



## CITY COUNCIL STAFF REPORT

DATE: November 4, 2009 NEW BUSINESS

SUBJECT: APPROVE A LICENSE AGREEMENT BETWEEN THE CITY OF PALM SPRINGS AND JOHN WESSMAN OF WESSMAN DEVELOPMENT COMPANY, FOR THE PLACEMENT OF THE SCULPTURE "TOGETHER AGAIN" ON A PRIVATE PROPERTY LOCATED AT 101 NORTH PALM CANYON DRIVE.

FROM: David H. Ready, City Manager

BY: Community & Economic Development

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### SUMMARY

On May 6, 2009 City Council approved a Gift Agreement for the donation of artwork, for the sculpture "Together Again". The Public Arts Commission is recommending approval to place the sculpture on a private property located at 101 North Palm Canyon Drive. The owner of the property, Wessman Development Company, is willing to enter into a License Agreement with the City for the Placement of Artwork on the property.

### RECOMMENDATION:

1. Approve a License Agreement with John Wessman of Wessman Development Company, for the placement of the sculpture "Together Again" on private property located at 101 North Palm Canyon Drive.
2. Authorize City Manager to execute all necessary documents.

### STAFF ANALYSIS:

On February 19, 2009 the Public Arts Commission voted 4/0 to recommend accepting the donation of the sculpture "Together Again" by Marlene Louchheim. The Public Arts Commission recommended installing the sculpture at the Palm Springs Adult School located at 333 North Farrell Drive. Staff contacted the Palm Springs Unified School District and sent a memo to the Superintendents Cabinet. The Superintendents Cabinet did not approve the request and chose to decline the proposal.

At the April 9, 2009 Public Arts Commission meeting, a motion was made to install the sculpture at the vacant pad located in front of 1103 North Palm Canyon Drive in the Uptown District, the motion passed unanimously. At the May 6, 2009 City Council meeting, the Council voted to defer placement of the sculpture and recommended that the Public Arts Commission pursue an alternate site.

On September 9, 2009 the Public Arts Commission made a motion to place the sculpture at the northwest corner of Palm Canyon Drive and Tahquitz Canyon Way at 101 North Palm Canyon Drive; the motion passed with a 6/1 vote. Staff contacted the property owner, Wessman Development Company, who expressed a willingness to enter into a License Agreement with the City for the placement of the sculpture on the property. Wessman Development Company will reserve the right to give the City a 30-day notice to remove the Artwork if the artwork impedes development of the site.

Staff presented the sculpture and the proposed downtown location, 101 North Palm Canyon Drive, to the Main Street Executive Board at the September 29, 2009 meeting. The Main Street Executive Board expressed approval of the proposed location for the public art. However, the Executive Board did not support the proposed sculpture. A motion was made to approve the location at 101 North Palm Canyon Drive for the placement of public art but not support the installation of the sculpture "Together Again", the motion passed with a 9/4 vote.

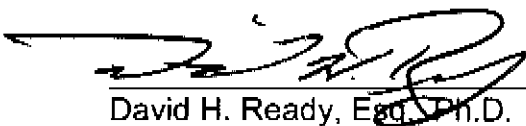
The City will be responsible for the installation, landscaping and lighting costs of the sculpture placement at 101 North Palm Canyon Drive. The cost to install the sculpture at this location will be approximately \$5,000. The Agreement provides that ownership and maintenance of the artwork remain with the City.

FISCAL IMPACT:

There is no impact to the General Fund. The cost of installation shall be made from the Public Arts Account #150-30-4408-50015.

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

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

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

Attachments:

Images of Artwork and Site

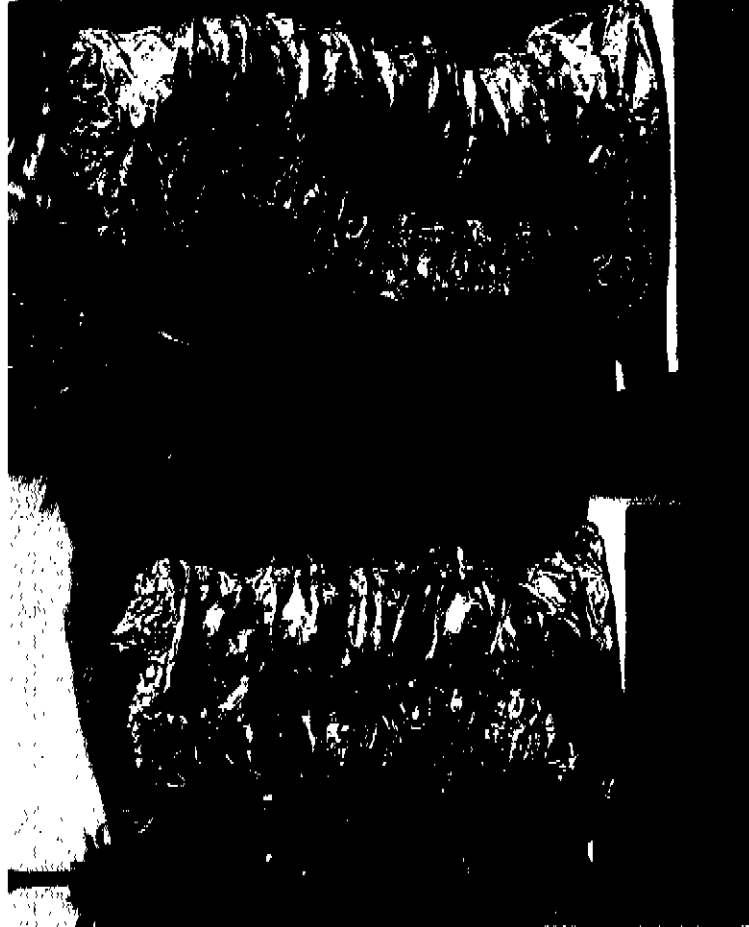
License Agreement for Placement of Artwork on Private Property

## Artwork

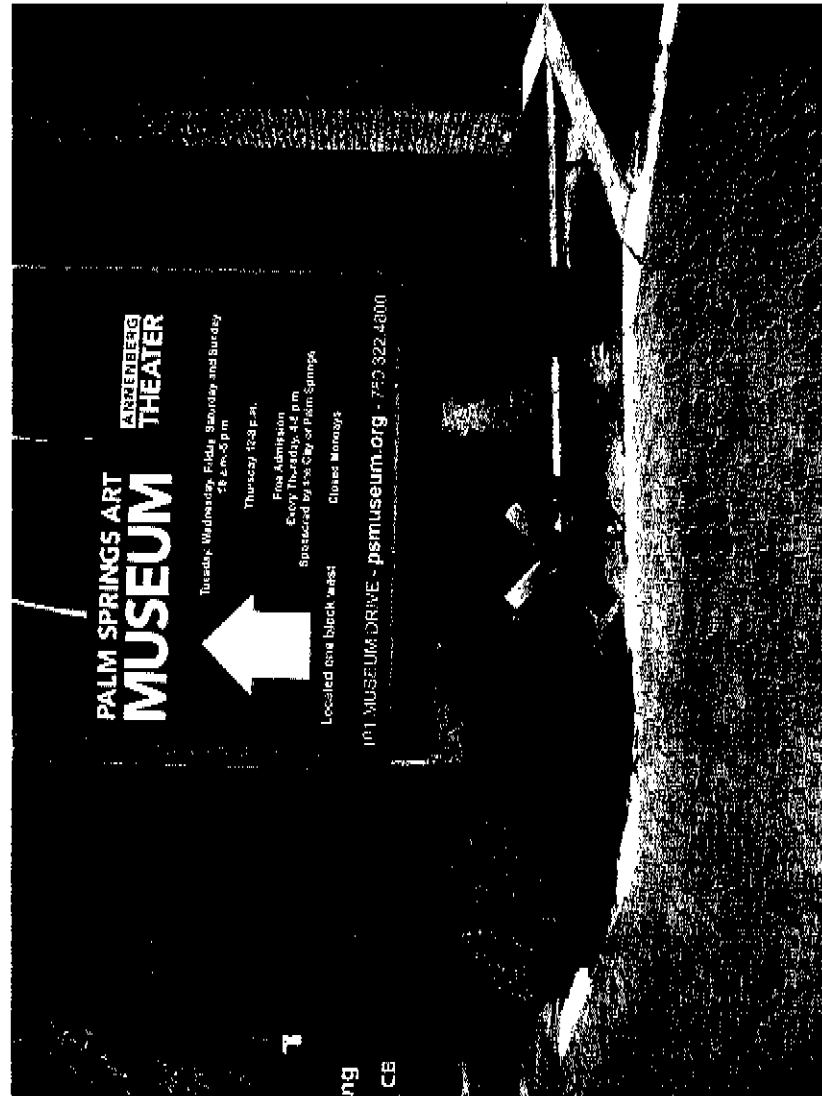
“Together Again”

Burlap, polished bronze and silver nickel

Size: 81”x44”x45” and 66”x45”x34”



