



# CITY COUNCIL STAFF REPORT

DATE: March 16, 2011

NEW BUSINESS

SUBJECT: APPROVE A REMODEL INCENTIVE AGREEMENT WITH VENCE VENTURES, LLC, ON BEHALF OF LULU CALIFORNIA BISTRO, LOCATED AT 200 SOUTH PALM CANYON DRIVE, IN THE AMOUNT OF \$100,000

FROM: David H. Ready, City Manager

BY: Community & Economic Development Department

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## SUMMARY

The redevelopment of the property located at 200 South Palm Canyon, once the B. Lewin Gallery and later Muriel's, then Atlas and later Copykatz, has been a priority of the City for the past several years. While it is located on one of the busiest corners in downtown, on a block with several of the most successful restaurants in the desert, including Las Casuelas Terraza, Kaiser Grill, LG's Steakhouse, The Chop House and Zin Bistro, the building has been in decline with businesses failing, and has remained vacant for the past several years.

Gerald Keller, owner of Acqua Pazza in Rancho Mirage ("Owner"), is in the process of purchasing and renovating the entire 22,000 s.f. building to develop a first quality California Bistro. This Remodel Incentive Agreement ("Agreement") is intended to provide an incentive for the Owner to expedite the build-out of the restaurant in order to be open this Spring, rather than at the end of 2011. While the amount is at a level higher than the \$25,000 maximum established under the Interior Remodel Program, it is commensurate with the significant scale of the remodel, the condition of the property today, and the importance of the location and building.

The Property has been vacant for more than two years and is in considerable disrepair, and Owner proposes to spend over \$1,000,000 in renovating and furnishing the restaurant. The Owner has requested assistance from the City since last fall, during the negotiation for the building, and has demonstrated to the City that the additional costs of expediting the remodel of the Property by May 31 would be nearly \$300,000 above the baseline remodel costs to make interior improvements to the Property by the end of the year.

The Agreement provides that, if the project is completed by the deadline date, the City would reimburse the Owner for \$100,000 of the additional costs incurred in expediting

the project. The Owner had actually requested significantly more funds last fall, with the initial request, and was hoping to receive \$150,000 through this agreement. The policy objective of the City in entering this Agreement is to maintain the positive momentum in downtown, as well as see the creation of the 100 or so jobs earlier in the year rather than waiting until December. Opening sooner also gives the City six or seven months worth of additional sales tax from the business. For the Owner, opening in April or May is less appealing than the end of the year because of the additional labor and materials costs, as well as the anticipated slower traffic throughout the summer, which means it will take longer to recover the additional costs. The City would not be obligated to make any payment if the Owner fails to complete the project and secure a certificate of completion and be open for business and operating by the May 31, 2011 deadline.

RECOMMENDATION:

1. Adopt a Resolution authorizing the approval of a Remodel Incentive Agreement with Vence Ventures, LLC for LULU California Bistro, located at 200 South Palm Canyon Drive, in the amount of \$100,000.

STAFF ANALYSIS:

Gerald Keller, owner of Acqua Pazza in Rancho Mirage, is in the process of purchasing and renovating the building to develop a first quality California Bistro at the property located at 200 South Palm Canyon, which was once the B. Lewin Gallery and later Muriel's, then Atlas and later Copykatz. The property is located on one of the busiest corners in downtown, but for much of the past nine years the building has been in decline with failing businesses, and has remained vacant for the past several years. The vacancy of the building became a touchstone in the image of downtown as being rife with vacant stores.

This Remodel Incentive Agreement ("Agreement") is intended to provide an incentive for the Owner to expedite the build-out of the restaurant in order to be open this spring, rather than at the end of 2011. While the amount is at a level higher than the \$25,000 maximum established under the Interior Remodel Program, it is commensurate with the significant scale of the remodel, the condition of the property today, and the importance of the location and building.

