City of Desert Hot Springs Façade Improvement Program

Dear Applicant:

The Facade Enhancement Program [Program] was created by the City of Desert Hot Springs Redevelopment Agency [Agency] as a part of an overall redevelopment strategy to improve the quality of life and stimulate economic growth in the downtown area of the City of Desert Hot Springs. The Program is designed to assist property and business owners [Participants] with rehabilitating the commercial facades of their properties for the purpose of creating a positive visual impact, stimulating private investment, reduce urban blight and complementing other community revitalization efforts.

A map is included in this packet to show the target area for the Program. The red overlay on the map will be given priority in the program while the blue overlay will be secondary. If you are interested in participating in the Program please complete and return the Facade Enhancement Application and required attachments.

Eligible improvements for the Program may include, but are not necessarily limited to: facade renovation; signs; doors; windows; awnings; graphics, exterior lighting improvements; landscaping; decorative fencing and landscaping of vacant parcels in connection with facade treatment; capital improvements such as surface parking lot installation and improvements, sidewalks, lighting, curbs, and gutters in conjunction with facade work; and certain types of passive energy conservation improvements. All modifications must conform to the City's Building Codes and the design guidelines for the project area. The overall project must provide a sufficiently substantial level of improvement to be acceptable by the Agency for inclusion in The Facade Enhancement Program.

Ineligible improvements include roofs, non-permanent fixtures, security systems, personal property, interior window coverings, equipment, any improvements not visible from the public right-of-way, and any improvements deemed to be inconsistent with redevelopment purposes and objectives.

Following receipt of the Application by staff, Architectural plans and an Architectural Review Commission Application must be prepared and submitted by an Agency approved Architect, to the Architectural Review Commission (ARC) through the City's Community Development Department. An ARC application is included in this packet for your convenience.

Following ARC approval, staff will prepare documents for the Applicant's signature including a Facade Agreement and Easement.

In consideration of the Agency's acceptance of the above agreements the Agency will fund costs up to a maximum of $40,000 per "Standard" commercial property for architectural fees, permit fees and improvements approved by staff. A standard Façade Improvement property is 60 lineal feet of frontage by 9,000 square feet in area or less. Corner lots with two or more frontage sides, that exceed the standard property size, are eligible for additional funding in the amount of $667 a lineal foot or $2,000 per square foot, up to $40,000. Properties that are significantly larger than the standard size may be eligible for additional consideration with City Council approval.

The Applicant can administer the entire Architectural Design, entitlement and construction process or relinquish that responsibility to the Agency.

Applicant Administered Projects

If the Applicant elects to manage the design, entitlement and construction process themselves, they will be solely responsible for obtaining all required approvals and permits for the project including the payment of all required fees of the City and other governmental entities having jurisdiction over the project. The Applicant is responsible for submitting and processing project plans through all applicable city required procedures. The Applicant needs to provide the Agency with the following in addition to the completed Facade Improvement Application prior to agency approval of the project and Applicant commencing improvement work:

(1) Copy of application to Architectural Review Commission (ARC)
(2) Copy of ARC project approval
(3) Copy of building plans

The Applicant is also solely responsible for hiring a city approved contractor to perform the agreed upon work. The Applicant is required to obtain proposals for the proposed project from a minimum of two (2) City pre-approved general contractors or two (2) City pre-approved specialty contractors for each trade sufficient to complete the project. The Applicant may decide to make payments directly to material suppliers or others rather than contracting with the contractors for these services. Contractors must bid project(s) pursuant to the California Department of Industrial Relations prevailing wage requirements and costs schedule.

The Applicant will be reimbursed for eligible costs indicated on the project budget attached to the application that are actually incurred by the applicant on the approved project. The Applicant may periodically submit requests for disbursement of the funds in installments as reimbursement for ongoing expenses or may submit a request for a lump sum disbursement upon completion of the project. Each request for disbursement shall be accompanied by documentation demonstrating that the expense is an eligible expense, that it was paid, and that the work was or is being performed and shall include contracts, receipts, invoices, canceled checks, labor and/or material lien release(s). The Agency may require that an inspection be conducted to determine that improvements have been installed or performed pursuant to the approved plans, have been properly made, and are in place.

Agency Administered Project(s)

If the Applicant elects to use the project management services provided by the Agency to manage the project, the Agency will assume responsibility for Architectural Design, Entitlements/Permits, construction management and payment to contractor to complete the project. The applicant is responsible for providing the Agency with adequate documentation, as required by staff for project approval.

PROGRAM STEPS

STEP 1: Application

a) City/Agency reviews application package for Project and Participant eligibility and location/conformance to redevelopment objectives.
b) CITY/AGENCY verifies with the City of Desert Hot Springs whether there are any outstanding or pending code enforcement actions involving the subject property.
c) CITY/AGENCY notifies participant of their eligibility status.

STEP 2: Execution of Agreement; Deposit

a) If the Project and Participant are approved, Participant shall submit a $250 deposit to the City of Desert Hot Springs.
b) CITY/AGENCY and Participant shall execute a Façade Easement Agreement.

