



Community Redevelopment Agency  
Staff Report

DATE: November 5, 2008 CONSENT CALENDAR

SUBJECT: APPROVAL OF A LEASE AGREEMENT WITH THE DESERT ART CENTER OF COACHELLA VALLEY, INC., FOR USE OF AGENCY OWNED PROPERTY LOCATED AT 550 NORTH PALM CANYON DRIVE AT FRANCES STEVENS PARK

FROM: David H. Ready, Executive Director

BY: Community & Economic Development Department

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SUMMARY

The Lease Agreement is for the use of the Agency-owned property located at 550 North Palm Canyon Drive by the non-profit arts organization the Desert Art Center of the Coachella Valley, Inc. The approval of this Lease Agreement will allow for the Desert Art Center to use the facility as part of their arts center operation in the historic village of Palm Springs. The non-profit group operates artist's studios, art workshops, gallery space, art fairs and festivals in downtown Palm Springs. The Agency property is used as the primary location for art related cultural activities on a year-around basis.

RECOMMENDATION:

1. Approve Agreement No. \_\_\_\_\_, Lease by and between the Desert Art Center of Coachella Valley, Inc., and the Community Redevelopment Agency of the City of Palm Springs for exclusive use of the Agency owned property at 550 North Palm Canyon Drive.
2. Authorize the Executive Director or his designee to execute all the necessary documents.

BACKGROUND:


The Desert Art Center of Coachella Valley, Inc. was established as a non-profit arts organization in 1950. The Desert Art Center has a month-to-month rental agreement with the City for the right to occupy the Frances Stevens Park Building, sections "A" and

“B”, located at 550 North Palm Canyon Drive. The Desert Art Center has increased its membership base to approximately two hundred, offers art classes six days a week on a year-around basis and awards three scholarships to graduating high school seniors in the Palm Springs Unified School District who are pursuing a higher education in the arts. However, recently the Agency acquired the property and would like to convert the month-to-month rental into a lease agreement. The Desert Art Center currently pays the City a monthly rental rate of \$408.00.


Going forward, Staff recommends entering a one year lease agreement with Desert Art Center of Coachella Valley, Inc., in the amount of \$500.00 per month. The new lease will allow Desert Art Center to continue operating in an efficient manner to provide cultural education and artistic resources to tourists and the local community. This is a one year lease, during which time the Agency will commission an appraisal of the property. The City’s rule allows non-profit organizations to lease property for an amount as low as 10% of Fair Market Value.

FISCAL IMPACT:

The Lease Agreement would provide the Agency revenue of \$500/month to help offset costs it currently bears in utilities and water as a result of operations.

  
\_\_\_\_\_  
John S. Raymond, Director  
Community & Economic Development

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

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

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

Attachments:

1. Desert Art Center of Coachella Valley, Inc., Lease Agreement

**LEASE**

**By and Between**

**THE COMMUNITY REDEVELOPMENT AGENCY  
OF THE  
CITY OF PALM SPRINGS**

**And**

**Desert Art Center of Coachella Valley, Inc.**

## LEASE

THIS LEASE ("lease") is made and entered into \_\_\_\_ day of \_\_\_\_\_, 2008, by and between the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, a municipal corporation (referred to variously as "Landlord" or "Agency"), and Desert Art Center of Coachella Valley, Inc. ("Tenant" or "Desert Art Center").

### RECITALS

- A. WHEREAS Desert Art Center of Coachella Valley, Inc. is a non-profit arts organization, serving tourists and visitors to the downtown area; and
- B. WHEREAS Desert Art Center of Coachella Valley, Inc. operates a local service that provides artist's studios, workshops and gallery space in the historic village of Palm Springs; and
- F. WHEREAS the Community Redevelopment Agency ("Agency") owns the property located at 550 North Palm Canyon Drive in Palm Springs, California ("**Facility**"). The Facility is used by Desert Art Center of Coachella Valley, Inc. to conduct workshops, art demonstrations and art festivals; and
- G. WHEREAS Desert Art Center of Coachella Valley, Inc. uses the Facility full time. Desert Art Center of Coachella Valley, Inc. desires to use the property located at 550 North Palm Canyon Drive in Palm Springs to provide a location for art related activities; and
- H. WHEREAS the proposed use of the Facility by User will benefit the Agency by, among other things, providing cultural education and artistic resource in the City of Palm Springs.

**1.0 LEASE SUMMARY.** Certain fundamental Lease provisions are presented in this Section and represent the agreement of the parties hereto, subject to further definition and elaboration in the respective referenced Sections and elsewhere in this Lease. In the event of any conflict between any fundamental Lease provision and the balance of this Lease, the latter shall control. References to specific Sections are for convenience only and designate some of the Sections where references to the particular fundamental Lease provisions may appear.

**1.1 Premises.** The "Premises" shall refer to that certain real property located in the County of Riverside, State of California, as depicted on the Plot Plan attached as Exhibit "A-1" hereof. The Premises shall be exclusively used by the Desert Art Center.

**1.2 Lease Commencement Date.** The Lease shall commence November 1, 2008.  
Lease Term: One (1) year. Lease Termination Date: October 31, 2009.

**1.3 Extension Options.** One (1) option for a term of one (1) year.

1.4 Rental. Rental shall be \$500.00 per month, with Tenant to pay all operational, utility and maintenance cost necessary to operate the Premises in accordance with the maintenance standards of Section 5.3 and the other provisions of the Lease. Upon each annual anniversary date of the Commencement Date, monthly rental shall be adjusted in proportion to the published changes in the Consumer Price Index ("CPI") for, All Items, for the Riverside/San Bernardino Metropolitan Statistical Area. Notwithstanding the foregoing, at the Agency's sole discretion the Property may be reappraised to establish a new base Purchase Price every year on the Commencement Date. The reappraised Purchase Price shall be adopted in lieu of the annual CPI adjustment for that year.