**Proposed Site**  
**101 North Palm Canyon Drive**  
**Northwest Corner of Tahquitz Canyon Way and**  
**North Palm Canyon Drive**





# Department of Planning Services Vicinity Map



## Legend

X Sculpture

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

**CITY OF PALM SPRINGS  
City Clerk  
P.O. Box 2743  
Palm Springs, CA 92263-2743**

Space Above this Line Reserved for Use by Recorder

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**LICENSE AGREEMENT FOR PLACEMENT OF ARTWORK ON PRIVATE  
PROPERTY**

This LICENSE AGREEMENT FOR PLACEMENT OF ART ON PRIVATE PROPERTY ("Agreement") is entered into as of \_\_\_\_\_, 2009 by and between the CITY OF PALM SPRINGS, a municipal corporation ("City") and WESSMAN DEVELOPMENT COMPANY ("Owner").

**RECITALS:**

A. The City has established a Public Arts Program as established by Chapters 2.24 and 3.37 of the Palm Springs Municipal Code ("Public Art Ordinance") which authorizes the placement of works of art on appropriate private property which encourages public access and viewing of the artwork.

B. Under the Public Art Fee Program, artwork may be acquired through the Public Arts Fund, either on City or private property, whether on loan, as a gift or purchase.

C. The City has purchased a work of art and desires to have such work of art placed on the Owner's property in accordance with this Agreement and the City of Palm Springs Public Art Program.

NOW THEREFORE, to comply with the requirements of the Public Art Ordinance, and for good and valuable consideration, the parties hereto hereby agree as follows:

1. Grant of License for Display of Public Art. Owner hereby grants and conveys to the City of Palm Springs a nonexclusive use of the Site (as shown in Exhibit "B") for purposes of displaying the Artwork and allowing the public access to the Site to view and enjoy the Artwork at reasonable times and in a reasonable manner ("License"), as described in Exhibit "B"; under the terms described in Section 4(b) of this Agreement.

2. Maintenance. The City shall provide all maintenance necessary as recommended by the artist with respect to the Artwork to preserve such Artwork in first class condition. City agrees to maintain the access paths, landscaping and other improvements to the Site. City shall repair and/or replace any damage to the Artwork within a reasonable time after such discovery. When necessary, City shall consult the artist or another competent Artwork conservationist or restoration specialist to determine the best methods of such restoration or repair.

3. Identification. The Artwork shall be identified by a plaque stating the artist's name, the title, the date the Artwork was completed and stating that the Artwork was funded through the City of Palm Springs Public Arts Program. The plaque will be placed in an appropriate location near the Artwork that facilitates viewing by the public.

4. City Representative. The City Manager, or his designee, a Contract Officer of the City ("City Manager"), shall be the City's designated representative with respect to this Agreement. Under the direction of the City Council, the City Manager shall have the authority to give approvals or consents required hereunder and to otherwise act on behalf of the City for purposes of this Agreement.

5. Owner and Representative. The Owner is the owner of certain property ("Property") generally known as 101 North Palm Canyon Drive, as shown on Exhibit "B" attached hereto and incorporated herein. The Owner has agreed to a License Agreement for the placement of Artwork on a portion of the Owner's property which portion is generally depicted and described as the "Site" on Exhibit "B".

6. Location and Removal of Artwork. In addition to any other remedies provided herein, in the event that the Artwork is destroyed, removed from the Site or improperly maintained by the City, the Owner may require that the City replace the Artwork with substitute Artwork of a comparable quality and value as determined at the sole discretion of the City, with consent of the Owner. The Owner may give the City a 30 day notice to remove Artwork at Owner's discretion.

7. Indemnification. The City hereby agrees to indemnify, defend, and hold harmless the Owner from and against any and all actions, suits, claims, damages, losses, costs, penalties, obligations, errors, omissions or liabilities (collectively "Claims or Liabilities") arising out of or in any way connected with any act, omission or negligence of City, its agents, employees, or contractors, or from the existence of the Artwork on the Site, or related to this Agreement, including, without limitation, bodily injury to or death of persons, injury or damage to property and attorneys' fees, but excluding such Claims or Liabilities resulting from the negligence or willful misconduct of the Owner, its officers, agents, representatives, or employees.

8. Compliance with the Law. City hereby agrees to comply with all applicable statutes, ordinances, orders, laws, rules and regulations, and the requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and offices thereof, which may be applicable to the display of Artwork on the Site or to the use or manner of use of the Site. Without in any

way limiting the foregoing, City agrees to comply with The Visual Artists Rights Act of 1990 (17 U.S.C. 101, *et seq.*).

