



CITY COUNCIL STAFF REPORT

DATE: ~~JULY 21, 2010~~ *Tabled to September 8, 2010* CONSENT CALENDAR

SUBJECT: APPROVE THE THIRD PERMIT FOR THE OPERATION OF A MEDICAL CANNABIS COLLECTIVE/COOPERATIVE TO ORGANIC SOLUTIONS OF THE DESERT AT 560 WILLIAMS ROAD (CASE NO. MC 09-002).

FROM: David H. Ready, City Manager

BY: Douglas C. Holland, City Attorney

SUMMARY

The City Council will consider a resolution approving a third permit, with conditions of approval, for the operation of a medical cannabis collective/cooperative to Desert Organic Solutions.

RECOMMENDATION:

Adopt Resolution No. _____, "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING A PERMIT TO OPERATE A MEDICAL CANNABIS COLLECTIVE/COOPERATIVE TO ORGANIC SOLUTIONS OF THE DESERT AT 560 WILLIAMS ROAD, PALM SPRINGS (CASE NO. MC 09-002)."

STAFF ANALYSIS:

On June 16, 2010, the City Council considered nine applications for the possible award of a third permit for the operation of a medical cannabis collective/cooperative. Based on the City Council evaluation and consideration of all public input and testimony, the City Council selected Desert Organic Solutions of the Desert and directed staff to prepare a resolution approving the permit with conditions of approval by the following vote:

Motion Mayor Pro Tem Hutcheson, seconded by Councilmember Mills and carried 4-1 on a roll call vote.

AYES: Councilmember Mills, Councilmember Weigel, Mayor Pro Tem Hutcheson, and Mayor Pougnet.

NOES: Councilmember Foat.

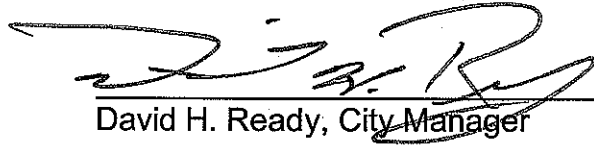
ITEM NO. J.N.

FISCAL IMPACT:

None.



Douglas C. Holland, City Attorney



David H. Ready, City Manager

Attachments:

Proposed Resolution (with Conditions of Approval)

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, APPROVING CASE MC 09-002, AN APPLICATION BY ORGANIC SOLUTIONS OF THE DESERT FOR A PERMIT TO OPERATE A MEDICAL CANNABIS COLLECTIVE/COOPERATIVE AT 560 S. WILLIAMS ROAD; ZONE M-1 ("N" AIRPORT COMBINING OVERLAY AND RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION COMPATIBILITY PLAN AREA "A") SECTION 19 TOWNSHIP 4, RANGE 5.

WHEREAS, On April 4, 2009, a Zone Text Amendment establishing PSZO Section 93.22.00 "Medical Cannabis Collectives/Cooperatives" went into effect; providing regulations and procedures for the application, administration and permitting of Medical Cannabis Cooperative/Collective uses in certain zones in the City of Palm Springs; and

WHEREAS, between April 4, 2009 and July 6, 2009, the City received and evaluated eleven applications for the award of two permits to operate Medical Cooperative/Collectives, and

WHEREAS, Organic Solutions of the Desert (the "Applicant") has filed an application pursuant to Section 93.22.00 "*Medical Cannabis Collectives/Cooperatives*" of the Palm Springs Zoning Ordinance for a permit to operate a Medical Cannabis Cooperative/Collective at 560 S. Williams Road and was one of the applications received during the submittal period noted above; and

WHEREAS, notices of public hearing of the City Council of the City of Palm Springs to consider the Medical Cannabis applications including Case MC 09-002, were given in accordance with applicable law; and

WHEREAS, on December 2, 2009, December 16, 2009 and February 3, 2010, public hearings on the applications for Medical Cannabis, including Case MC 09-002, were held by the City Council in accordance with applicable law; and

WHEREAS, on June 16, 2010 the City Council amended PSZO Section 93.22.00 to allow the issuance of a third regulatory permit for a medical cannabis cooperative/collective and considered the issuance of said third permit to Organic Solutions of the Desert, Case MC 09-002; and

WHEREAS, the City Council has carefully reviewed and considered all of the evidence presented in connection with the meeting on the project, including but not limited to the staff report, and all written and oral testimony presented.