1.5 Security Deposit. N/A.

1.6 Use of Premises. Premises shall be used for artist's studio space, art workshops, gallery display, including but not limited to sales by artist's, art fairs and art festivals. Tenant shall make good faith efforts to coordinate usage of the Premises with the Agency.

1.7 Tenant's Address for Notices.

Desert Art Center of Coachella Valley, Inc.  
Adele Hill, President  
P.O. Box 2813  
Palm Springs, CA 92263  
Telephone: 760-323-7973

With a copy 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

## 2.0 TERM.

2.1 Term. The term of this Lease shall commence on the date specified in Section 1.2 ("Commencement Date") and shall continue for the period specified therein unless earlier terminated as provided herein.

2.2 Termination By Landlord. Landlord shall have the right to terminate this Lease effective on any anniversary of the Commencement Date, with or without cause, by providing Tenant with at least sixty (60) days' advance written notice. If Landlord terminates this Lease as provided in this Section, Tenant hereby waives any right to receive any other compensation from Landlord, including, but not limited to, the value of Tenant's leasehold interest, loss of goodwill and relocation benefits, inverse condemnation or the taking of property and Landlord shall have no obligation to pay Tenant therefore.

2.3 Holding Over. Any holding over after the expiration of the term of this Lease, with the consent of Landlord, express or implied, shall be construed to be a tenancy from month to month, cancelable upon thirty (30) days written notice, and at a rental equal to one hundred fifty percent (150%) of the last applicable Monthly Rental and upon terms and conditions as existed during the last year of the term hereof.

## 3.0 RENTAL.

3.1 Monthly Rental. Tenant shall pay to Landlord, during the term of this Lease from and after the Commencement Date as monthly rental ("Rental") for the Premises the sum specified in Section 1.4 hereof, which sum shall be paid in advance on the first day of each month of the term of this agreement. All rental to be paid by Tenant to Landlord shall be in lawful money of the United States of America and shall be paid without deduction or offset, prior notice or demand at the address designated in Section 12.10 hereof.

3.2 Real Property Taxes. In addition to all rentals herein reserved, Tenant shall pay, directly to the taxing authority, annual real estate taxes and assessments levied upon the Premises (including any possessory interest taxes), as well as taxes of every kind and nature levied and assessed in lieu of, in substitution for, or in addition to, existing real property taxes. Such amount shall be paid on the date that is twenty (20) days prior to the delinquent date or, if Landlord receives the tax bill, ten (10) days after receipt of a copy of the tax bill from Landlord, whichever is later. Even though the term of this Lease has expired and Tenant has vacated the Premises, when the final determination is made of Tenant's share of such taxes and assessments, Tenant shall immediately pay to Landlord the prorated amount of any additional sum owed.

3.3 Personal Property Taxes. During the term hereof Tenant shall pay prior to delinquency all taxes assessed against and levied upon fixtures, furnishings, equipment and all other personal property as of Tenant contained in the Premises, and when possible Tenant shall cause said fixtures, furnishings, equipment and other personal property to be assessed and billed separately from the real property of Landlord.

3.4 Late Payment. Tenant hereby acknowledges that late payment by Tenant to Landlord of rental or other sums due hereunder will cause Landlord to incur costs not contemplated by this Lease, the exact amount of which is extremely difficult to ascertain. Such

costs include, but are not limited to, processing and accounting charges. Accordingly, any payment of any sum to be paid by Tenant not paid when within five (5) days of its due date shall be subject to a five percent (5%) late charge. Landlord and Tenant agree that this late charge represents a reasonable estimate of such costs and expenses and is fair compensation to Landlord for its loss suffered by such late payment by Tenant.

3.5 Interest. Any sum to be paid pursuant to the terms of this Lease not paid when due shall bear interest from and after the due date until paid at a rate equal to three percent (3%) over the reference rate being charged by Bank of America, N.A. from time to time during such period so long as the rate does not exceed the maximum non-usurious rate permitted by law in which case interest shall be at the maximum non-usurious rate allowed by law at the time the sum became due.

#### 4.0 USE OF THE PREMISES.

4.1 Permitted Use. The Landlord hereby leases to Tenant and Tenant hires from Landlord the exclusive use of the Premises, with improvements as defined herein, for the purpose of conducting thereon only the use specified in Section 1.6 of this Lease.

4.2 Prohibited Uses. Tenant shall not sell or permit to be kept, used, displayed or sold in or about the exclusive Premises (a) pornographic or sexually explicit books, magazines, literature, films or other printed material, sexual paraphernalia, or other material which would be considered lewd, obscene or licentious, (b) any article which may be prohibited by standard forms of fire insurance policies, or (c) any alcoholic beverages unless expressly permitted by Section 1.6 hereof.

4.3 Compliance with Laws. Tenant shall, at his sole cost and expense, 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 Premises and shall faithfully observe in said use all municipal ordinances, including, but not limited to, the General Plan and zoning ordinances, state and federal statutes, or other governmental regulations now in force or which shall hereinafter be in force. Tenant's violation of law shall constitute an incurable default under this Lease. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether Landlord be a party thereto or not, that Tenant has violated any such order or statute in said use, shall be conclusive of that fact as between the Landlord and Tenant.