STEP 3: Design/Architecture
Agency Administered Project

a) An architect will be assigned to assist the Project.
b) Participant, CITY/AGENCY and the architect will meet to discuss design and architecture of the Project.
c) CITY/AGENCY provides design assistance/architectural services to Participant,
d) Architect completes design/architecture of the Project and provides cost estimates and recommendations to the Participant.
e) Participant submits design/architecture of the Project to the Architectural Review Committee for approval.

Applicant Administered Project:

a) Complete design/architecture of the Project with Participant's own architect.
b) Participant submits design/architecture of the Project to the Architectural Review Committee for approval.

STEP 4: Bids and Insurance

a) Participant shall obtain at least two (2) written bids from Pre-qualified, licensed contractors to perform the improvements of the Project, award the bid, and provide information on the awarding bid and the rejected bid to CITY/AGENCY.
b) Participant shall obtain and submit to CITY/AGENCY certificates of all required insurance policies naming the Redevelopment Agency and the City of Desert Hot Springs, and their respective officials, officers, employees, agents, contractors, and agents as additional insureds.
c) Participant shall provide to CITY/AGENCY any required permits and approvals.

STEP 5: Notice to Proceed

Applicant Administered Project

a) CITY/AGENCY shall issue a "Notice to Proceed" to the Participant upon CITY/AGENCY's receipt and approval of the awarded bid, insurance policy certificates, plans and specifications, Program Agreement, and any other requested documentation.
b) Receipt of the "Notice to Proceed" is the Participant's authorization to begin construction. Please note all appropriate City of Desert Hot Springs permits including, without limitation, building permits and other approvals must be obtained by the Participant prior to commencement of construction.
c) 3 Participant shall not commence work on the Project until receipt of the "Notice to Proceed".

STEP 6: Construction
Applicant Administered Project

a) Participant hires a contractor and all contractual obligations regarding the improvement work for the Project are between the Participant and contractor. CITY/AGENCY does not have any contractual relationship with the contractor.
b) Participant must issue a notice to proceed to the contractor within thirty (30) calendar days of receipt of the Notice to Proceed from CITY/AGENCY.
c) Participant shall comply with all requirements of the Department of Industrial Relations in accordance with the California Labor Code, and all other applicable federal, state and local laws and regulations pertaining to labor standards and the payment of prevailing wages.
d) Participant is solely responsible for scheduling and monitoring the construction of all improvements of the Project.
e) Participant has one (1) year to complete construction of the Project from the effective date of the Façade Easement Agreement entered into by and between the Participant and CITY/AGENCY.
f) Participant is solely responsible for making all payments to the contractor, suppliers, and vendors and is solely responsible for ensuring that all contractors, subcontractors, material suppliers, and other vendors are paid in full.
g) Participant is solely responsible for ensuring that all work performed on the Project is done properly and satisfactorily.
h) Upon completion, Participant shall notify CITY/AGENCY and call for inspection.
i) CITY/AGENCY and Participant shall complete inspection of the Project.

Agency Administered Project

a) Agency hires a contractor and all contractual obligations regarding the improvement work for the Project are between the Agency and contractor.
b) Agency must issue a notice to proceed to the contractor within thirty (30) calendar days of receipt of the Notice to Proceed from CITY/AGENCY.
c) Agency shall comply with all requirements of the Department of Industrial Relations in accordance with the California Labor Code, and all other applicable federal, state and local laws and regulations pertaining to labor standards and the payment of prevailing wages.
d) Agency is responsible for scheduling and monitoring the construction of all improvements of the Project.
e) Agency is responsible for making all payments to the contractor, suppliers, and vendors and is responsible for ensuring that all contractors, subcontractors, material suppliers, and other vendors are paid in full.
f) Agency is responsible for ensuring that all work performed on the Project is done properly and satisfactorily.
g) Upon completion, Agency shall call for inspection.
h) CITY/AGENCY and Participant shall complete inspection of the Project.

STEP 7: Reimbursement of Grant

Applicant Administered Project

a) Participant shall submit a written request for a rebate to CITY/AGENCY. The request for a rebate shall include:
b) Cover letter indicating the Project is completed and the total Project costs and requesting a rebate in a specific amount within the maximum allowable limits.
c) All contractor invoices detailing the specific tasks completed in accordance with the approved Project.

d) Proof of Participant's payment of all contractor invoices, including payment of any invoices from subcontractors, material suppliers and vendors.
e) Unconditional lien releases.
f) Any additional back up material requested by CITY/AGENCY, including proof of payment of prevailing wages.
g) Two 8" x 11" photos taken of the Project after completion.
h) CITY/AGENCY shall review each request for a rebate and, if approved, process the request for payment to Participant in accordance with the Program Guidelines.
i) CITY/AGENCY issues a check for the approved rebate amount to Participant for a portion of the Project costs.

Agency Administered Project
Agency will assume responsibility for project payment schedule and accounting.