It also covers part of the cost of "fast-tracking" the project through the design, approval, and construction process including the expedited ordering of special building materials and furnishings, and pushing contractors to complete tasks quickly. Overall, expediting the project would add 21% to the overall materials costs (which does not include operating supplies) and 32% to the construction/labor expenditure.

The Agreement provides that, if the project is completed by the deadline date, the City would reimburse the Owner for \$100,000 of the additional costs incurred in expediting the project. The Owner had actually requested significantly more funds last fall with the

initial request, and was hoping to receive \$150,000 through this agreement. The policy objective of the City in entering this Agreement is to maintain the positive momentum in downtown, as well as see the creation of the 100 or so jobs earlier in the year rather than waiting until December. While opening sooner will not be as profitable for the Owner, they hope to have good sales through the off-season based on their current experience in the desert, and it also gives the City six or seven months worth of additional sales tax from the business. For the Owner, opening in April or May is less appealing than the end of the year because of the additional labor and materials costs, as well as the anticipated slower traffic throughout the summer, which means it will take longer to recover the additional costs. Though the City is eager to get a high quality restaurant on this prominent corner in downtown Palm Springs, it would not be obligated to make any payment if the Owner fails to complete the project and secure a certificate of completion by the May 31, 2011 deadline.

The concept of LULU California Bistro is based on the continuing success of Acqua Pazza at The River in Rancho Mirage, another restaurant owned by Mr. Keller. The same large value-priced menu and quality food and drinks provide the basis for another very successful restaurant, especially in an area of downtown that is already an established dining destination. Their experienced staff is looking forward to this new opportunity. Despite the difficult financial times, Acqua Pazza, due to its menu, food, drinks, service and value, has grown every year for the last six years.

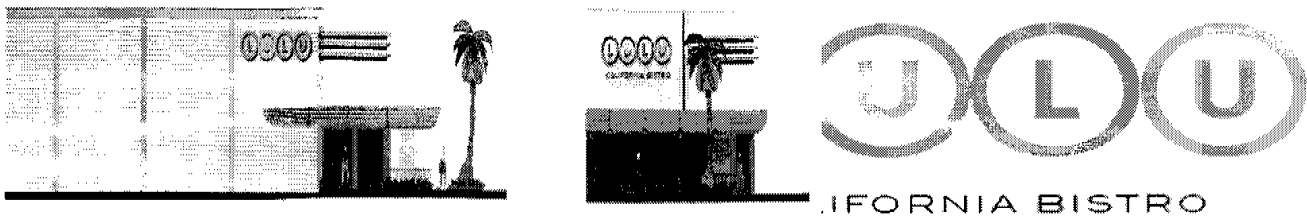
While the building is dilapidated from the transition from tenant to tenant, it needs very few structural or system repairs. It has two complete cooling systems, swamp-cooling or air conditioning, providing excellent savings on utility bills. Its layout offers substantial street-side seating, a must on South Palm Canyon Drive, an impressive bar visible from the street, and has the capacity to hold more than three hundred people. The upstairs is perfect for private parties and could host bus tour groups going to the Palm Springs Follies and other theatres, and the many varied events and conventions in Palm Springs.

This design team has prepared plans for submittal to the City. Below is a list of the team working to create LULU:

- David Christian, architect and designer, was the original architect of the first restaurant, Muriel's Nightclub, that went into this building approximately ten years ago.
- Jeff Jurasky, interior designer, also designed the interior for Acqua Pazza and will be responsible for the design of the new bar, tables, chairs, carpets and overall feel and look of the restaurant.

- Gary Wexler, advertising and graphic designer, conceived the name, LULU, and has already developed graphics for it. He will be involved in signage, menus, and promotion.
- Desert Habitat, built out Acqua Pazzo and will be responsible for overseeing the construction of all areas of LULU, including painting, building the new bar, interior separation walls, booths, all electrical, plumbing, etc.