Tenant shall not engage in any activity on or about the Premises that violates any Environmental Law, and shall promptly, at Tenant's sole cost and expense, take all investigatory and/or remedial action required or ordered by any governmental agency or Environmental Law for clean-up and removal of any contamination involving any Hazardous Material created or caused directly or indirectly by Tenant. The term "Environmental Law" shall mean any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or the environmental conditions on, under or about the Premises, including, without limitation, (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. Sections 9601 et seq.; (ii) the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. Sections 6901 et seq.; (iii) California Health and Safety Code

Sections 25100 et seq.; (iv) the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.; (v) California Health and Safety Code Section 25359.7; (vi) California Health and Safety Code Section 25915; (vii) the Federal Water Pollution Control Act, 33 U.S.C. Sections 1317 et seq.; (viii) California Water Code Section 1300 et seq.; and (ix) California Civil Code Section 3479 et seq., as such laws are amended and the regulations and administrative codes applicable thereto. The term "Hazardous Material" includes, without limitation, any material or substance which is (i) defined or listed as a "hazardous waste", "extremely hazardous waste", "restrictive hazardous waste" or "hazardous substance" or considered a waste, condition of pollution or nuisance under the Environmental Laws; (ii) petroleum or a petroleum product or fraction thereof; (iii) asbestos; and/or (iv) substances known by the State of California to cause cancer and/or reproductive toxicity. It is the intent of the parties hereto to construe the terms "Hazardous Materials" and "Environmental Laws" in their broadest sense. Tenant shall provide all notices required pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq. Tenant shall provide prompt written notice to Landlord of the existence of Hazardous Substances on the premises and all notices of violation of the Environmental Laws received by Tenant.

4.4 Signs. Tenant shall have the right to place a sign at the entrance to the Premises in accordance with the City's Zoning Code pertaining to signs, and shall not place or permit to be placed any sign that is not in compliance with the sign ordinance of the Landlord upon the exterior or in the windows of the Premises. Any sign not constructed in accordance therewith shall be immediately removed by Tenant and, if said sign is not removed by Tenant within ten (10) days of written notice from Landlord to Tenant, then Landlord may remove and destroy said sign without Tenants approval.

4.5 Hours of Business. Subject to the provisions of Section 8.0 hereof, Tenant shall continuously during the entire term hereof conduct and carry on Tenants business in the Premises and shall keep the Premises open for business and cause Tenant's business to be conducted therein during the usual business hours of each and every business day. If scheduling patterns may change and in that event, Tenant shall report those changes to the Agency in writing. This provision shall not apply if the Premises should be closed and the business of Tenant temporarily discontinued therein on account of strikes, lockouts, or similar causes beyond the reasonable control of Tenant including weather, traffic delays, border delays, equipment failures.

4.6 Rules and Regulations. Tenant shall faithfully observe and comply with the rules and regulations that Landlord shall from time to time promulgate and/or modify. The rules and regulations, if any, 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.

## **5.0 ALTERATIONS AND REPAIRS.**

5.1 Alterations and Fixtures. Any expansion, amendment, or alteration of the 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 Landlord. Landlord may require that any such alterations be removed prior to 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 Tenants expense so that the Premises can be surrendered in a good, clean and sanitary condition as required by Section 5.2 hereof. Any and all fixtures and appurtenances installed by Tenant shall conform with the requirements of all municipal, state, federal, and governmental authorities including requirements pertaining to the health, welfare, or safety of employees or the public.

5.2 Maintenance and Repair. Tenant shall, at all times during the term hercof, and at Tenants sole cost and expense, keep, maintain and repair the Premises, and other improvements within the Premises in good and sanitary order, condition, and repair (except as hereinafter provided) including without limitation, the maintenance and repair of any gates, electrical wiring and conduits. Tenant shall also at its sole cost and expense be responsible for any alterations or improvements to the Premises necessitated as a result of the requirement of any municipal, state or federal authority. Tenant hereby waives all right to make repairs at the expense of Landlord, 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 Premises, Tenant shall be deemed to have accepted the Premises as being in good and sanitary order, condition and repair, and Tenant agrees on the last day of said term or sooner termination of this Lease to surrender the Premises with appurtenances, in the same condition as when received and in a good, clean and sanitary condition, reasonable use and wear thercof and damage by fire, act of God or by the elements excepted.

5.3 Free from Liens. During the period of construction and thereafter Tenant shall keep the Premises 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. Upon completion of construction of the improvements Tenant shall assure that lien releases are obtained for all mechanics liens.

## 6.0 INSURANCE AND INDEMNIFICATION.

6.1 Insurance Provided by Landlord. Landlord shall maintain fire and extended coverage insurance throughout the term of this Lease in an amount equal to at least ninety percent (90%) of the replacement value of the Tenant's building on the Premises, together with such other insurance, coverages and endorsements as may be required by Landlord's lender, or as Landlord may determine in its sole discretion. Tenant hereby waives any right of recovery from Landlord, its officers and employees, and Landlord 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.

### 6.2 Insurance Provided by Tenant.

(a) Tenant to Provide Personal Property Insurance. Tenant, at its expense, shall maintain fire and extended coverage insurance written on a per occurrence basis on

its trade fixtures, equipment, personal property and inventory within the Premises from loss or damage to the extent of their full replacement value.