City of Desert Hot Springs Redevelopment Agency

Façade Improvement Program Application

Applicant's Name: _____

Applicant is: (Circle one) (**O**) **Owner** (**T**) **Tenant**

Project Property Address: _____
_____

APN No(s): _____

Name of Building (N/A if not applicable): _____

Business Name	Address

Owner Mailing Address: _____
_____

_____ _____
Business Phone Number E-Mail

_____ _____
Cellular Fax Number Fax Number

_____
Home Phone Number

Tenant Mailing Address: _____
_____

_____ _____
Business Phone Number E-Mail

_____ _____
Cellular Fax Number Fax Number

_____
Home Phone Number

For Internal Use Only				
Parcel				
Max Payable				
Frontage Feet				
Square Feet				

Proposed Improvements:

_____
_____
_____
_____
_____

Estimated cost for Improvements: $_____

Funding Source for Improvement: (Circle One)

(A) City of Desert Hot Springs, Redevelopment Agency

(B) Applicants Savings or other Assets:
(Provide three recent bank statements or relevant documentation)

(C) Institutional Lender
Address:

_____
_____
_____

Phone Number: _____

(D) Other Source of Funds: (Provide relevant documentation)

_____
_____
_____
_____
_____

I certify that the above information is true and accurate to the best of my knowledge.

_____	_____
Owner Signature	Date
_____	_____
Owner Signature	Date
_____	_____
Tenant Signature (if applicable)	Date
_____	_____
Tenant Signature (if applicable)	Date

Recording Requested by
and when Recorded, return to:

City of Desert Hot Springs
Redevelopment Agency
65950 Pierson Blvd
Desert Hot Springs, CA 92240
Attn: Troy Strange

EXEMPT FROM RECORDING FEES PER
GOVERNMENT CODE §§6103, 27383

(SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE)

Project: Facade Improvement and Easement
APN: _____

GRANT OF FAÇADE AND ACCESS EASEMENT AGREEMENT

This Grant of Façade and Access Easement and License to Enter Agreement (this "**Agreement**"), dated as of _____, 20__, is executed by and between the Redevelopment Agency of the City of Desert Hot Springs, a public agency ("**Agency")** and _____ ("**Owner"**). Agency and Owner are hereinafter collectively referred to as the "**Parties**."

RECITALS

A. Owner is the owner of certain real property located at _____ within the Project Area of the City of Desert Hot Springs, California ("**City**") and more particularly described in Exhibit A attached hereto ("**Property**").

B. Pursuant to that certain Facade Improvement Agreement by and between the Parties dated as of _____, 20___ ("**Improvement Agreement**"), Owner shall construct certain facade improvements on the Property (**"Facade Improvements**").

C. Pursuant to the Improvement Agreement, as part of the Facade Improvements, Owner shall maintain the Facade Improvements and the Property for no less than five (5) years from the date of this Agreement.

D. The Parties acknowledge that maintenance of the Property and the facade improvements alleviates blighting influences within the City, and the Parties desire to ensure that (i) Property is rehabilitated and thereafter maintained in its form and appearance, and (ii) in the event Owner fails to maintain the Facade Improvements, the Agency will have access to the Property for the purpose of maintaining the Facade Improvements and the Property.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows.

1. Grant of Easement. Subject to the terms and upon the conditions set forth in this Agreement, Owner hereby grants to Agency the following irrevocable easements (collectively, hereafter the "**Easements**"):

(a) Nonexclusive pedestrian and vehicular rights of ingress to, egress from, and access across the Access Area for the purpose of allowing Agency and its employees, contractors, subcontractors, and agents to inspect, construct, repair and maintain the Project and the Property in accordance with this Agreement and the Improvement Agreement.

(b) A maintenance and construction easement pursuant to which Agency and its employees, contractors, subcontractors and agents shall have the right to inspect the Facade Improvements, and to repair and maintain the Property in accordance with this Agreement with right of reimbursement from Owner in the event Owner fails to maintain the Facade Improvements in accordance with the terms and conditions of this Agreement and the Improvement Agreement.

2. Covenant Running With the Land; Binding on Successors.

Each Easement created hereby and each term, condition and covenant contained in this Agreement constitutes a covenant running with the land and shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns, including, without limitation, all subsequent owners of the Property burdened hereby or any portion thereof or interest therein. Any person accepting a deed or other instrument conveying, granting or assigning the Property, or any interest therein, or any part thereof affected by this Agreement, shall take title subject to this Agreement, and during the period of such ownership, such person shall be deemed to have assumed all of the applicable obligations imposed hereby with regard to such property regardless of whether this Agreement is mentioned in such deed or other instrument. It is the intent of the Parties that the easements granted hereby and all agreements set forth herein shall be "covenants running with the land" binding upon the Property. Whenever a reference in this Agreement is made to Agency or Owner, such reference shall be deemed to also mean a reference to the successors in interest of each such party (or parties), as applicable, as if in every case so expressed.

3. Duration. The Easements granted hereby shall commence upon the Effective Date and expire on the fifth (5th) anniversary of the Effective Date, unless the Parties mutually agree otherwise in an instrument recorded in the Official Records of Riverside County.

4. Construction and Maintenance Obligations.

4.1 Owner's Obligations. Owner shall, at Owner's sole cost without reimbursement: (i) complete the Facade Improvements in accordance with the requirements set forth in the Improvement Agreement, and (ii) maintain and repair the Facade Improvements and the Easements in accordance with the standards set forth in this Agreement and the Improvement Agreement, and in compliance with all applicable

state, federal and laws, rules, regulations and ordinances, including without limitation the Americans With Disabilities Act ("**ADA**"), as applicable.