In terms of renovations, the restaurant will need a complete new kitchen as much of the kitchen equipment has been removed by the previous tenants. The performance stage will be removed and the downstairs bar, which was a focal point of Muriel's but later removed, will be replaced in its original location. Many of the solid curved walls on the second and third levels will be replaced with glass, increasing visibility throughout the restaurant and "opening up" the space. The upstairs bar, which was added after Muriel's, will be removed. Signage will be added to the building's exterior:



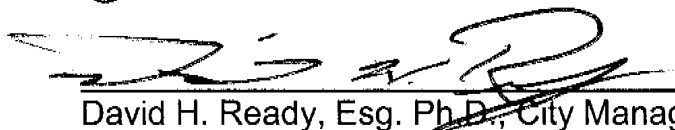
This Agreement is in the amount of \$100,000, but is commensurate with the significant scale of the remodel, the condition of the property today, and the importance of the location and building. As an incentive payment, the City would not be obligated to make any payment if the Owner fails to complete the project and secure a certificate of completion and is open for business and operating by the May 31, 2011 deadline.

FISCAL IMPACT:

Funds are available in the Economic Recovery Fund in Economic Development.

  
\_\_\_\_\_  
John Raymond, Director

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

  
\_\_\_\_\_  
David H. Ready, Esq. Ph.D., City Manager

Attachments: Resoution  
Agreement

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM SPRINGS, CALIFORNIA, AUTHORIZING THE APPROVAL OF A REMODEL INCENTIVE AGREEMENT WITH VENCE VENTURES, LLC IN THE AMOUNT OF \$100,000 FOR THE REDEVELOPMENT OF A PROPERTY AT 200 SOUTH PALM CANYON DRIVE, KNOWN AS LULU CALIFORNIA BISTRO

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WHEREAS, the City of Palm Springs ("City") has established a number of Remodel Grant Programs and other incentive programs for Owners and Tenants of commercial-retail businesses in the City of Palm Springs to promote economic activity during the recession and slow economic recovery; and

WHEREAS, the Vence Ventures, LLC ("Owner") is the purchaser and current tenant of a real property located at 200 South Palm Canyon Drive, Palm Springs, ("Property"), otherwise known as LULU California Bistro; and

WHEREAS, the Property has been vacant for more than two years and is in considerable disrepair, and Owner proposes to spend over \$1,000,000 in renovating and furnishing the restaurant; and

WHEREAS, the Owner has demonstrated that the additional costs of expediting the remodel of the Property by May 31 would be nearly \$300,000 above the baseline remodel costs to make interior improvements to the Property by the end of the year and given the additional expense of expediting and the opening so close to the slower summer season, there exists considerable disincentive to the Owner to move quickly at increased expense to open the restaurant sooner; and

WHEREAS, the City desires to enter this Agreement is to maintain the positive momentum in downtown, as well as see the creation of the 100 jobs earlier in the year, rather than waiting until December. Opening sooner also gives the City an additional six of new sales tax from the business which will offset a portion of the incentive payment; and

WHEREAS, prior to any disbursement under the terms of the Agreement, Owner/Tenant shall apply for and receive all necessary approvals from the City's Planning, Building or Engineering Departments and other State and County agencies and shall have completed work on the Property sufficient to receive a Certificate of Occupancy, and be open and operating for business;

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

SECTION 1. The Remodel Incentive Agreement between the City of Palm Springs and Vence Ventures, LLC is hereby approved

SECTION 2. This Project is Categorically Exempt under Section 15301 of the California Environmental Quality Act.

SECTION 3. The City Manager is authorized to execute all documents related to this Agreement.

ADOPTED THIS \_\_\_\_<sup>TH</sup> DAY OF MARCH, 2011.

\_\_\_\_\_  
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 April 7, 2010, by the following vote:

AYES:  
NOES:  
ABSENT:  
ABSTAIN:

\_\_\_\_\_  
James Thompson, City Clerk  
City of Palm Springs, California



# CITY OF PALM SPRINGS

## REMODEL INCENTIVE AGREEMENT

THIS INCENTIVE GRANT AGREEMENT (the "Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, by and between the City of Palm Springs, ("City"), and Vence Ventures, LLC the ("Owner"). Collectively the City and Owner are referred to as the Parties.