(b) Tenant to Provide Liability Insurance. During the entire term of this Lease, the Tenant shall, at the Tenants sole cost and expense, but for the mutual benefit of Landlord and Tenant, maintain comprehensive general liability insurance insuring against claims for bodily injury, death or property damage occurring in, upon or about the Premises and on any rights of way directly adjacent to the Premises written on a per occurrence basis in an amount not less than either (i) a combined single limit of ONE MILLION DOLLARS (\$1,000,000.00) for bodily injury, death, and property damage or (ii) bodily injury limits of \$250,000.00 per person, \$500,000.00 per occurrence and \$500,000.00 products and completed operations and property damage limits of \$100,000.00 per occurrence and \$250,000.00 in the aggregate; provided, however, if Landlord so elects Landlord may provide such insurance and, in such event, Tenant agrees to pay its pro rata share of the cost of said insurance on the same basis as provided in Section 6.1 above.

(c) Tenant to Provide Worker's Compensation Insurance. If applicable, Tenant shall, at the Tenants sole cost and expense, maintain a policy of worker's compensation insurance in an amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Tenant and the Landlord 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 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 Landlord, its officers, employees and agents as additional insureds. The insurers shall waive all rights of contribution they may have against the Landlord, 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 Landlord. Prior to the Commencement Date or such earlier date as Tenant takes possession of the Premises for any purpose; and at least 30 days prior to the expiration of any insurance policy, Tenant shall provide Landlord with certificates of insurance or appropriate insurance binders evidencing the above insurance coverages written by insurance companies acceptable to Landlord, licensed to do business in the state where the Premises are located and rated A:VII or better by Bests Insurance Guide. In the event the Risk Manager of Landlord ("Risk Manager") determines that (i) the Tenant's activities in the Premises creates an increased or decreased risk of loss to the Landlord, (ii) greater insurance coverage is required due to the passage of time, or (iii) changes in the industry require different coverages be obtained, Tenant agrees that the minimum limits of any insurance policy required to be obtained by Tenant may be changed accordingly upon receipt of written notice from the Risk Manager, provided that Tenant shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of Landlord within ten (10) days of receipt of notice from the Risk Manager. Landlord and Tenant hereby waive any rights each may have against the other

on account of any loss or damage occasioned by property damage to the Premises, its contents, or Tenants trade fixtures, equipment personal property or inventory arising from any risk generally covered by insurance against the perils of fire, extended coverage, vandalism, malicious mischief, theft, sprinkler damage, and earthquake sprinkler leakage. Each of the parties, on behalf of their respective insurance companies insuring such property of either Landlord or Tenant against such loss, waive any right of subrogation that it may have against the other. The foregoing waivers of subrogation shall be operative only so long as available in California and provided further that no policy is invalidated thereby.

6.3 Indemnification of Landlord. Tenant, as a material part of the consideration to be rendered to Landlord under this Lease, hereby waives all claims against Landlord for damage to equipment or other personal property, trade fixtures, leasehold improvements, goods, wares, inventory and merchandise, in, upon or about the Premises and for injuries to persons in or about the Premises, from any cause arising at any time. Tenant agrees to indemnify the Landlord, its officers, agents and employees against, and will hold and save them and each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities of Tenant, its agents, employees, subcontractors, or invitees, provided for herein, or arising from the use of the Premises or the parking and Common Area by Tenant or its employees and customers, or arising from the failure of Tenant to keep the Premises in good condition and repair, as herein provided, or arising from the negligent acts or omissions of Tenant hereunder, or arising from Tenant's negligent performance of or failure to perform any term, provision covenant or condition of this Lease, whether or not there is concurrent passive or active negligence on the part of the Landlord, its officers, agents or employees but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the Landlord, its officers, agents or employees, who are directly responsible to the Landlord, and in connection therewith:

(a) Tenant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Tenant will promptly pay any judgment rendered against the Landlord, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Tenant hereunder, and Tenant agrees to save and hold the Landlord, its officers, agents, and employees harmless therefrom;

(c) In the event the Landlord, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Tenant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Tenant hereunder, Tenant agrees to pay to the Landlord, its officers, agents or employees, any and all costs and expenses incurred by the Landlord, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

## 7.0 ABANDONMENT AND SURRENDER.

7.1 Abandonment. Tenant shall not vacate or abandon the Premises at any time during the term of this Lease; and if Tenant shall abandon, vacate or surrender the Premises or be dispossessed by process of law, or otherwise, any personal property belonging to Tenant and left on the Premises shall be deemed to be abandoned, at the option of Landlord, except such property as may be mortgaged to Landlord.

7.2 Surrender of Lease. The voluntary or other surrender of this Lease by Tenant or a mutual cancellation thereof, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subleases or subtenancies, or may, at the option of Landlord, operate as an assignment to it of any or all of such subleases or subtenancies.

8.0 **DAMAGE AND DESTRUCTION OF PREMISES.** In the event of (a) partial or total destruction of the Premises during the term of this Lease which requires repairs to the Premises, or (b) the Premises being declared unsafe or unfit for occupancy by any authorized public authority for any reason other than Tenant's act, use or occupation, which declaration requires repairs to the Premises, Landlord shall forthwith make said repairs provided Tenant gives to Landlord thirty (30) days written notice of the necessity therefor. No such partial destruction (including any destruction necessary in order to make repairs required by any declaration made by any public authority) shall in any way annul or void this Lease except that Tenant shall be entitled to a proportionate reduction of Monthly Rental while such repairs are being made, such proportionate reduction to be based upon the extent to which the making of such repairs shall interfere with the business carried on by Tenant in the Premises. However, if during the last (1) year of the term of this Lease the Premises are damaged as a result of fire or any other insured casualty to an extent in excess of twenty-five percent (25%) of the then replacement cost (excluding foundations), Landlord may within thirty (30) days following the date such damage occurs terminate this Lease by written notice to Tenant. If Landlord, however, elects to make said repairs, and provided Landlord uses due diligence in making said repairs, this Lease shall continue in full force and effect, and the Monthly Rental shall be proportionately reduced while such repairs are being made as hereinabove provided. Nothing in the foregoing to the contrary withstanding, if the Premises or said building is damaged or destroyed at any time during the term hereof to an extent of more than twenty-five percent (25%) of the then replacement cost (excluding foundations) as a result of a casualty not insured against, Landlord may within thirty (30) days following the date of such destruction terminate this Lease upon written notice to Tenant. If Landlord does not elect to terminate because of said uninsured casualty, Landlord shall promptly rebuild and repair the Premises and/or the building and the Monthly Rental shall be proportionately reduced while such repairs are being made as hereinabove provided. If Landlord elects to terminate this Lease, all rentals shall be prorated between Landlord and Tenant as of the date of such destruction. In respect to any partial or total destruction (including any destruction necessary in order to make repairs required by any such declaration of any authorized public authority) which Landlord is obligated to repair or may elect to repair under the terms of this Section, Tenant waives any statutory right it may have to cancel this Lease as a result of such destruction.

