

**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

**AGREEMENT FOR PLACEMENT OF ARTWORK ON PRIVATE PROPERTY
AND GRANT OF EASEMENT**

This AGREEMENT FOR PLACEMENT OF ART ON PRIVATE PROPERTY AND GRANT OF EASEMENT ("Agreement") is entered into as of _____, 2008 by and between the CITY OF PALM SPRINGS, a municipal corporation ("City") and _____ ("Owner").

RECITALS:

A. The City has established a Public Art Fee Program 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 provided or an "in lieu" fee may be paid.

C. Owner desires to commission a work of art and have such work of art placed on its property in accordance with this Agreement and the City of Palm Springs Public Art Program as established by Chapters 2.24 and 3.37 of the Palm Springs Municipal Code ("Public Art Ordinance").

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. 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.

2. Agreement to Commission Work of Art. Owner has commissioned a work of art described as _____, and shown on Exhibit "A" (Artwork). Owner is solely responsible with respect to the contract entered into for the

commissioning of the Artwork (“Contract”) including responsibility for all payments to be made thereunder.

3. Duties of Owner. The Owner owns certain property (“Property”) generally known as _____, as shown on Exhibit “B” (“Site”) attached hereto and incorporated herein. The Owner has agreed to permanently locate the Artwork on a portion of the Owner’s property which portion is generally depicted and described as the Site on Exhibit “B”. Owner shall provide for the installation of the Artwork on the Site at its sole cost and expense, including, without limitation, constructing any improvements necessary for displaying the Artwork.

4. Default.

(a) Cure Rights. In the event of any default or breach of any of the covenants or conditions contained in this Agreement by Owner, City shall have all rights and remedies permitted at law or in equity including, without limitation, the remedy of specific performance. Additionally, in the event that Owner has not cured any curable default hereunder within thirty (30) days after written notice from City of such default, City shall have the right to cure such default and charge Owner with the cost thereof, including all costs incurred in connection with enforcing this Agreement or in collecting such amounts from Owner.

(b) Location and Removal of Artwork. The Artwork shall not be removed from the Site without the prior written approval of the Commission, which approval may be withheld in the Commission’s sole and absolute discretion. In addition to any other remedies provided herein, in the event that the Artwork is destroyed, removed from the Site or improperly maintained by Owner, the Commission may either require the Owner to (i) pay the art in lieu fee as set forth in Section 7 below to City or (ii) replace the Artwork with substitute Artwork of a comparable quality and value as determined in the sole discretion of the Commission.

5. 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.

6. Ownership. Upon the acceptance of the Artwork and payment therefor, the Artwork and all rights thereto shall be conveyed by Artist to Owner. The Artwork shall remain the property of the Owner, provided, however, that the Owner shall transfer ownership of the Artwork to any successor in interest of the Site.

7. Refund of Purchase Price. The City shall reimburse the Owner, an amount equal to the lesser of; (i) the actual amount paid by Owner to the Artist

under the Contract; or (ii) the amount previously paid by Owner to the Public Art Fund. The amount to be refunded shall not exceed the amount paid into the Public Arts Fund by the Owner. The Owner's request for reimbursement shall be submitted only after the Artwork is installed and approved by the Public Arts Commission. The request for reimbursement shall be in writing and include (i) a copy of the permits set forth in Exhibit "C" attached hereto ("Permits") clearly showing the art fee and (ii) a copy(s) of the invoice Exhibit "D" attached hereto ("Invoice") paid to the Artist and related subcontractors if any.

8. Grant of Public Access Easement. _____ (Owner) hereby grants and conveys to the City of Palm Springs a perpetual nonexclusive easement in gross over and across the Site 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 ("Easement").

9. Maintenance. Owner shall provide all maintenance necessary as recommended by the artist with respect to the Artwork to preserve such Artwork in first class condition. Owner agrees to maintain the access paths, landscaping and other improvements to the Site in first class condition. Owner shall repair and/or replace any damage to the Artwork within fourteen (14) calendar days of such damage being discovered. In the event any graffiti is discovered on the Artwork, owner shall remove such graffiti on the day it is discovered. So long as the Artwork remains on the Site, Owner shall keep, maintain, repair and replace the Artwork in a good, clean and first class condition and of the highest quality. Materials used to restore, repair or replace any portion of the Artwork shall be of equal or better quality than the original materials used in the Artwork. When necessary, Owner shall consult the artist or another competent Artwork conservationist or restoration specialist to determine the best methods of such restoration or repair. All such maintenance, repair, replacement and restoration shall be at the sole cost of Owner. In addition to all other remedies provided by law, in the event the owner fails to maintain the Artwork, upon reasonable notice, the City may perform all necessary repairs, maintenance or secure insurance, and charge the Owner for the costs therefor. In the event the Owner fails to reimburse the City for the reasonable costs thereof after reasonable notice, the City may assess its costs against the Property and establish a lien to be collected in the same manner as nuisance abatement liens pursuant to Section 11.72.265 of the Palm Springs Municipal Code.

10. Compliance with the Law. Owner 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, Owner agrees to comply with The Visual Artists Rights Act of 1990 (17 U.S.C. 101, *et seq.*).

11. Insurance. Owner shall procure and maintain, at its sole cost and expense, in a form and content consistent with industry standards, with an insurer qualified to do business in California and rated "A" or better in the most recent edition of Best Rating Guide with a financial class category of Class VII or better, unless such requirements are waived by the Risk Manager of the City, during the entire term of this Agreement and at all times while the Artwork is located on the Site, the following policies of insurance:

(a) Comprehensive General Liability Insurance. A policy of comprehensive general liability insurance together with a Broad Form CGL Endorsement and insuring against contractually assumed liability which shall specifically insure Owner's indemnity obligation under Section 12 below. The policy of insurance shall have a combined single limit liability of One Million Dollars (\$1,000,000.00).

