard, Suite 1200  
Costa Mesa, CA 92626

and if to Tenant, as specified in Section 6. Either party may change the address set forth

herein by written notice by certified mail to the other. Any notice or demand given by certified mail shall be effective one (1) day subsequent to mailing.

31. Waiver. No delay or omission in the exercise of any right or remedy by a nondefaulting party shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Lease.
32. Exhibits and Addenda. The Exhibits and Addenda attached to this Lease are made a part hereof as if fully set forth herein. In the event of a conflict between the terms and provisions of an Addenda and the terms and provisions of this Lease, the terms and provisions of the Addenda shall prevail.
33. Choice of Law. This Lease is to be construed in accordance with the laws of the State of California.
34. Waiver of Sovereign Immunity. Except as stated herein, the Tenant does not waive, limit, or alter its tribal sovereign immunity from unconsented suit or other proceedings. The Tenant hereby does waive its tribal sovereign immunity from unconsented suit by only the City, and by no other party whatsoever, if the City seeks, in a court of competent jurisdiction located in Riverside County, California, (1) monetary damages for breach of the specific payment obligations undertaken by the Tenant toward the City in this Lease, with such relief limited to the amounts which the Tenant has expressly promised to pay to the City in this Lease. As a pre-condition to any such suit, the City must first attempt an informal resolution of any such dispute regarding the Tenant's performance of its express obligations under this Lease by (1) presenting to the Tenant, in the manner specified regarding notices herein, a simple and concise written statement of the specific obligations of the Tenant under this Lease that the City believes that Tenant has not fulfilled, and (2) meeting in person with authorized representatives of the Tenant within thirty days of the Tenant's receipt of such notice to discuss the City's claim. This meeting will be excused if the Tenant does not make its representatives reasonably available during such 30-day period after receipt of such a notice of an in-person meeting.

[SIGNATURES ON NEXT PAGE]

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

ATTEST:

"CITY"

CITY OF PALM SPRINGS, a  
municipal corporation

\_\_\_\_\_  
By:  
JAMES THOMPSON  
City Clerk

\_\_\_\_\_  
By:  
DAVID READY  
City Manager

REVIEWED AND APPROVED:

\_\_\_\_\_  
By:  
DOUG HOLLAND  
City Attorney

"TRIBE"

AGUA CALIENTE BAND OF  
CAHUILLA INDIANS

\_\_\_\_\_  
By:  
THOMAS J. DAVIS  
Chief Planning & Development  
Officer

REVIEWED AND APPROVED:

\_\_\_\_\_  
By:  
MICHELLE CARR  
In-House Counsel

EXHIBIT "A"  
("Visitor Center Premises")