**9.0 ASSIGNMENT AND SUBLETTING.** Tenant shall not assign this Lease or sublet the Premises, or any interest therein, without the prior written consent of Landlord, which consent shall not be unreasonably withheld. For purposes of this Lease, an assignment shall be deemed to include the transfer to any person or group of persons acting in concert of more than twenty five percent (25%) of the present ownership and/or control of Tenant, taking all transfers into account on a cumulative basis. Landlord may withhold its consent to an assignment or sublease to a proposed assignee or sublessee, and Tenant agrees that Landlord shall not be unreasonable for doing so, unless all the following criteria are met: (a) The proposed assignee's or sublessee's general financial condition, including liquidity and net worth, verified by audited financial statements prepared by a Certified Public Accountant in conformity with Generally Accepted Accounting Principles is equal to or greater than that of Tenant; (b) the proposed assignee or sublessee has a demonstrated merchandising capability equal to or greater than that of Tenant as to the use for which the Premises are leased; (c) the proposed assignee or sublessee is morally and financially responsible. Any such assignment shall be subject to all of the terms and conditions of this Lease and the proposed assignee shall assume the obligations of Tenant under this Lease in writing in form satisfactory to Landlord. The proposed assignee shall simultaneously provide to Landlord an estoppel certificate in the form described in Section 12.2 hereafter. Consent by Landlord to one assignment, subletting, occupation or use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, occupation or use by another person. Any assignment or subletting without the prior written consent of Landlord shall be void, shall constitute a material breach of this Lease, and shall, at the option of Landlord, terminate this Lease. Neither this Lease nor any interest therein shall be assignable as to the interest of Tenant by operation of law.

Landlord shall be under no obligation to consider a request for Landlord's consent to an assignment until Tenant shall have submitted in writing to Landlord a request for Landlord's consent to such assignment together with audited financial statements of Tenant and the proposed assignee, a history of the proposed assignee's business experience and such other information as required by Landlord to verify that the criteria for assignment as set forth herein are met. If Landlord approves such assignment, Tenant shall pay to Landlord one-half (1/2) of any consideration received by Tenant for such assignment. In addition, if Landlord determines that the Monthly Rent payable to Landlord under this Lease is less than the fair market rental value, as determined by Landlord, Landlord shall have the right to condition its approval to an assignment or subletting on the increase of Monthly Rent to the fair market rental value.

#### **10.0 DEFAULT AND REMEDIES.**

**10.1 Default by Tenant.** In addition to the defaults described in Section 9.0 hereinabove, the occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant: (a) the failure to pay any rental or other payment required hereunder to or on behalf of Landlord more than three (3) days after written notice from Landlord to Tenant that Tenant has failed to pay rent when due; (b) the failure to perform any of Tenant's agreements or obligations hereunder (exclusive of a default in the payment of money) where such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant which notice shall be deemed to be the statutory notice so long as such notice complies with statutory requirements; (c) the vacation or abandonment of the Premises by Tenant; (d) the making by Tenant of a general assignment for the benefit of creditors; (e) the

filing by Tenant of a voluntary petition in bankruptcy or the adjudication of Tenant as a bankrupt; (f) the appointment of a receiver to take possession of all or substantially all the assets of Tenant located at the Premises or of Tenants leasehold interest in the Premises; (g) the filing by any creditor of Tenant of an involuntary petition in bankruptcy which is not dismissed within sixty (60) days after filing; or (h) the attachment, execution or other judicial seizure of all or substantially all of the assets of Tenant or Tenant's leasehold where such an attachment, execution or seizure is not discharged within sixty (60) days. Any repetitive failure by Tenant to perform its agreements and obligations hereunder, though intermittently cured, shall be deemed an incurable default. Two (2) breaches of the same covenant within a sixty (60) day period, a notice having been given pursuant to (a) or (b) above for the first breach, or three (3) of the same or different breaches at any time during the term of this Lease for which notices pursuant to (a) or (b) above were given for the first two (2) breaches shall conclusively be deemed to be an incurable repetitive failure by Tenant to perform its obligations hereunder.