THE CITY COUNCIL OF THE CITY OF PALM SPRINGS DOES HEREBY RESOLVE AS FOLLOWS:

Section 1: Pursuant to the California Environmental Quality Act ("CEQA") guidelines, the application has been determined to be a Project under the definition of CEQA. The case has been evaluated and staff has made a determination that the application is "Categorically Exempt" from further analysis under CEQA in accordance with CEQA Section 15303 (*New Construction or Conversion of Small Structures*).

Section 2: Pursuant to Section 93.22.00 of the Palm Springs Zoning Code, the City Council has evaluated eleven applications for the operation of Medical Cannabis Collectives/Cooperatives and found that Case MC 09-002 ranked one of the three most qualified applicants to provide the highest level of service and opportunities to the residents of Palm Springs.

Section 3: The obligations of the Medical Cannabis Cooperative or Collective, including all on-going and continuing obligations required pursuant to any provision of Section 93.22.00 of the Zoning Code as well as any conditional approval shall be set forth in a covenant running with the land or the leasehold interest, approved as to form by the City Attorney and enforceable by the City. Such covenant shall also provide that the cooperative or collective shall annually provide to the City Manager an updated application containing the information contained in Subsection G of Section 93.22.00 of the Zoning Code.

Section 4: The City Council further finds:

A. The City Council adopted and amended Section 93.22.00 of the Zoning Code to ensure the health, safety, and welfare of the residents of the City by enacting a maximum limitation on the establishment of medical cannabis collectives or cooperatives within the City, and to provide additional locational restrictions for such establishments.

B. The City Council further finds and declares that such zoning restrictions are necessitated because of the growing number of adverse secondary effects arising from the operation of storefront marijuana dispensaries throughout California. The adverse secondary effects include certain criminal activities including armed robberies and murders, and burglary, arising from, or connected with, the operation of such storefront marijuana dispensaries as noted by law enforcement agencies in the California communities of Willits, Santa Barbara, Mendocino County, San Leandro, Hayward, Laytonville, Bellflower, and Claremont. Several cities such as Los Angeles, El Cerrito, and West Hollywood have enacted moratoria banning or severely restricting the operation of storefront marijuana dispensaries based upon reported crimes in other communities and within their jurisdictions.

C. The City Council of the City of Los Angeles specifically found that reports from its police department and the media showed an increase in and escalation of violent crime at the location of medical marijuana dispensaries, and further that, medical marijuana that has not been collectively or personally grown constitutes a unique health hazard to the public because it is not regulated, inspected, or analyzed for contamination by state or federal government. The City Council of the City of Los Angeles (population of 4 million) accordingly enacted a maximum number of 70 for such establishments that may operate within the city limits.

D. The City Council therefore finds that the maximum cap of three medical cannabis cooperatives or collectives allowed under the PSMC Section 93.22.00 and the locational requirements provided therein will promote the public health and safety by reducing the potential for the types of secondary negative effects experienced in other communities.

NOW, THEREFORE, BE IT RESOLVED that based upon the foregoing, the City Council approves Case MC 09-002 "Organic Solutions of the Desert" for the receipt of a regulatory permit to operate a Medical Cannabis Cooperative/Collective at 560 S. Williams Road. These actions are subject to the conditions contained in Exhibit A, which is attached hereto and made a part of this resolution.

ADOPTED, this _____ day of July, 2010.

David H. Ready, City Manager

ATTEST:

James Thompson, City Clerk

CERTIFICATION:

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss.
CITY OF PALM SPRINGS)

I, JAMES THOMPSON, City Clerk of the City of Palm Springs, hereby certify that Resolution No. _____ is a full, true and correct copy, and was duly adopted at a regular meeting of the City Council of the City of Palm Springs on July ____, 2010, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

James Thompson, City Clerk
City of Palm Springs, California

RESOLUTION NO. _____

EXHIBIT A

Case MC 09-002 "Organic Solutions of the Desert"
560 S. Williams Road, Palm Springs, CA 92264

July 21, 2010

CONDITIONS OF APPROVAL

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the City Engineer, the Director of Planning Services, the Director of Building and Safety, the Chief of Police, the Fire Chief or their designee, depending on which department recommended the condition.

