

## ZONING

### APPENDIX 2

#### **AGUA CALIENTE BAND OF CAHUILLA INDIANS—INTERIM PROCESSING OF TRUST LAND DEV PERMITS AGREEMENT #1324 (Orig 7-26-77) RES #12298, 7-26-77**

#### **CONTRACT**

This agreement is made as of the 26th day of July, 1977, by and between the Tribal Council of the Agua Caliente Band of Cahuilla Indians (“Tribal Council”) and the City Council of the City of Palm Springs, California (“City”).

#### **I. STATEMENT OF FACTS.**

1. The Tribal Council is the legally recognized organized governing body of the Tribe with the authority under its Constitution and By-Laws to enter into this agreement with the City.
2. The Under Secretary of the Interior, effective as of June 28, 1977, issued a Notice (42 P.R. 32851) rescinding the application of the land use regulatory laws of the City of Palm Springs and the State of California to those leased Indian trust lands geographically located within the City.
3. The Tribal Council has the power under its Constitution and By-Laws and in keeping with its powers of self-determination to adopt policies to achieve the highest and best use of Aqua Caliente Indian lands, including but not limited to zoning and development thereof.
4. In view of the Under Secretary’ s Notice, the City, by City Council Resolution No. 12249 adopted on June 29, 1977, has suspended the processing of applications filed on and after June 29, 1977, dealing with Indian trust lands.
5. The suspension of applications in respect to the development of Indian trust land, if not promptly and properly eliminated threatens to impose an unreasonable hardship on the appropriate development of Indian trust land and to irreparably damage the economy of the entire community.
6. Both parties recognize the need for effective planning, zoning, and land use controls with respect to all lands under their respective jurisdiction.
7. The parties desire to make a sincere effort to effectively resolve this problem without delays and in a mutually satisfactory manner.

#### **II. AGREEMENT OF THE PARTIES.**

In consideration of the mutual promises and undertakings hereinafter agreed to, the Tribal Council and the City do hereby agree as follows:

1. Upon execution of this agreement, the Tribal Council shall by ordinance or resolution make applicable to Indian trust lands geographically located within the City the laws, ordinances, codes, resolutions, rules, or other regulations of the State of California and of the City, limiting, zoning or otherwise governing, regulating or controlling the use or development of Indian trust lands within the geographical limits of the City, and the

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City will resume the processing and, when all is found to be regular and in accordance with applicable laws and regulations, the issuance of all permits pertaining to said Indian trust lands in all ways necessary and proper for the development thereof, which shall include but not be limited to the following:

- a. Building and utility permits,
  - b. Changes of zone,
  - c. Variances from applicable zoning requirements,
  - d. Conditional use permits,
  - e. Planned Development District permits,
  - f. Tentative and final Tract and Parcel Maps,
  - g. Changes or amendments to the General Plan,
  - h. Enforcement of zoning and building codes,
  - i. Compliance with State and Federal environmental regulations, and
  - j. Related matters to the above.
2. As further consideration the City of Palm Springs may collect all fees heretofore collected or as the same may be amended and reasonably related to the cost of administering paragraph 1 above.
  3. The Tribal Council and the City shall consult with each other regarding all planning and zoning matters affecting Indian trust lands.
  4. Any party aggrieved by an action of said City Council in planning and zoning matters as outlined in paragraph 1.a. through 1.j. above, affecting Indian trust lands may appeal to the Tribal Council for relief. Said Tribal Council in accordance with procedures to be established, after notice and opportunity for hearing and on the basis of the entire record, may affirm, reverse or modify any decision of said City Council on a matter affecting Indian trust lands and the decision of the Tribal Council shall be final. In no event shall the Tribal Council act finally on an appeal before meeting jointly with the City Council to review said appeal.
  5. This agreement is intended to serve pending the development of future procedures, rules or regulations by agreement of the parties respecting regulation of land use on Indian trust lands geographically located within the City. Joint discussions regarding these matters shall begin not more than 120 days after approval of this agreement.  
  