In the event of any such default or breach by Tenant, Landlord may at any time thereafter, without further notice or demand, rectify or cure such default, and any sums expended by Landlord for such purposes shall be paid by Tenant to Landlord upon demand and as additional rental hereunder. In the event of any such default or breach by Tenant, Landlord shall have the right (i) to continue the Lease in full force and effect and enforce all of its rights and remedies under this Lease, including the right to recover the rental as it becomes due under this Lease, or (ii) Landlord shall have the right at any time thereafter to elect to terminate the Lease and Tenants right to possession thereunder. Upon such termination, Landlord shall have the right to recover from Tenant:

(i) The worth at the time of award of the unpaid rental which had been earned at the time of termination;

(ii) The worth at the time of award of the amount by which the unpaid rental which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Tenant proves could have been reasonably avoided;

(iii) The worth at the time of award of the amount by which the unpaid rental for the balance of the term after the time of award exceeds the amount of such rental loss that the Tenant proves could be reasonably avoided; and

(iv) Any other amount necessary to compensate the Landlord for all the detriment proximately caused by Tenants failure to perform its obligations under the lease or which in the ordinary course of things would be likely to result therefrom.

The "worth at the time of award" of the amounts referred to in subparagraphs (i) and (ii) above shall be computed by allowing interest at three percent (3%) over the prime rate then being charged by Bank of America, N.A. but in no event greater than the maximum rate permitted by law. The worth at the time of award of the amount referred to in subparagraph (iii) above shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent (1%), but in no event greater than ten percent (10%).

As used herein "rental" shall include the Monthly Rental, percentage rental equal to the average percentage rental paid or payable by Tenant for the last twelve (12) months or such lesser period as Tenant has been open for business, other sums payable hereunder which are designated "rental" or "additional rental" and any other sums payable hereunder on a regular basis such as reimbursement for real estate taxes.

Such efforts as Landlord may make to mitigate the damages caused by Tenants breach of this Lease shall not constitute a waiver of Landlord's right to recover damages against Tenant hereunder, nor shall anything herein contained affect Landlord's right to indemnification against Tenant for any liability arising prior to the termination of this Lease for personal injuries or property damage, and Tenant hereby agrees to indemnify and hold Landlord harmless from any such injuries and damages, including all attorney's fees and costs incurred by Landlord in defending any action brought against Landlord for any recovery thereof, and in enforcing the terms and provisions of this indemnification against Tenant.

Notwithstanding any of the foregoing, the breach of this Lease by Tenant, or an abandonment of the Premises by Tenant, shall not constitute a termination of this Lease, or of Tenant's right of possession hereunder, unless and until Landlord elects to do so, and until such time Landlord 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 Landlord to terminate this Lease shall not prevent Landlord from later terminating this Lease or constitute a waiver of Landlord's right to do so.

10.2 No Waiver. Acceptance of rental hereunder shall not be deemed a waiver of any default or a waiver of any of Landlord's remedies.

10.3 Landlord's Default. Landlord shall not be in default unless Landlord fails to perform obligations required of Landlord within a reasonable time, but in no event later than thirty (30) days after written notice by Tenant to Landlord and to the holder of any first mortgage or deed of trust covering the Premises whose name and address shall have theretofore been furnished to Tenant in writing, specifying wherein Landlord has failed to perform such obligation; provided, however, that if the nature of Landlord's obligation is such that more than thirty (30) days are required for performance then Landlord shall not be deemed in default if Landlord commences performance within a (30) day period and thereafter diligently prosecutes the same to completion. In no event shall Tenant have the right to terminate this Lease as a result of Landlord's default and Tenant's remedies shall be limited to damages and/or an injunction.

11.0 **CONDEMNATION**. In the event a condemnation or a transfer in lieu thereof results in a taking of any portion of the Premises, Landlord may, or in the event a condemnation or a transfer in lieu thereof results in a taking of twenty-five percent (25%) or more of the Premises, Tenant may, upon written notice given within thirty (30) days after such taking or transfer in lieu thereof, terminate this Lease. Tenant shall not be entitled to share in any portion of the award and Tenant hereby expressly waives any right or claim to any part thereof. Tenant shall, however, have the right to claim and recover, only from the condemning authority (but not from Landlord), any amounts necessary to reimburse Tenant for the cost of removing stock and

fixtures. If this Lease is not terminated as above provided, Landlord shall use a portion of the condemnation award to restore the Premises.

## 12.0 MISCELLANEOUS.

12.1 Entry and Inspection. Tenant shall permit Landlord and his agents to enter into and upon the Premises at all reasonable times for the purpose of inspecting the same or for the purpose of maintaining the Premises as required by the terms of this Lease or for the purpose of posting notices of nonliability for alterations, additions or repairs, or for the purpose of placing upon the property in which the Premises are located any usual or ordinary "For Sale" signs or any signs for public safety as determined by Landlord. Landlord shall be permitted to do any of the above without any rebate of rent and without any liability to Tenant for any loss of occupation or quiet enjoyment of the Premises thereby occasioned. Tenant shall permit Landlord, at any time within six (6) months prior to the expiration of this Lease, to place upon the Premises any usual or ordinary "For Lease" signs, and during such six (6) month period Landlord or his agents may, during normal business hours, enter upon said Premises and exhibit same to prospective tenants.

12.2 Jurisdiction and Venue. The parties hereto agree that the State of California is the proper jurisdiction for litigation of any matters relating to this Lease, and service mailed to the address of tenants set forth herein shall be adequate service for such litigation. The parties further agree that Riverside County, California is the proper place for venue as to any such litigation and Tenant agrees to submit to the personal jurisdiction of such court in the event of such litigation.

12.3 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.

12.4 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.

12.5 No Oral Agreements. This (i) Lease covers in full each and every agreement of every kind or nature whatsoever between the parties hereto concerning this Lease, (ii) supersedes any and all previous obligations, agreements and understandings, if any, between the parties, oral or written, and (iii) merges all preliminary negotiations and agreements of whatsoever kind or nature herein. Tenant acknowledges that no representations or warranties of any kind or nature not specifically set forth herein have been made by Landlord or its agents or representatives.