Any agreements, easements or covenants required to be entered into shall be in a form approved by the City Attorney.

ADMINISTRATIVE CONDITIONS

- ADM 1. Project Description. This approval is for the project described per Case (MC 09-002); except as modified with the conditions below;
- ADM 2. Reference Documents. The site shall be developed and maintained in accordance with the approved plans, date stamped June 22, 2009, including site plans, architectural elevations, exterior materials and colors, landscaping, and grading on file in the Planning Division except as modified by the conditions below.
- ADM 3. Conform to all Codes and Regulations. The applicant shall conform to the conditions contained herein, all applicable regulations of the Palm Springs Zoning Ordinance, Municipal Code, and any other City County, State and Federal Codes, ordinances, resolutions and laws that may apply, including but not limited to all provisions of Section 93.22.00 of the Palm Springs Zoning Ordinance.
- ADM 4. Minor Deviations. The Director of Planning or designee may approve minor deviations to the project description and approved plans in accordance with the provisions of the Palm Springs Zoning Code.
- ADM 5. Indemnification. The owner shall defend, indemnify, and hold harmless the City of Palm Springs, its agents, officers, and employees from any claim, action, or proceeding against the City of Palm Springs or its agents, officers or employees to attach, set aside, void or annul, an approval of the City of Palm Springs, its legislative body, advisory agencies, or administrative officers concerning Case MC 09-002. The City of Palm Springs will promptly

notify the applicant of any such claim, action, or proceeding against the City of Palm Springs and the applicant will either undertake defense of the matter and pay the City's associated legal costs or will advance funds to pay for defense of the matter by the City Attorney. If the City of Palm Springs fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Palm Springs. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without the applicant's consent but should it do so, the City shall waive the indemnification herein, except, the City's decision to settle or abandon a matter following an adverse judgment or failure to appeal, shall not cause a waiver of the indemnification rights herein.

- ADM 6. Covenant. The obligations of the Medical Cannabis Cooperative or Collective, including all on-going and continuing obligations required pursuant to any provision of Section 93.22.00 of the Palm Springs Zoning Ordinance or as may be provided in any conditional approval of the City Manager or the City Council, shall be set forth in a covenant running with the land or the leasehold interest, approved as to form by the City Attorney, and enforceable by the City. Such covenant shall also provide that the cooperative or collective shall annually provide to the City Manager an updated application containing the information contained in Subsection G. To the fullest extent permitted by law, the City shall not assume any liability whatsoever, and expressly does not waive sovereign immunity, with respect to medical cannabis, or for the activities of any Medical Cannabis Cooperative or Collective. Upon receiving possession of a regulatory permit as provided in this Section, the collective or cooperative shall
- a. Execute an agreement indemnifying the City;
 - b. Carry insurance in the amounts and of the types that are acceptable to the City Manager;
 - c. Name the City as an additionally insured.
 - d. Agree to defend at its sole expense, any action against the City, its agents, officers, and employees because of the issues of such approval.
 - e. Agree to reimburse the City for any court costs and attorney fees that the City may be required to pay as a result of such action. The City may, at its sole discretion, participate at its own expense in the defense of any such action, but such participation shall not relieve the operator of its obligation hereunder.

- ADM 7. Maintenance and Repair. The property owner(s) and successors and assignees in interest shall maintain and repair the improvements including and without limitation all structures, sidewalks, bikeways, parking areas, landscape, irrigation, lighting, signs, walls, and fences between the curb and property line, including sidewalk or bikeway easement areas that extend onto private property, in a first class condition, free from waste and debris, and in

accordance with all applicable law, rules, ordinances and regulations of all federal, state, and local bodies and agencies having jurisdiction at the property owner's sole expense. This condition shall be included in the recorded covenant agreement for the property if required by the City.