However, either party may terminate this agreement, without prejudice to any legal position thereafter asserted except as hereafter provided, upon thirty (30) days written notice to the other party. In the event of termination of this agreement, any project existing or in process pursuant to previously granted approval by the City shall continue to be bound by the terms and conditions of such approval.
  6. This agreement shall be approved by resolutions of the Tribal Council and the City Council.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by their respective authorized officers the day and year first above written.

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TRIBAL COUNCIL OF THE AGUA CALIENTE BAND OF CAHUILLA INDIANS

By:

CITY OF PALM SPRINGS, CALIFORNIA

By:

Mayor

**SUPPLEMENTAL AGREEMENT NO. 1**

(To Agreement No. 1324 between the Tribal Council of the Agua Caliente Band of Cahuilla Indians and the Palm Springs City Council.)

This supplemental agreement is made as of the 28th day of March, 1978, by and between the Tribal Council of the Agua Caliente Band of Cahuilla Indians (“Tribal Council”) and the City Council of the City of Palm Springs, California (“City”).

**I. PURPOSE.**

The Tribal Council and the City previously entered into an agreement (No. 1324 in City’s records) dated July 26, 1977, relating to the regulations concerning zoning, use and development of Indian trust lands, and the administration thereof by the City; and it is now the mutual desire of the parties to prescribe more specific details in implementation of paragraph II.4. of said agreement pertaining to appeals by persons aggrieved by planning and zoning actions.

**II. AGREEMENT.**

Therefore, the parties hereto mutually agree that paragraph II.4. of said Agreement No. 1324 is implemented by the adoption of the procedures and specific details prescribed in the attached “Proposed Amendment, Palm Springs Zoning Ordinance” which procedures and details shall be deemed effective immediately, and shall be processed for inclusion in the Palm Springs Zoning Ordinance at such time in the future as the total “package” of future procedures, rules or regulations by agreement of the parties, is ready for processing for inclusion in the Palm Springs Zoning Ordinance, as contemplated by paragraph 11.5. of said Agreement No. 1324.

IN WITNESS WHEREOF, the parties hereto have executed this agreement by their respective authorized officers the day and year first above written.

TRIBAL COUNCIL OF THE AGUA CALIENTE BAND OF CAHUILLA INDIANS

By:

CITY OF PALM SPRINGS, CALIFORNIA

By:

**PROPOSED AMENDMENT**

**PALM SPRINGS ZONING ORDINANCE**

NOTE: The following specific language is proposed as an amendment to the above Ordinance, based on the latest study and meetings of the Tribal Council, Agua Caliente Band of Cahuilla Indians and the Palm Springs City Council.

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### **SECTION 9411.00 APPEALS, INDIAN TRUST LAND**

A. Pursuant to the contractual agreement between the Tribal Council, Agua Caliente Band of Cahuilla Indians (“Tribal Council”), and the City Council of the City of Palm Springs (“City Council”), executed July 26, 1977, and the provisions of Tribal Ordinance No. 4, enacted August 5, 1977, and notwithstanding any provision of the Palm Springs Zoning Ordinance to the contrary, said Tribal Council may; upon the appeal of an aggrieved party, either affirm, modify, or reverse any decision of said City Council in the following matters relating to the use, proposed use, or development of Indian trust land:

1. Building and Utility Permits.
2. Changes of Zone.
3. Variances from applicable zoning requirements.
4. Conditional Use Permits.
5. Planned Development District Permits.
6. Tentative and Final Tract and Parcel Maps.
7. Changes or amendments to the General Plan, or to the Zoning Ordinance of the City of Palm Springs.
8. Enforcement of Zoning and Building Codes.
9. Interpretation of State and Federal environmental regulations.
10. Related matters to the above.

B. Notice of appeals to the Tribal Council must be filed within ten (10) days of the written decision of the City Council which is being appealed, and such filing stays all proceedings in the matter until the decision of the Tribal Council on the appeal.