12.6 Authority. In the event that Tenant is a corporation or a partnership, each individual executing this Lease on behalf of said corporation or said partnership, as the case may be, represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation or partnership, in accordance with a duly adopted resolution of the



Board of Directors, if a corporation, or in accordance with the Partnership Agreement if a partnership, and that this Lease is binding upon said corporation or partnership in accordance with its terms. Tenant represents and warrants to Landlord that the entering into this Lease does not violate any provisions of any other agreement to which Tenant is bound!

12.7 Relationship of Parties. The relationship of the parties hereto is that of Landlord and Tenant, and it is expressly understood and agreed that Landlord does not in any way or for any purpose become a partner of Tenant in the conduct of Tenant's business or otherwise, or a joint venturer with Tenant, and that the provisions of this Lease and the agreements relating to rent payable hereunder are included solely for the purpose of providing a method whereby rental payments are to be measured and ascertained.

12.8 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 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, lessees, sublessees, subtenants or vendees in the Premises.

12.9 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 Landlord, to the Community Redevelopment Agency of the City of Palm Springs, P.O. Box 2743, Palm Springs, California, 92263, Attn: Executive Director, and if to Tenant, as specified in Section 1.7. 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.

12.10 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.

12.11 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.

[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:

COMMUNITY REDEVELOPMENT  
AGENCY OF THE  
CITY OF PALM SPRINGS, a  
California Charter City

By: \_\_\_\_\_  
Assistant Secretary

By: \_\_\_\_\_  
Executive Director

REVIEWED AND APPROVED  
WOODRUFF, SPRADLIN & SMART

By: \_\_\_\_\_  
Douglas C. Holland  
Agency Counsel

“TENANT”

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

DRAFTED AND REVIEWED

By: \_\_\_\_\_  
John S. Raymond, Director  
Community and Economic Development

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PREMISES

LEGAL DESCRIPTION OF THE PROPERTY

That portion of the Southeast quarter of the Southeast quarter of Section 10, Township 4 South, Range 4 East, San Bernardino Base and Meridian, described as follows:

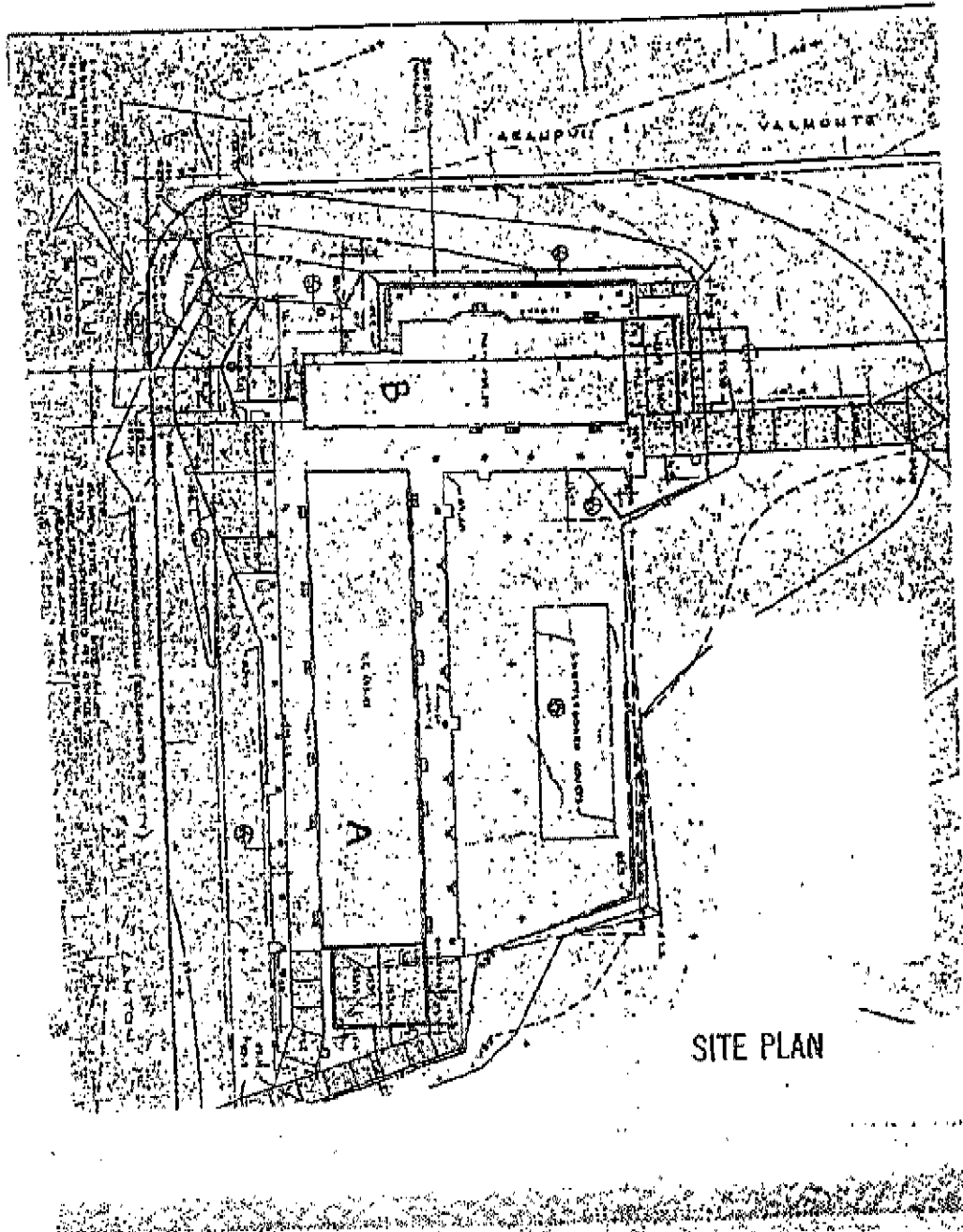
Beginning at a point on the South line of said Section 10, Township 4 South, Range 4 East, San Bernardino Base and Meridian, 30 feet West of the Southeast corner thereof; thence, South 89° 42' West on said South line, 297.40 feet; thence North on the East line of a public highway 550.4 feet; thence North 89° 42' East, 296.75 feet to a point distant 30 feet, measured at a right angle, from the East line of said Section 10; thence South 0° 2' 30" East and parallel with said East line, 550.4 feet to the point of beginning.