- ADM 8. Right to Appeal. Decisions of an administrative officer or agency of the City of Palm Springs may be appealed in accordance with Municipal Code Chapter 2.05.00. Permits will not be issued until the appeal period has concluded.
- ADM 9. Cause No Disturbance. The owner shall monitor outdoor parking areas, walkways, and adjoining properties and shall take all necessary measures to ensure that customers do not loiter, create noise, litter, or cause any disturbances while on-site. The owner and operator shall ensure that at closing time, all customers leave the property promptly and that the property is clean and secure before the owner/operator leaves the premises. The Police Chief, based upon complaints and/or other cause, may require on-site security officers to ensure compliance with all City, State, and Federal laws and conditions of approval. Failure to comply with these conditions may result in revocation of this permit, temporary business closure or criminal prosecution.
- ADM 10. Grounds for Revocation. Non-compliance with any of the conditions of this approval or with City codes and ordinances, State laws; any valid citizen complaints or policing and safety problems (not limited to alcohol consumption, noise, disturbances, signs, etc) regarding the operation of the establishment; as determined by the Chief of Policy or the Director of Building and Safety, may result in proceedings to revoke the Permit. In addition, violations of the City Codes and Ordinances will result in enforcement actions which may include citations, arrest, temporary business closure, or revocation of this permit in accordance with law.
- ADM 11. Comply with City Noise Ordinance. This use shall comply with the provisions of Section 11.74 Noise Ordinance of the Palm Springs Municipal Code. Violations may result in revocation of this Conditional Use Permit.
- ADM 12. Comply with all laws. The cooperative or collective shall comply fully with all of the applicable restrictions and mandates set forth in state law, including without limitation the Attorney General Guidelines.
- ADM 13. Hours of Operation Limited. The cooperative shall only be open between the hours of 9:00 a.m. and 7:00 p.m., Monday through Saturday.
- ADM 14. Physician's referrals shall be verified by the cooperative prior to inclusion into the cooperative and at least every six months thereafter.

- ADM 15. Qualified Patients/Caregivers Only. Each member of the cooperative or collective shall be a patient or a qualified primary caregiver. The cooperative shall maintain patient records in a secure location within the City of Palm Springs, available to the City Manager to review upon demand. Such records shall include without limitation a copy of the physician's referral and, if using a primary caregiver, a notarized written authorization from the patient to be represented by such primary caregiver.
- ADM 16. Security. Cannabis shall be kept in a secured manner during business and non-business hours.
- ADM 17. Conditions for Food Consumption. If consumable Medical Cannabis products (including, but not limited to, lollipops, brownies, cookies, ice cream, etc.) are present on site or offered for distribution, then the applicant shall secure a County of Riverside Department of Health Services approval for handling food products.
- ADM 18. No Commercial Sale. No cooperative or collective shall conduct or engage in the commercial sale of any product, good, or service. All transactions between the cooperative or collective and its members or the members' primary caregivers shall be made by check or credit card; no cash transactions shall be allowed.
- ADM 19. Sales Tax. Any Medical Cannabis Cooperative or Collective must pay any applicable sales tax pursuant to federal, state, and local law.
- ADM 20. Prohibited Activities. On-site smoking, ingestion, or consumption of cannabis or alcohol shall be prohibited on the premises of the cooperative or collective. The term "premises" as used in this Subsection includes the actual building, as well as any accessory structures and parking areas. The building entrance to a cooperative or collective shall be clearly and legibly posted with a notice indicating that smoking, ingesting, or consuming marijuana on the premises or in the vicinity of the cooperative or collective is prohibited.
- ADM 21. Signage for the cooperative shall be limited to name of business only, and no advertising of the goods and/or services shall be permitted.
- ADM 22. Alcoholic beverages shall not be sold, stored, distributed, or consumed on the premises. A cooperative or collective shall not hold or maintain a license from the State Department of Alcohol Beverage Control to sell alcoholic beverages, or operate a business that sells alcoholic beverages. In addition, alcohol shall not be provided, stored, kept, located, sold, dispensed, or used on the premises of the cooperative or collective.
- ADM 23. Windows and/or entrances shall not be obstructed and must maintain a clear view into the premises during business hours and in conformance with the

Security Plan Provisions of Section 93.22.00 of the Palm Springs Zoning Code.