4.2 Rights of Agency. If at any time Owner fails to maintain the exterior appearance of the House in accordance with the standards set forth in this Agreement and the City Approvals, following notice and the expiration of any applicable cure period, Agency shall have the right to perform maintenance, repairs and replacements reasonably necessary to restore the Project and the Property to such standards, and Owner shall reimburse Agency for the cost of such maintenance, repairs and replacement.

5. No Barriers. No wall, fence or barrier of any kind which impairs or impedes access to, or use of, any of the Easements shall be constructed or maintained on or adjacent to the Property or the Access Area, nor shall the Parties do anything which shall materially prevent, impair or discourage the use or exercise of any of the Easements or the free access and movement thereon.

6. Indemnity. Owner shall indemnify, defend and hold harmless Agency and City and their respective boards, commissions and elected and appointed officials, officers, employees, agents and contractors ("**Indemnitees**") from and against all actions, proceedings, claims, demands, liabilities, judgments, losses, expenses (including reasonable attorneys' fees and expenses) and costs (all of the foregoing, collectively "**Claims**") arising out of or related to Owner's performance or failure to perform its obligations described hereunder except to the extent the same are attributable to the gross negligence or willful misconduct of Indemnitees. Furthermore, Owner shall indemnify, defend and hold harmless Indemnitees from and against any claim, action or proceeding to attack, set aside, void or annul this Agreement or any part hereof. Agency shall promptly notify Owner of any such Claim. Nothing contained in this Section shall prohibit the Agency from participating in a defense of any Claim, and if the Agency chooses to do so, Owner shall reimburse Agency for reasonable attorneys' fees and expenses incurred by Agency. It is the intent of the Parties that Agency and City shall have no liability for Claims arising in connection with the use of the Easements hereby granted other than as expressly stated in this Section.

7. Insurance. Owner shall keep in full force and effect a policy or policies of commercial general liability and property damage insurance against liability for bodily injury to, or death of any person, or property damage arising out of occurrences on the Property or use of any Easement. The limits of such coverage shall be not less than $1,000,000 combined single limit. The liability policies shall be written on an occurrence basis and shall name the Agency and the City and their respective elected and appointed officials, officers, employees and agents as additional insureds. Owner shall carry worker's compensation insurance as required by law covering all persons it employs in connection with the repair and maintenance of the Easements and the construction and installation of improvements therein. All insurance policies required hereunder shall be placed with insurers licensed to do business in the State of California and having an A.M. Best's rating of not less than A:VII. Coverage shall be

primary and not contributing with any policy of insurance or any self-insurance maintained by City or Agency, and the policies shall so state. The insurance policies shall contain a waiver of subrogation for the benefit of City and Agency. The policies shall be endorsed to provide that they shall not be cancelled or modified without 30-days prior notice to Agency. Owner shall provide Agency with certificates evidencing the insurance and endorsements required hereunder, and shall furnish Agency with a copy of the policies upon request of Agency.

8. Events of Default; Remedies. An Event of Default under this Agreement shall occur if either Party fails to comply with any of the covenants or obligations hereunder and does not cure such failure within thirty (30) days after receipt of written notice thereof (or fails to commence to cure such default within such thirty-day period and thereafter fails to proceed with due diligence to cure such default.) Upon the occurrence of an event of default hereunder, the Parties may pursue all remedies at law or in equity, expressly including the remedy of specific performance of this Agreement.

9. Miscellaneous.

9.1 Effective Date. This Agreement shall be effective as of the date this document is recorded in the Official Records of Riverside County.

9.2. No Joint Venture; No Brokers. No provision of this Agreement shall be deemed to constitute the Parties as partners, principal and agent, or joint venturers with one another. Each Party represents and warrants to the other that no brokers have been retained or consulted in connection with this transaction other than as disclosed in writing to the other party. Each Party shall defend, indemnify, and hold the other Party harmless from any claim, expense, cost, loss or liability imposed by any party claiming a fee or commission in connection with this Agreement or the acquisition of the Easement and arising out of the indemnifying Party's conduct.

9.3 No Waiver. No waiver of, acquiescence in or consent to any breach of any term, covenant or condition hereof shall be construed as, or constitute a waiver of, acquiescence in, or consent to, any other, further or succeeding breach of the same or any other term, covenant or condition.

9.4 Notices. Except as otherwise specified herein, all notices to be sent pursuant to this Agreement shall be made in writing, and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered to the other parties in accordance with this Section. All such notices shall be sent by:

(i) personal delivery, in which case notice is effective upon delivery;

(ii) certified or registered mail, return receipt requested, in which case notice shall be deemed delivered on receipt if delivery is confirmed by a return receipt;

(iii) nationally recognized overnight courier, with charges prepaid or charged to the sender's account, in which case notice is effective on delivery if delivery is confirmed by the delivery service;

(iv) facsimile transmission, in which case notice shall be deemed delivered upon transmittal, provided that (a) a duplicate copy of the notice is promptly delivered by first-class or certified mail or by overnight delivery, or (b) a transmission report is generated reflecting the accurate transmission thereof. Any notice given by facsimile shall be considered to have been received on the next business day if it is received after 5:00 p.m. recipient's time or on a nonbusiness day.