Said property is also situated in the City of Palm Springs, and known as Buildings A & B of the former Senior Center, 550 North Palm Canyon Drive.

EXHIBIT "B-1"

PLOT PLAN OF PREMISES

PLOT PLAN OF THE PROPERTY SHOWING  
THE LOCATION OF DEKISED PREMISES



SITE PLAN

EXHIBIT "C"

ESTOPPEL CERTIFICATE

Tenant: DESERT ART CENTER OF COACHELLA VALLEY, INC.

Landlord: COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF PALM SPRINGS, a municipal corporation

Date of Lease: November 1, 2008

Premises: 550 North Palm Canyon Drive, Buildings "A" and "B"

To: Desert Art Center of Coachella Valley, Inc.  
Adele Stevens, President  
P.O. Box 2813  
Palm Springs, CA 92263

The undersigned hereby certifies as follows:

1. The undersigned is the tenant ("Tenant") under the above-referenced lease ("Lease") covering the above-referenced premises ("Premises").
2. The Lease constitutes the entire agreement between landlord and Tenant with respect to the Premises and the Lease has not been modified, changed, altered or amended in any respect except as set forth above.
3. The term of the Lease commenced on November 1, 2008 and, including any presently exercised option or renewal term, will expire on October 31, 2009. Tenant has accepted possession of the Premises and is the actual occupant in possession thereof and has not sublet, assigned or hypothecated its leasehold interest. All improvements to be constructed on the Premises by Landlord have been completed and accepted by Tenant and any tenant construction allowances have been paid in full.
4. As of this date, to the best of Tenant's knowledge, there exists no breach or default, nor state of facts which, with notice, the passage of time, or both, would result in a breach or default on the part of either Tenant or Landlord. To the best of Tenant's knowledge, no claim, controversy, dispute, quarrel or disagreement exists between Tenant and Landlord.
5. Tenant is currently obligated to pay Monthly Rent in installments of \$500.00 per month, and such monthly installments have been paid not more than one month in advance. To the best of Tenant's knowledge, no other rent has been paid in advance and Tenant has no claim or defense against Landlord under the Lease and is asserting no offsets or credits against either the rent or Landlord. Tenant has no claim against Landlord for any security or other deposits except \$500.00 which was paid pursuant to the Lease.
6. Tenant has no option or preferential right to lease or occupy additional space within the Property of which the Premises are a part. Tenant has no option or preferential right to purchase all of any part of the Premises nor any right or interest with respect to the Premises other than as Tenant under the Lease.

Tenant has no right to renew or extend the term of the Lease except as set forth in the Lease.

7. Tenant has made no agreements with Landlord or its agent or employees concerning free rent, partial rent, rebate of rental payments or any other type of rent or other concession except as expressly set forth in the Lease.

8. There has not been filed by or against Tenant a petition in bankruptcy, voluntary or otherwise, any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States, or any state thereof, or any other action brought under said bankruptcy laws with respect to Tenant.

9. All insurance which Tenant is required to maintain under the Lease has been obtained by Tenant and is in full force and effect and all premiums with respect thereto have been paid.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

## EXHIBIT "D"

### RULES AND REGULATIONS

1. All loading and unloading of goods and other related equipment, as well as the parking and storage of related items shall be done only at the times, in the areas and through the entrances reasonably designated for such purposes by Agency.

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

3. The Tenant is responsible for maintaining the security of guests and students at the Premises through its own efforts.

4. All of Tenant's refuse and rubbish shall be removed on a regular basis at Tenant's sole cost and expense. Tenant shall not burn any trash or garbage of any kind in, about or upon the Premises. Tenant shall not place any rubbish or other matter outside any building within the Facility, except in such containers as are authorized from time to time by Agency.

5. No radio or television or other similar device audible outside the facility shall be installed without obtaining in each instance the written consent of Agency. No aerial shall be erected on the roof, exterior walls or grounds of the Premises without first obtaining in each instance the written consent of Agency which consent shall not be unreasonably withheld or delayed. Any aerial so installed without such written consent shall be subject to removal without notice at any time.

6. No loudspeakers, televisions, phonographs, radios or other devices shall be used in a manner so as to be heard or seen outside of the Premises without first obtaining in each instance written consent of Agency.

7. No sirens, outside paging or any type of signalization will be permitted, except approved alarm systems.

8. The outside sidewalks, parking lots and loading areas immediately adjoining the premises shall be kept clean and free from dirt and rubbish by Tenant to the reasonable satisfaction of Agency, 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.

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

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

10. No vehicle servicing or fueling shall be allowed on the Premises, including the changing of wheels or tires, pumping fuel, emptying liquid waste tanks, or servicing any engine or motor.

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