- ADM 24. Minors. No one under 18 years of age shall be a member of a cooperative or a collective without written authorization of a parent or legal guardian.
- ADM 25. Physician services shall not be provided on the premises. "Physician services" does not include social services, including counseling, help with housing and meals, hospice and other care referrals which may be provided on site.
- ADM 26. The building in which the cooperative or collective is located as well as the operations as conducted therein shall fully comply with all applicable rules, regulations, and laws including, but not limited to, zoning and building codes, the City's business license ordinances, the Revenue and Taxation Code, the Americans with Disabilities Act, and the Compassionate Use Act.
- ADM 27. No Distribution to non-members. The cooperative or collective shall not distribute, sell, dispense, or administer cannabis to anyone other than qualified patient members of the cooperative or collective and their primary caregivers.
- ADM 28. Restricted Source of Medical Cannabis. A Medical Marijuana Cooperative or Collective shall distribute only cannabis cultivated on the premises or by a member of the cooperative or collective or the member's primary caregiver. The cooperative or collective shall do an inventory on the first business day of each month and shall record the total quantity of each form of cannabis on the premises. These records shall be maintained for two (2) years from the date created.
- ADM 29. Provision of Records and Contacts. Provide the City Manager with the name, phone number, facsimile number, and email address of an on-site community relations or staff person or other representative to whom one can provide notice if there are operating problems associated with the Cooperative. The Cooperative shall make every good faith effort to encourage residents to call this person to try to solve operating problems, if any, before any calls or complaints are made to the police or planning departments.
- ADM 30. Fully comply with and meet all operating criteria required pursuant to the Compassionate Use Act, state law, the Attorney General Guidelines, the provisions of this Section, and any specific, additional operating procedures and measures as may be imposed as conditions of approval of the regulatory permit, and all requirements set forth in the covenant as described in Subsection J of PSZO Section 93.22.00, in order to ensure that the operation of the cooperative or collective is consistent with the protection of the health, safety, and welfare of the community, qualified patients, and primary caregivers, and will not adversely affect surrounding uses.

ADM 31. Security Recordings. Recordings made by the security cameras shall be made available to the City Manager upon verbal request; no search warrant or subpoena shall be needed to view the recorded materials.

ADM 32. City Access The City Manager shall have the right to enter the Medical Cannabis Cooperative or Collective from time to time unannounced for the purpose of making reasonable inspections to observe and enforce compliance with this Section and all laws of the City and State of California.

ADM 33. Operation of the cooperative or collective in non-compliance with any conditions of approval or standards of this Section shall constitute a violation of the Municipal Code and shall be enforced pursuant to the provisions of this Code.

ADM 34. Revocation of Regulatory Permit. The City Manager may revoke a medical marijuana regulatory permit if any of the following, singularly or in combination, occur:

- a. The City Manager determines that the cooperative or collective has failed to comply with this Section, any condition or approval, or any agreement or covenant as required pursuant to this Section; or
- b. Operations cease for more than 90 calendar days, including during change of ownership proceedings; or
 1. Ownership is changed without securing a regulatory permit; or
 2. The cooperative or collective fails to maintain 120 hours of security recordings; or
 3. The cooperative or collective fails to allow inspection of the security recordings, the activity logs, or of the premise by authorized City officials.

ADM 35.

Revisions to Organization's by-laws. The Police Department and the City Attorney's Office are concerned that cannabis cooperatives are or can be operated illegally or as fronts for other criminal activity. The regulatory approach that the City has taken in the development and administration of the current zoning program helps address some of those concerns. Providing for heightened involvement in the operation of the collective or cooperative will also help ensure that each collective or cooperative is operating for the sole purpose of providing safe product at a reasonable cost to the member patients and their caregivers. Thus, the inclusion of the following amendments to the bylaws of the approved applications is required. A full revised draft copy of the organizations by-laws shall be submitted to the City

Attorney in a Microsoft Word Document (.doc) format incorporating the following aspects into the by-laws to the satisfaction of the City Attorney:

1. Members shall elect all Directors.
2. Compensation of Directors shall be approved by the membership.
3. Compensation of Officers shall be approved by the Directors.
4. The annual budget of the corporation and any amendment to the budget that results in increases in expenditures above any amount budgeted shall be approved by the membership.
5. No minimum attendance for membership meetings shall be required; any action requiring membership approval or action shall be approved by a majority or super-majority of the votes cast, as provided in the bylaws, so long as at least 50% of the membership participate in the vote. All members shall be provided the opportunity to participate in any vote, either by attendance at a meeting, by mail, or any other reasonable, objective, and fair method designed to encourage independent membership participation.
6. All membership meetings and all Board of Director meetings shall be held in Palm Springs
7. Any amendment of the bylaws shall be approved by the membership.
8. All records of the corporation shall be available for inspection by the membership.