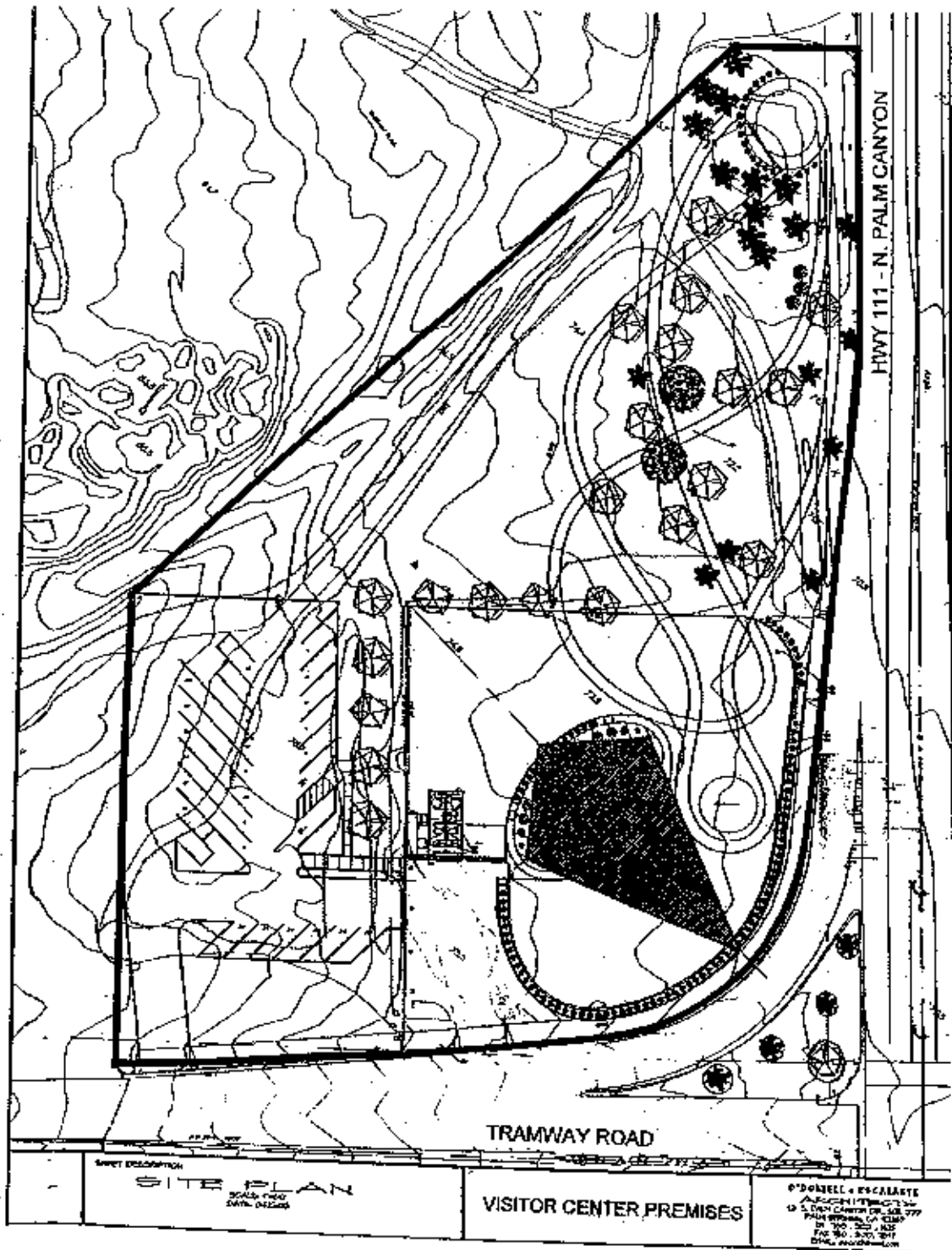


EXHIBIT A

EXHIBIT "B"  
("Plot Plan")