### RECITALS

- A. City has established a number of Remodel Grant Programs and other incentive programs for Owners and Tenants of commercial-retail businesses in the City of Palm Springs to promote economic activity during the recession and slow economic recovery.
- B. Owner is the purchaser and current tenant of a real property/business located within the eligible area at **200 South Palm Canyon Drive**, Palm Springs, ("Property"), otherwise known as LULU California Bistro.
- C. The Property has been vacant for more than two years and is in considerable disrepair, and Owner proposes to spend over \$1,000,000 in renovating and furnishing the restaurant.
- D. Owner has demonstrated that the additional costs of expediting the remodel of the Property by May 31 would be nearly **\$300,000 above the baseline remodel costs** to make interior improvements to the Property as described in Exhibit "B," Scope of Work, by the end of the year.
- E. Given the additional expense of expediting and the opening so close to the slower summer season, there exists considerable disincentive to move quickly at increased expense to open the restaurant sooner.
- F. The City desires to enter this Agreement is to maintain the positive momentum in downtown, as well as see the creation of the 100 jobs earlier in the year, rather than waiting until December. Opening sooner also gives the City an additional six of new sales tax from the business which will offset a portion of the incentive payment.
- G. Prior to any disbursement under the terms of this Agreement, Owner shall apply for and receive all necessary approvals from the City's Planning, Building or Engineering Departments, which are shown in Exhibit "C", Evidence of Approval, and shall have completed work on the Property sufficient to receive a Certificate of Occupancy. The business shall be open and operating.

H. The City has reviewed the project scope, the evidence of financial participation by Owner, the location of the Property, and the approvals, and has approved the Application.

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, City agrees to grant to Owner the amount of **\$100,000** and Owner agrees to undertake the approved improvements, under the following terms and conditions:

### **AGREEMENT**

1. **Property Ownership/Right to Undertake Work.** Owner represents that it is the Owner of the Property or holds Tenancy in the Property which entitles it to undertake interior physical improvements to the Property.
2. **Schedule.** The Parties agree that all interior improvements shall be completed within **90** days of the date of this Agreement, but no later than May 31, 2011. The City would not be obligated to make any payment if the Owner fails to complete the project and secure a certificate of completion and be open for business and operating by the May 31, 2011 deadline.
3. **Contractor.** The Parties agree that Owner has sole responsibility for choosing and hiring the contractor, which shall be shown in Exhibit "D", Contractor/Vendor Agreements, and the acceptance of the material used and the work performed is Owner's responsibility, and the City is not a party to any agreement with the vendor or contractor and does not guarantee the quality of workmanship of the property improvements, nor have any liability whatsoever therefor. At all times hereunder, the Contractor shall have a valid City of Palm Springs Business License.
4. **Design Approval and Permits.** The Parties agree that Owner has sole responsibility for obtaining design approval and evidence of required permit approvals from the City of Palm Springs as shown in Exhibit C, and ensuring the compliance with those permits.
5. **Grant Limitations.** The maximum City matching grant shall not exceed \$100,000.
6. **Evidence of Completion and Operation.** The Parties agree that the City will release the Grant funds upon the completion of the work by the Owner or his contractor. Evidence of completion shall include but is not limited to: photographs of the finished work; a final inspection by a representative of the



City of Palm Springs; and, a copy of the final invoice for the work completed and proof of payment to the contractor. The business must also be open and operating.