Agency: Redevelopment Agency of the City of Desert Hot Springs
65950 Pierson Blvd.
Desert Hot Springs, CA 92240
Attn: Rick Daniels
Telephone: (760)329-6411
Facsimile: (760)288-0606

Owner: _____

9.5 Further Assurances. The Parties agree to execute, acknowledge and deliver to the other such other documents and instruments, and to undertake such other actions, as either shall reasonably request as may be necessary to carry out the intent of this Agreement.

9.6 No Third Party Beneficiaries. The City of Desert Hot Springs is an intended third-party beneficiary of this Agreement with the right, but not the obligation to enforce the terms hereof. There shall be no third party beneficiaries to this Agreement except as specifically set forth herein.

9.7 Governing Law; Venue. This Agreement shall be construed in accordance with the laws of the State of California without regard to principles of conflicts of law. Any legal action filed in connection with this Agreement shall be filed in the Superior Court of Riverside County, California or in the Federal District Court for the Northern District of California.

9.8 Severability. If any term, provision, covenant or condition contained in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties are materially altered or abridged by such invalidation, voiding or unenforceability.

9.9 Attorneys' Fees. In any action at law or in equity, arbitration or other proceeding arising in connection with this Agreement, the prevailing party shall recover

reasonable attorneys' fees and other costs, including but not limited to court costs and expert and consultants' fees incurred in connection with such action in addition to any other relief awarded, and such attorneys' fees and costs shall be included in any judgment in such action.

9.10 Mortgagee Protection. Nothing in this Agreement shall be interpreted to, and no breach of any provision hereof shall, defeat, render invalid, diminish or impair the lien of any deed of trust or mortgage on any property subject to this Agreement, and neither the beneficiary of any such instrument nor the purchaser at any trustee's sale or foreclosure sale nor any entity acquiring title to any of the property subject to this Agreement by assignment or deed in lieu of foreclosure shall be liable for any violation hereof or any liability hereunder which violation or liability occurs or accrues prior to the acquisition of title by such beneficiary, purchaser or entity.

9.11 Amendments. This Agreement may be modified or amended, in whole or in part, only by an instrument in writing, executed and acknowledged by the Parties, and recorded in the Official Records of Riverside County.

9.12 Captions; Entire Agreement. The section headings used in this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained. This Agreement, together with the Improvement Agreement and the documents referenced therein, contains the entire agreement of the Parties with respect to the subject matter hereof, and all prior negotiations, documents and discussions with respect thereto are hereby superseded. Exhibits A and B attached hereto are hereby incorporated herein by reference.

9.13 Action by Agency. Except as may be otherwise specifically provided herein, whenever any approval, notice, direction, consent or request by the Agency is required or permitted under this Agreement, such action shall be in writing, and such action may be given, made or taken by the Agency's Executive Director or his or her designee, without further approval by the Agency's governing board, unless the Agency Executive Director determines in his or her discretion that such action or approval requires referral to Agency's governing board for consideration.

9.14 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be an original and all of which together shall constitute one agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

OWNER

By: _____

Print Name: _____

REDEVELOPMENT AGENCY
OF THE CITY OF DESERT HOT SPRINGS

By: _____

Name:_____
Executive Director

ATTEST:

By: _____
Agency Secretary

APPROVED AS TO FORM:

By: _____
Agency Counsel

SIGNATURES MUST BE NOTARIZED.

Exhibit A

PROPERTY

(Attach legal description of Property.)

Exhibit B

ACCESS AREA

(Attach diagram of Access area.)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On_____ before me, _____,
personally appeared _____,
personally known to me (or proved to me that 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Signature _____ (Seal)

Recorded at request of and return to:
City of Desert Hot Springs
Redevelopment Agency
65950 Pierson Blvd
Desert Hot Springs, California 92240
Attn: Troy Strange

FREE RECORDING
This instrument is for the benefit of the
City of Desert Hot Springs
Redevelopment Agency
and is entitled to be
recorded without fee.
(Govt. Code 6103)

Project: Facade Easement Agreement –
APN:

FACADE IMPROVEMENT AGREEMENT
BY AND BETWEEN THE
CITY OF DESERT HOT SPRINGS
REDEVELOPMENT AGENCY

AND
<Applicant's Name\Business Name>
(Agency Managed Project)

THIS FACADE IMPROVEMENT AGREEMENT (the "Agreement") is entered into by and between the **CITY OF DESERT HOT SPRINGS REDEVELOPMENT AGENCY,** a public body corporate and politic (hereinafter "Agency"), and <Applicant's Name>, (hereinafter "Owner") on this <day> day of <month>, 2009.

RECITALS

The following recitals are a substantive part of this Agreement:

WHEREAS, Agency is a Redevelopment Agency duly created, established and authorized to transact business and exercise its powers pursuant to the provisions of the California Community Redevelopment Law (California Health and Safety Code Section 33000, et seq.); and,

WHEREAS, the City of Desert Hot Springs and the Agency have adopted, by Ordinance No. 82-3 (Project Area 1), on July 14, 1982, Ordinance No. 84-17 (Project Area 2), on November 30, 1987 and amended and merged Project Area 1 & 2 by

Ordinance No. 1997-09, on December 16, 1997, a redevelopment plan for an area within the Riverside County known as the City of Desert Hot Springs Redevelopment Agency (hereinafter the “Project Area”); and,