9. Successors and Assigns. The rights and obligations of Owner under this Agreement shall be applicable to Owner's successors and assigns.

10. Integration. This Agreement and other documents expressly incorporated herein by reference contain the entire and exclusive understanding and agreement between the parties relating to the matters contemplated hereby and all prior or contemporaneous negotiations, agreements, understandings, representations and statements, oral or written, are merged herein and shall be of no further force or effect.

11. Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made by written instrument or endorsement thereon and in each such instance executed on behalf of each party hereto.

12. Counterparts. This Agreement may be executed in counterparts which, when taken together, shall constitute one executed document as though all signatures appeared on one copy.



IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first above written.

**"OWNER"**

WESSMAN DEVELOPMENT  
COMAPNY  
By John Wessman  
Its: Owner

By: \_\_\_\_\_  
Name: John Wessman  
Its: Owner

**"CITY"**

CITY OF PALM SPRINGS,  
a municipal corporation

**ATTEST:**

By: \_\_\_\_\_  
City Clerk

By: \_\_\_\_\_  
City Manager

**APPROVED AS TO FORM:**

\_\_\_\_\_

EXHIBIT "A"

(Artwork)



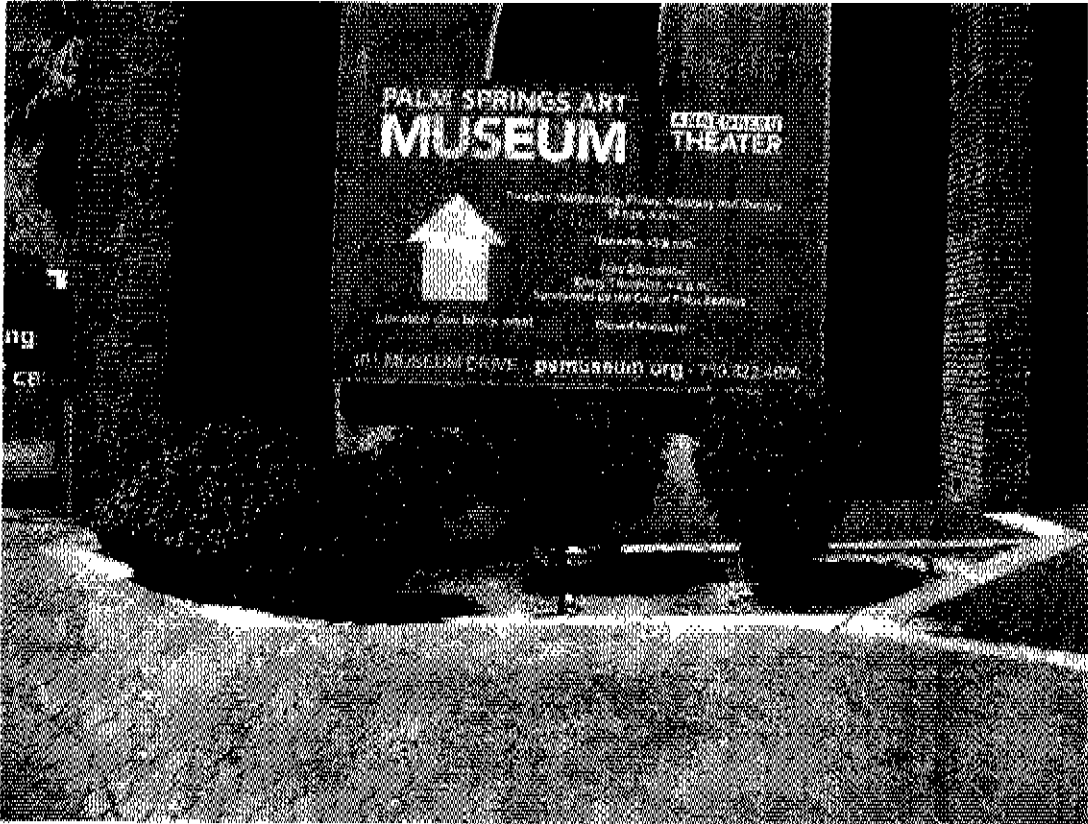
Artist: Marlene Louchheim

Title: *"Together Again"*

Medium: Bronze, Burlap, Mixed Media

Size: 81 x 44 x 45 and 66 x 45 x 34 inches

EXHIBIT "B"  
ART WORK SITE



STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF )

On \_\_\_\_\_, \_\_\_\_\_, before me,

\_\_\_\_\_ personally appeared \_\_\_\_\_, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the Instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

(SEAL)