(b) Workers' Compensation Insurance. A policy of Workers' Compensation Insurance in an amount as would fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both Owner and the City against any loss, claim or damage arising from any injuries or occupational hazards or diseases occurring to any worker employed by or any person retained by Owner in the course of carrying out the obligations of this Agreement.

(c) Fine Arts Insurance. Owner shall procure and maintain fine arts insurance on the Artwork an all risk form with limits not less than _____ and a deductible not to exceed ONE THOUSAND DOLLARS (\$1,000.00) for each loss. The payment of any deductible amount shall be the responsibility of Owner

All of the above policies of insurance shall be primary insurance and shall name the City, its officers, employees and agents as additional insureds. The insurer shall waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. All such policies shall provide that such insurance may not be amended or canceled without providing thirty (30) days written notice by registered mail to the City. Cancellation clause shall read "**SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING COMPANY SHALL MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT**". In the event any of such policies are canceled, Owner shall, prior to the cancellation date, submit new evidence of insurance in conformance with the requirements of this Section 11. Owner shall provide the Commission with Certificates of Insurance evidencing the insurance coverages and policies required hereunder. Owner agrees that the existence of any insurance shall not limit or otherwise affect Owner's obligations under this Agreement.

In the event the Risk Manager of City determines that the work or services to be performed under this Agreement creates an increased or decreased risk or loss to the City, the Owner agrees that the minimum limits of the insurance policies required by this Section 11 may be changed accordingly upon receipt of written notice from the Risk Manager, provided that the Owner shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

12. Indemnification. Owner hereby agrees to Indemnify, defend and hold harmless the City, its officers, agents and employees 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 Owner, 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 solely from the willful misconduct of the City, its officers, agents, representatives or employees who are directly responsible to the City.

13. Rights to Artwork. All copyrights to the Artwork shall be transferred to the Owner together with the Artwork. Artist and Owner shall share copyright to the Artwork with the City in accordance with the terms and conditions set forth in Exhibit "D" attached hereto ("Copyright Agreement").

14. Mortgage Protection. No violation of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust given in good faith and for value. All of the covenants and conditions contained herein shall be binding and effective against any party whose interest is derived through foreclosure, trustee sale, deed in lieu of foreclosure or otherwise provided, however, that any mortgagee or beneficiary who takes title to the Site pursuant to foreclosure or deed in lieu of foreclosure or any purchaser at a foreclosure or trustee sale shall take title free of any claims against Owner arising under this Agreement which became due and payable prior to the date such mortgagee, beneficiary or purchaser takes title hereto.

15. Successors and Assigns. The obligations of Owner under this Agreement shall be binding on Owner's successors and assigns and shall burden the Site and shall run with the land and be binding upon all successors and assigns acquiring any right, title and interest in and to the Site.

16. Attorneys' Fees. In the event that any action or proceeding is instituted for the interpretation or enforcement of this Agreement, the prevailing party in such action or proceeding shall be entitled to recover from the other party, all costs and expenses related to such action or proceeding, Including, without limitation all attorneys' fees and expert witness fees, both at trial and on appeal.

17. 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.

18. 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.

19. 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.

SAMPLE

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

“OWNER”

a : _____
By: _____
Its: _____

“CITY”

CITY OF PALM SPRINGS,
a municipal corporation

ATTEST:

By: _____
City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

EXHIBIT "A"

(Artwork)

SAMPLE

EXHIBIT "B"

(Site)

SAMPLE

EXHIBIT "C"

(Permits)

SAMPLE

Exhibit "D"
(Invoice)

SAMPLE

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)

EXHIBIT "E"

COPYRIGHT AGREEMENT

This COPYRIGHT AGREEMENT ("Agreement") is entered into as of _____, _____ by and between the CITY OF PALM SPRINGS, a municipal corporation ("City"), _____ ("Artist") and _____, ("Owner").

Owner has commissioned a work of art ("Artwork") created by the Artist and more particularly described in that certain Agreement for Placement of Art on Private Property and Grant of Easement dated _____, 200__, by and between the City and Owner ("City Agreement"). Artist hereby acknowledges the City Agreement. Artist has delivered the completed Artwork to Owner and Owner has accepted the Artwork.

Pursuant to the City Agreement, Artist has transferred all rights under applicable copyright laws to the Artwork to Owner. Artist and Owner hereby agree to share copyright to the Artwork and hereby transfer, convey and assign to the City the right to make reproductions, photographs and other two dimensional, less than full-scale, non-exact reproductions of the Artwork for both commercial and non-commercial purposes.

The Artist warrants that the work is unique and a single-edition, and that the Artist will not execute or authorize another to execute another work of substantially the same design as the Artwork. The covenants and warranties of the Artist shall be binding on the Artist's heirs and assigns.

Due to the nature of the Artwork and the Site on which it is to be placed and the public interest of the City, Artist and his/her agents, heirs, successors and assigns hereby waive any and all rights they may have under the California Art Preservation Act, as set forth in California Civil Code Section 987. The Artist, his/her agents, heirs, successors and assigns also agree to attempt to defeat this waiver by cooperating with any other person or organization which seeks to bring an action under California Civil Code Section 989.

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

“OWNER”

a _____

By: _____

Its: _____

“ARTIST”

(Name of Artist Here)

“CITY”

CITY OF PALM SPRINGS,
a municipal corporation

ATTEST:

By: _____
City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

By: _____
City Attorney