WHEREAS, the City of Desert Hot Springs Redevelopment Plan (hereinafter “DHS-RDA PLAN”) was adopted in order to eliminate blight and revitalize the substandard physical and economic conditions that exist within the Project Area; and,

WHEREAS, the purpose of this Agreement is to effectuate the Redevelopment Plan for the Project Area by providing for improvements to commercial property in the Project Area. This Agreement is in the vital and best interest of the City and the health, safety, morals, and welfare of its residents, and in accord with the public purposes and provisions of applicable state and local laws and requirements under which the Redevelopment Plan has been undertaken.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Agency and the Owner hereby agree as follows:

Section 1. **<u>The Property.</u>** The Owner is the owner of certain real property located at <Street Address, City, State, Zip > within the Project Area, located on assessor parcel number <APN No>. (hereinafter the "Property") as shown on <Exhibit “A”> attached hereto and incorporated herein by this reference.

Section 2. **<u>Improvement of the Property</u>.**

A. The Agency and Owner desire to complete a facade rehabilitation to the exterior of the building located on the Property, which improvements are described in <Exhibit "B"> attached hereto and incorporated herein by this reference (hereinafter the "Improvements").

B. The Owner agrees to work cooperatively with Agency to undertake the Improvements to the building on the Property. Owner agrees to convey to the Agency the Grant of Facade and Access Easement Agreement referred to as Exhibit “C” attached herein. In consideration thereof, the Agency agrees to pay for and construct the Improvements, in accordance with the terms and conditions of this

Agreement, in an amount not to exceed forty thousand dollars ($40,000) (the "Grant Amount") for the actual costs for the Improvements. The parties acknowledge that the Grant Amount may represent **only part** of the cost of the work constituting the Improvements and that the Owner shall have the obligation to pay for the remaining cost of constructing the Improvements. All construction shall be in accordance with the description and specifications set forth on <Exhibits "B".

Section 3. <u>Owner's Responsibility</u>

A. The Owner will be responsible for any amount of the construction cost that exceeds forty thousand dollars ($40,000). By no later than [Insert Date: _____], the Owner shall deposit $_____ with the Agency to pay for any construction costs that exceed $40,000 ("Contingency Fund"). Agency shall only use the Contingency Fund for construction costs that exceed $40,000 and, within five (5) days of using the Contingency Fund, shall deliver to Owner an invoice that sets forth the amount deducted from the Contingency Fund and an itemized list of construction costs.

B. Before commencement of construction of the Improvements upon the Property, the owner shall secure or cause to be secured any and all permits which may be required by the City and/or any other governmental agency affected by such construction, development, or work. The Owner shall comply with and give notices required by all laws, ordinances, rules, regulations, and lawful orders of public authorities having jurisdiction over construction of the Improvements.

C. The Owner shall clean the entire site to eliminate any and all items such as debris, rubbish and weeds, which contribute to blighting conditions within the Project Area.

D. The Owner shall convey to the Agency the Easement in the form attached hereto as <Exhibit "C"> and incorporated herein by this reference, which Easement is for the purpose of constructing and maintaining the Improvements on the exterior portions of the Property.

Section 4. <u>Agency's Responsibility</u>

A. The Agency shall fund the cost of the Improvements as shown in Exhibit “B” up to the maximum amount of forty thousand dollars ($40,000). If the cost of the Improvements exceeds forty thousand dollars ($40,000), and the Owner will not participate in funding the Improvements that exceeds this amount, the Agency reserves the right to terminate this Agreement in its entirety, within fourteen (14) days written notice.

B. The Agency shall prepare or cause to prepare, in consultation with the Owner, all plans and specifications to be utilized in connection with construction of the Improvements and as to the kind and quality of materials and equipment to be used by the Agency.

C. The Agency shall be solely responsible for and have control over construction means, methods, techniques, sequences and procedures and for coordinating all aspects of construction of the Improvements. The Agency shall furnish efficient business administration and superintendence of the construction of the improvements and shall cause an adequate number and amount of subcontractors, workmen and materials to be furnished and shall cause the work to be performed in the best and most expeditious and economical manner.

D. The Agency shall commence construction of the Improvements no later than [_____ (__)] days after Owner obtains all required permits pursuant to <u>Section 3(B)</u>, (hereinafter the “Commencement Date”) and shall use commercially reasonable efforts to complete the construction of the Improvements no later than <End Date>, (hereinafter the "Completion Date"). The Agency shall notify, in writing, Owner of any delay or extension of the Completion Date.

E. The Agency shall provide and pay for labor, materials, equipment, tools, and construction equipment and machinery. The Agency shall use materials and equipment of good quality and new unless otherwise required or permitted. The Agency shall be responsible for ensuring that all work contracts entered into for the completion

of the Improvements shall (i) require the payment of the current prevailing wage rate as determined by the Director of Industrial Relations for the State of California (ii) comply with California Health and Safety Code Section 33422.1, and (iii) comply with California Labor Code Section 1720 *et seq.* and all regulations adopted pursuant thereto (collectively, "**Prevailing Wage Laws**"), and be responsible for carrying out the requirements of such provisions.. The Agency shall be responsible for obtaining certified payroll reports from any and all contractors that perform work for the completion of the Improvements as is required by the Director of Industrial Relations of the State of California.