7. **Release of Liens.** The Parties Agree that the Owner is responsible for obtaining the release of any Mechanics Liens or other liens placed upon Owner's property by any contractor or subcontractor hired under this program.
8. **Maintenance.** Owner agrees and covenants that, after the City issues its Certificate of Completion, Owner shall be responsible for maintenance of all improvements that may exist at the Property from time to time, including without limitation buildings, parking lots, lighting, signs, and walls in first-class condition and repair, and shall keep the Property free from any accumulation of debris or waste materials. Owner shall also maintain all landscaping required pursuant to Property's approved landscaping plan, if any, in a healthy condition, including replacement of any dead or diseased plants with plants of a maturity similar to those being replaced. Owner hereby waives any notice, public hearing, and other requirements of the public nuisance laws and ordinances of the City that would otherwise apply.

#### **MISCELLANEOUS PROVISIONS**

9. **Covenant Against Discrimination.** Owner covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination or segregation in the performance of or in connection with this Agreement regarding any person or group of persons on account of race, color, creed, religion, sex, marital status, disability, sexual orientation, national origin, or ancestry.
10. **Notice.** Any notice, demand, request, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by pre-paid, first-class mail to the address set forth below. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

**To City:**

City of Palm Springs  
Economic Development Administrator  
3200 E. Tahquitz Canyon Way  
Palm Springs, California 92262

**To Owner:**

Gerald Keller  
LULU California Bistro  
200 South Palm Canyon Drive  
Palm Springs, CA 92262

11. **Integrated Agreement.** This Agreement contains all of the agreements of the parties and cannot be amended or modified except by written agreement.
12. **Amendment.** This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.
13. **Severability.** In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement, which shall be interpreted to carry out the intent of the parties hereunder.
14. **Indemnification.** Owner shall indemnify and hold harmless, the City of Palm Springs ("City") and the City, the City Council, the Agency Board of Directors, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever based and asserted upon any act or omission of the City for property damage, bodily injury, or death or any other element of damage of any kind or nature, relating to or in any way connected with participation in the Program.
15. **Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that they are duly authorized to execute this Agreement on behalf of said parties and that by so executing this Agreement the parties hereto are formally bound to the provisions of this Agreement. Owner certifies that the above statements are true and accurate to the best of Owner's belief. Failure to meet any of the terms of this Agreement shall result in the forfeiture of any Grant funds from the City for this program.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates stated below.

**“City”  
City of Palm Springs**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Community & Economic Development

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Director, Community & Economic Development

Date: \_\_\_\_\_

By: \_\_\_\_\_  
David H. Ready, Esq., PhD.  
City Manager

**ATTEST:**

**APPROVED AS TO FORM:**

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

By: \_\_\_\_\_  
Douglas C. Holland  
City Attorney

**“OWNER”**

Date: \_\_\_\_\_

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

Date: \_\_\_\_\_

\_\_\_\_\_  
( )

EXHIBIT "B"  
SCOPE OF WORK

**LULU Build-Out Items**

Carpet--main upper floor & stairs	6,000 square feet
Floor Tile	4,500 square feet
Insulation-ceiling-	
Square feet--egg crate & wedges	5,550 square feet
Wall tile--pearlescent glass	1,500 square feet

Insulation-wall

Glass partition to bar

Glass Walls upstairs

Ceiling-acrylic confetti clouds

Drapes- 460 yards

Drapes--valances, tracks, bases

Lit "dot" acrylic seating

Signs

Sprinklers

Lighting

Chandeliers & Wraps Ceiling; Wall; Drapery; Banquet Room; Below bar, etc.

Point of Sale System

Security Camera System

Telephone System/computers

Alarm/Security System

Televisions

**Kitchen**

Plans through health dept

Equipment

Special Flooring

Dishes, Cutlery, Glassware, etc.

Chairs

Bar chairs

Tables

Bar Tables

Banquettes & booths

Welcome desk

**Construction**

Bathrooms (4)

Mirrored Banquet Wall

New Staircase; move wall;  
dining levels; ramp; bar; kitchen "trench"

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Architect

Interior & Exterior Design

Art & Graphic Design

Electrical

Plumbing

HVAC

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