ENVIRONMENTAL ASSESSMENT CONDITIONS

- ENV 1. Coachella Valley Multiple-Species Habitat Conservation Plan (CVMSHCP) Local Development Mitigation Fee (LDMF) required. This project is exempt from CVMSHCP LDMF fees.
- ENV 2. California Fish & Game Fees Required. The project is required to pay a fish and game impact fee as defined in Section 711.4 of the California Fish and Game Code. This CFG impact fee plus an administrative fee for filing the action with the County Recorder shall be submitted by the applicant to the City in the form of a money order or a cashier's check payable to the Riverside County Clerk prior to the final City action on the project (either Planning Commission or City Council determination). This fee shall be submitted by the City to the County Clerk with the Notice of Determination. Action on this application shall not be final until such fee is paid. The project may be eligible for exemption or refund of this fee by the California Department of Fish & Game. Applicants may apply for a refund by the CFG at www.dfg.ca.gov for more information.

PLANNING DEPARTMENT CONDITIONS

- PLN 1. Outdoor Lighting Conformance. Exterior lighting plans, including a photometric site plan showing the project's conformance with Section 93.21.00 Outdoor Lighting Standards of the Palm Springs Zoning ordinance, shall be submitted for approval by the Department of Planning. Manufacturer's cut sheets of all exterior lighting on the building and in the landscaping shall be included. If lights are proposed to be mounted on buildings, down-lights shall be utilized. No lighting of hillsides is permitted.
- PLN 2. Sign Applications Required. No signs are approved by this action. Separate approval and permits shall be required for all signs in accordance with Zoning Ordinance Section 93.20.00. The applicant shall submit a sign program to the Department of Planning Services prior to the issuance of building permits.
- PLN 3. Maintenance of Awnings & Projections. All awnings shall be maintained and periodically cleaned.
- PLN 4. Screen Roof-mounted Equipment. All roof mounted mechanical equipment shall be screened per the requirements of Section 93.03.00 of the Zoning Ordinance.
- PLN 5. Exterior Alarms & Audio Systems. No sirens, outside paging or any type of signalization will be permitted, except approved alarm systems.
- PLN 6. Outside Storage Prohibited. No outside storage of any kind shall be permitted except as approved as a part of the proposed plan.
- PLN 7. No off-site Parking. Vehicles associated with the operation of the proposed development including company vehicles or employees vehicles shall not be permitted to park off the proposed building site unless a parking management plan has been approved.
- PLN 8. Bicycle Parking. The project shall be required to provide secure bicycle parking facilities on site for use by residents and commercial/retail patrons and owners. Location and design shall be approved by the Director of Planning.
- PLN 9. Avigation Easement and non-suit covenant contract required. The parcel lies within the N overlay zone (airport noise combining zone) and Zone "A" of the Riverside County Airport Land Use Commission Compatibility Plan. Applicant must enter into an Avigation Easement and non-suit Covenant contract with the City of Palm Springs on a form prescribed by the City Attorney prior to issuance of building permits or certificate of occupancy.

POLICE DEPARTMENT CONDITIONS

- POL 1. Applicant shall comply with Section II of Chapter 8.04 "Building Security Codes" of the Palm Springs Municipal Code.

BUILDING DEPARTMENT CONDITIONS

- BLD 1. Prior to any construction on-site, all appropriate permits must be secured.
- BLD 2. All facilities and operations shall conform at all times to applicable California and Palm Springs Building Codes including Accessibility Codes.

ENGINEERING DEPARTMENT CONDITIONS

(none)

FIRE DEPARTMENT CONDITIONS

- FIR 1. All facilities and operations shall conform at all times to applicable California and Palm Springs Fire Codes.

END OF CONDITIONS