Section 5. <u>Time of Essence.</u>

Time is of the essence in this Agreement. By executing this Agreement, the Owner acknowledges and agrees that the time limits prescribed herein for constructing the Improvements are reasonable.

Section 6. <u>Maintenance.</u>

The Owner agrees to maintain the Improvements at his/her sole expense for a period of five (5) years, in accordance with the provisions set forth in <Exhibit "C"> (attached hereto). In the event that the Owner fails to maintain the Improvements, the Agency may issue a thirty (30) days written notice to the Owner to correct any maintenance deficiencies. If the owner fails to correct the stated deficiencies within 30 days of the notice the Agency shall cause any maintenance or repair work to be performed at the Owner's expense. The Agency shall charge a minimum one thousand dollars ($1,000) administrative fee, plus actual maintenance cost to the Owner. In the event that the Owner sells the Property prior to the completion of the five (5) year period, the Owner must comply with the provisions of Section 7 hereof.

Section 7. <u>Sale of Property.</u>

If the Owner sells the Property prior to the termination date of this Agreement, the Owner must obtain an agreement to fulfill the remaining terms of this Agreement

from the purchaser of the Property. If the Owner fails to obtain such agreement, the Owner must repay the Reimbursement Amount to the Agency as follows:

1) If the Owner sells the property during the 1st year after the completion of the Improvements described in Exhibit "B" and acceptance by the Agency, 100% of the Grant Amount will become due to the Agency immediately upon sale of the Property.

2) If the Owner sells the property between one (1) and two (2) years of completion of the Improvements described in Exhibit "B" of this Agreement and acceptance by the Agency, 75% of the Grant Amount will become due to the Agency immediately upon sale of the Property.

3) If the Owner sells the property between two (2) and three (3) years of completion of the Improvements described in Exhibit "B" of this Agreement and acceptance by the Agency, 50% of the Grant Amount will become due to the Agency immediately upon sale of the Property.

4) If the Owner sells the property between three (3) and five (5) years of completion of the Improvements described in Exhibit "B" of this Agreement and acceptance by the Agency, 25% of the Grant Amount will become due to the Agency immediately upon sale of the Property.

Section 8. <u>Bodily Injury and Property Damage Insurance.</u>

The Owner shall defend (with Agency-approved counsel), assume all responsibility for, and hold the Agency, its officers and employees, harmless from all claims or suits for, and damages to, property and injuries to persons, including accidental death (including attorneys' fees and costs), which may be caused by any of the Owner's activities under this Agreement and which are normally insurable pursuant to a comprehensive liability policy, whether such activities or performance thereof be by

the Owner or anyone directly or indirectly employed or contracted with by the Owner and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Owner shall take out and maintain during the course of construction of the Improvements, until accepted by the Agency, a comprehensive liability policy in the amount of one million dollars ($1,000,000) combined single limit policy, as shall protect the Owner and Agency from claims for such damages.

The Owner shall furnish a certificate of insurance countersigned by an authorized agent of the insurance carrier on a form of the insurance carrier setting forth the general provisions of the insurance coverage. This countersigned certificate shall name the Agency and their respective officers, agents, and employees as additionally insured under the Policy. The certificate by the insurance carrier shall contain a statement of obligation on the part of the carrier to notify the Agency of any material change, cancellation or termination of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation or termination. Coverage provided hereunder by the Owner shall be primary insurance and not contributing with any insurance maintained by the Agency, and the policy shall contain such an endorsement.

The Owner shall also furnish or cause to be furnished to the Agency evidence satisfactory to the Agency that any contractor with whom it has contracted for the performance of the improvements or other work on the Property or otherwise, whether or not pursuant to this Agreement, carries Workers' Compensation insurance as required by law.

Section 9. Rights of Access.

For the purpose of assuring compliance with this Agreement, representatives of the Agency shall have the right of reasonable access with prior notice to the Owner to portions of the Property which allow the Agency and the City to inspect the construction of the Improvements during normal construction hours over the course of construction for the purposes of this Agreement, including, but not limited to, the inspection of the

work being performed in constructing the Improvements, so long as they comply with all safety rules and do not unreasonably interfere with construction.

Section 10. <u>Nondiscrimination.</u>

The Owner, for itself and its successors and assigns, agrees that in the construction of the Improvements provided for in this Agreement, the Owner will not discriminate against any employee or applicant for employment because of race, color, creed, religion, age, sex, marital status, handicap, national origin, or ancestry.

The Owner shall refrain from restricting the rental, sale, or lease of the Property on the basis of race, color, creed, religion, sex, marital status, age, handicap, national origin, or ancestry of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

A. <u>In Deeds</u>: "The grantee herein covenants by and for himself, herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the premises herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed. The foregoing covenants shall run with the land."

B. <u>In Leases</u>: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through him or her, 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 any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, 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 herein leased."

C. In Contracts: "The contractor herein covenants by and for himself or herself, his or her heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this contract is made and accepted upon and subject to the conditions that there shall be no discrimination against or segregation of any person or of a group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the property herein transferred nor shall the contractor 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 property herein transferred. The foregoing provisions shall be binding upon and shall obligate the contractor and any subcontracting parties, successors, assigns and other transferees under the contract."

Notwithstanding the foregoing, with respect to familial status, nothing herein shall be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code nor shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to this Section.