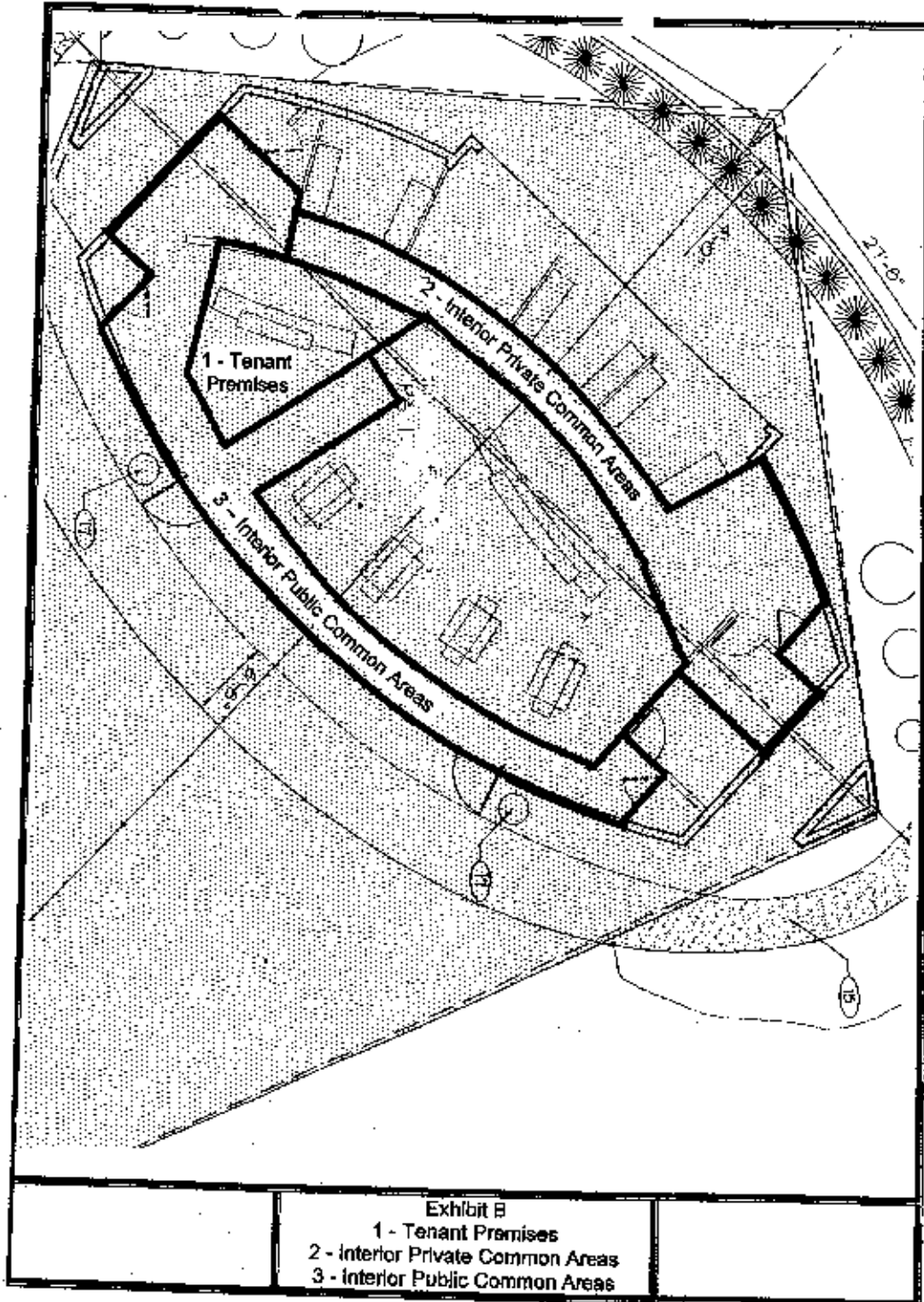


EXHIBIT "C"  
RULES AND REGULATIONS

All loading and unloading of goods shall be done only at the times, in the areas and through the entrances reasonably designated for such purposes by the City.

The delivery or shipping of merchandise, supplies and fixtures to and from the Tenant Premises shall be subject to such rules and regulations as in the reasonable judgment of City are necessary for the proper operation of the Tenant Premises or of the Visitor Center Premises generally.

All of Tenant's refuse and rubbish shall be removed on a daily basis to central trash bins located in the Visitor Center Premises.

No audible radio, television, loudspeakers, stereos or other similar devices shall be installed or used in a manner so as to be heard or seen either inside or outside the main building of the Visitor Center Premises without obtaining in each instance the written consent of the City. No aerial, satellite dish, or other similar devices shall be erected on the roof of any building, exterior walls or on the grounds of the Visitor Center Premises without first obtaining in each instance the written consent of City. Any such devices so installed without such written consent shall be subject to removal without notice at any time.

5. . In cooperation with other Visitor Center staff, the outside sidewalks and loading areas of the Visitor Center Premises shall be kept clean and free from dirt and rubbish by Tenant to the reasonable satisfaction of City, and Tenant shall not place or permit any obstructions or merchandise in such areas, except to the extent specifically permitted by the provisions of Tenant's Lease.

Tenant shall not burn any trash or garbage of any kind in or about the Visitor Center Premises.

Tenant will not allow animals, except seeing-eye dogs, in, about or upon the Tenant Premises.

Tenant shall not use, and shall not allow anyone else to use, the Visitor Center Premises as a habitation. Such prohibition shall include, without limitation, sleeping, eating or bathing.

Tenant shall not place any rubbish or other matter outside any building within the Visitor Center Premises, except in such containers as are authorized from time to time by City.