The foregoing covenants against discrimination or segregation shall continue in effect for the duration of this Agreement.

Section 11. <u>No Agency Partnership.</u>

None of the terms or provisions hereof shall be deemed to create a partnership between or among the parties hereto, nor shall it cause them to be considered joint ventures or members of any joint enterprise.

Section 12. <u>Waiver</u>

No waiver by Agency at anytime of any of the terms and conditions of this Agreement shall be deemed or construed as a waiver at anytime thereafter of the same or of any other terms or conditions contained herein or of strict and timely performance of such terms and conditions.

Section 13. <u>Successors.</u>

All terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by or against the parties hereto and their respective legal representatives, successors, and assigns, and every successor in interest to the real property or any part hereof.

Section 14. <u>Term of Agreement</u>.

This Agreement shall take effect on the date of its execution by Agency and shall terminate five (5) years after the acceptance of the Improvements by the Agency.

Section 15. <u>Local, State and Federal Laws.</u>

The Owner shall carry out the construction of the improvements in conformity with all applicable laws, including all applicable federal and state labor standards.

Section 16. <u>Applicable Law; Interpretation.</u>

The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

Section 17. <u>Severability.</u>

Invalidation of any covenant, condition, or restriction, or of any other provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

Section 18. <u>Indemnity; Prevailing Wage</u>.

The Owner shall indemnify, defend (with Agency approved counsel), and hold harmless the Agency, and its officers and employees, from and against all claims, damages, losses, and expenses, including (but not limited to) attorneys' fees, arising out of or resulting from construction of the Improvements, or which may arise out of any of the matters contemplated by this Agreement, regardless of whether or not such claim, damage, loss or expense is caused in part by the Agency (except that such indemnification shall not extend to any gross negligence or willful misconduct of the Agency). In claims against the Agency by any employee or subcontractor of the Owner, the indemnification obligation under this Section shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Owner under Workers' Compensation Act, disability benefits, or other employee benefits acts.

Owner and all Owner's contractors shall comply with Prevailing Wage Laws pursuant to Section 3(D) of this Agreement. Owner covenants to take no action which would cause Agency to violate the Prevailing Wage Laws. Owner shall, and hereby agrees to, unconditionally indemnify, reimburse, defend, protect and hold harmless Agency and the City and their elective and appointive boards, commissions, officers,

agents, attorneys, consultants and employees, and all of their respective successors and assigns, from and against any and all claims, demands, suits and actions at law or in equity, and losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief, and costs and damages of every kind, nature and description (including but not limited to attorneys' fees and court costs; with counsel reasonably acceptable to Agency and the City), and administrative, enforcement or judicial proceedings, whether known or unknown, and which directly or indirectly, in whole or in part, are caused by, arise from, or relate to, or are alleged to be caused by, arise from, or relate to, the payment or requirement of payment of prevailing wages or the requirement of competitive bidding in the construction of the Project, the failure to comply with any state or federal labor laws, regulations or standards in connection with this Agreement, including but not limited to California Labor Code Section 1720 *et seq.* and the Prevailing Wage Laws, or any act or omission of Agency or Owner related to this Agreement with respect to the payment or requirement of payment of prevailing wages or the requirement of competitive bidding, whether or not any insurance policies shall have been determined to be applicable to any such claims, demands, suits, actions, losses, liabilities, expenses, penalties, fines, orders, judgments, injunctive or other relief, costs, damages, or administrative, enforcement or judicial proceedings. It is further agreed that Agency and the City do not, and shall not, waive any rights against Owner which they may have by reason of this indemnity and hold harmless agreement because of the acceptance by Agency, or the deposit with Agency by Owner, of any of the insurance policies described in this Agreement.

If applicable, as provided in California Labor Code Section 1720 *et seq.*, the hourly and daily rate of wages to be paid each of the classes of mechanics and worker employed in connection with construction of the Improvements shall not be less than the rate of such wages then prevailing in Riverside County. If Prevailing Wages applies to any portion of the Project, Owner agrees to and shall forfeit, as a penalty to Agency, the sums established and applicable pursuant to California Labor Code Section 1720 *et*

seq. for each calendar day or portion thereof that each workman employed in connection with the Project is paid less than the rates designated in this paragraph for any work performed under this Agreement by Owner or any subcontractors or agents of Owner; or is not reported to the labor commissioner and Agency as required pursuant to California Labor Code Section 1720 *et seq.*

Section 19. <u>Entire Agreement</u>.

This Agreement contains the entire agreement of the parties hereto as to the rights herein granted and the obligations herein assumed, and supersedes all prior negotiations among the parties. No oral representation, whether preceding or following the execution of this Agreement, which purports to alter the terms hereof shall be of any force or effect.

No written modification of this Agreement shall be of any force or effect until signed by the party to be charged.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and year first above written.

PROPERTY OWNER	**CITY OF DESERT HOT SPRINGS REDEVELOPMENT AGENCY**
_____	_____
<Applicant's Name>	Rick Daniels, Executive Director City of Desert Hot Springs Redevelopment Agency
(Notary Required)	(Notary Required)

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On_____ before me, _____,
personally appeared _____,
personally known to me (or proved to me that 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.
Signature _____ (Seal)