C. Notwithstanding any provision of the Palm Springs Zoning Ordinance to the contrary, any matter referred to in Section 9411.00A, above and relating to the use, proposed use, or development of Indian trust land, which has been disapproved by the Planning Commission of the City of Palm Springs, shall be forwarded to the City Council for decision within the time limit, as prescribed for those matters requiring a decision of said City Council. Unless an applicant signs a written waiver of his appeal rights when any matter referred to in Section 9411.00A above has been disapproved, the Secretary of the Planning Commission shall notify the applicant of such disapproval in writing. The notification shall further inform the applicant that:

- (1) The matter has been forwarded to the City Council for decision, and
- (2) That applicant may contact the City Clerk within 15 days regarding the date applicant desires the matter to come before the City Council.

For purposes of this paragraph, a matter shall be deemed disapproved if formally disapproved or conditions are imposed before the approval will be granted.

D. In those matters referred to in Section 9411.00A, above, and relating to the use, proposed use, or development of Indian trust land, the applicant, land owner, or the Tribal Council at any time during the application or proposal processing period, may, if it is contended that there is or has been any unreasonable or undue delay in such processing, file complaint in writing to this

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effect with the City Clerk, and the City Council shall thereupon as promptly as practicable, hear the matter, make a decision, and take such action as is appropriate in the case.

E. Notwithstanding the fact that the Tribal Council is not a “public agency” or a “quasi-public agency,” the decision of the Tribal Council on an appeal from action of the City Council in any matter referred to above, shall be made at or subsequent to at least one public meeting with the City Council at which time the appellant may be heard and where testimony of the general public on the issue may be heard, provided that such comments supply new and pertinent information not previously included in the City record. Testimony of the general public shall be subject to reasonable restrictions which might be imposed by the Tribal Council to limit the length of the meeting and to avoid repetition of testimony.

F. The decision of the Tribal Council shall be final on any appeal from a decision of the City Council. Thereafter, any permits necessary to the use of the land in accordance with the decision of the Tribal Council shall be issued by the City of Palm Springs.

## SUPPLEMENT NO. 2

### **TO CONTRACT REGARDING LAND USE BETWEEN THE AGUA CALIENTE BAND OF CAHUILLA INDIANS AND THE CITY OF PALM SPRINGS, CALIFORNIA**

This supplement is made this 4th day of February, 1987 by and between the Agua Caliente Band of Cahuilla Indians, a federally-recognized Indian tribe acting through its duly-constituted Tribal Council (hereinafter, the “Tribe”), and the City of Palm Springs, California, a municipal corporation (hereinafter, the “City”) as specified below.

#### **I. BACKGROUND.**

On July 26, 1977 the Tribe and the City executed a contract by which:

- (1) The Tribe agreed to adopt all of the City’s land use regulations as its own and apply them to the trust lands of the Agua Caliente Indian Reservation located within the City,
- (2) The Tribe designated the City to be and to act as the Tribe’s agent to enforce those land use regulations on the trust lands of the Agua Caliente Indian Reservation,
- (3) The parties agreed to an appeal procedure, and
- (4) The City accepted these responsibilities.

By a Supplemental Agreement No. 1 dated March 20, 1978, the parties amended the contract of July 26, 1977. At both times neither party believed that either this Contract of July 26, 1977 or its Supplement No. 1 of March 20, 1978 required the approval of the Secretary of the Interior under 25 U.S.C. § 81, as the Department of the Interior had so informed the parties. For this reason, no such approval was obtained at the time for either the Contract of July 26, 1977 or its Supplement No. 1 of March 20, 1978, and some of the recitals required by 25 U.S.C. § 81 were omitted from both said documents.

#### **II. PURPOSE.**

Because the federal courts and the Department of the Interior now both believe that the scope of the approval requirement of 25 U.S.C. § 81 is much broader than the parties and the

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Department of the Interior believed in 1977 and 1978, the Tribe and the City have formally requested the approval of the above Contract of July 26, 1977 and its Supplement No. 1, March 20, 1978 under 25 U.S.C. § 81 on December 10, 1986. In order to enable the Secretary of the Interior to give such approval, the parties now wish to amend the said Contract of July 26, 1977, as modified by the said Supplement No. 1 of March 20, 1978, by adding to it the following recitals required by 25 U.S.C. § 81:

### III. RECITALS.

1. Parties in Interest:
  - a. Agua Caliente Band of Cahuilla Indians, a federally-recognized Indian tribe and local government of the Agua Caliente Indian Reservation performing the normal functions of such Indian tribes, with offices at 960 East Tahquitz Way, Suite 106, Palm Springs, California 92262.
  - b. City of Palm Springs, California, a municipal corporation and the local government of all land within its city limits, except as otherwise provided by law, performing all of the normal functions of such cities, with offices at 3200 East Tahquitz-McCallum Way, Palm Springs, California.
  - c. Scope of Tribal Council's authority to execute Contract of July 26, 1977 and Supplement No. 1 of March 20, 1978: Constitution and Bylaws of the Agua Caliente Band of Cahuilla Indians (adopted on July 28, 1955, as amended, and approved by Commissioner of Indian Affairs on April 18, 1957), Article V ("Powers of the Tribal Council), including ¶a ("To administer the affairs and manage the business of the Band; to regulate the uses and disposition of tribal property; to protect and preserve the Tribal property... to protect the security and general welfare of the Band and its members"); ¶b ("To enact ordinances and resolutions pertaining to tribal affairs and to take all proper means to enforce the same"); ¶i ("To promulgate and enforce assessments or permit fees upon non-members doing business and obtaining special privileges on the Agua Caliente Reservation..."); and ¶1 "To negotiate with... local governments on behalf of the Band"). The Department of the Interior has recognized the Tribal Council's authority to execute this Contract, See the letter of November 12, 1977 from Undersecretary James A. Joseph to Mayor of City of Palm Springs, a copy of which is found as Exhibit 0 to the legal memorandum to Assistant Secretary Swimmer from the Tribal Attorney, dated September 26, 1986, in which the Undersecretary states "We recognize the authority and jurisdiction of both governments, tribal and state, to enter into this agreement."
  - d. Reason for Tribal Council to exercise its authority to execute Contract of July 26, 1977 and Supplement No. 1 of March 20, 1978: See ¶'s 1.2—1.7 of Contract of July 26, 1977.
2. Place made.

The Contract of July 26, 1977 and the Supplement No. 1 of March 20, 1978 were both executed at Palm Springs, California.
3. Term.

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The term of the Contract of July 26, 1977, as amended by Supplement No. 1 of March 20, 1978, will be until July 4, 2076 or until the expiration of the 30 days of written notice of termination specified in ¶5 of the said contract, whichever occurs first.

4. In all other respects, the said Contract of July 26, 1977, as amended by its Supplement No. 1 of March 20, 1978, remains in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Supplement No. 2 at Palm Springs, California on the day and year first above written.

AGUA CALIENTE BAND OF CAHUILLA INDIANS

By:

Richard M. Milanovich, Chairman, Tribal Council

CITY OF PALM SPRINGS

By:

Frank M. Bogert, Mayor

ATTEST:

By:

APPROVED BY THE CITY COUNCIL

By Res. 16110, 2-4-87

## APPROVAL

Pursuant to section 2103 of the Revised Statutes of the United States (25 U.S.C. Section 81), the Contract between the Agua Caliente Band of Cahuilla Indians and the City of Palm Springs, California, consisting of (1) the Contract between the parties dated July 26, 1977, (2) Supplement No. 1 thereto dated March 20, 1978, and (3) Supplement No. 2 thereto dated February 4, 1987, is hereby approved for a period beginning on July 26, 1977 and ending on either: (1) July 4, 2076, or (2) the expiration of the 30-day written notice period provided for in ¶5 of the said contract of July 26, 1977, whichever occurs first.

Dated: 5/18/1987

Ross O. Swimmer

Assistant Secretary—Indian Affairs

## SUPPLEMENT NO. 3

### **TO LAND USE CONTRACT BETWEEN THE CITY OF PALM SPRINGS AND THE AGUA CALIENTE BAND OF CAHUILLA INDIANS AGREEMENT #1324 R18538, 1-4-95**

On July 26, 1977, the Agua Caliente Band of Cahuilla Indians, a federally-recognized Indian tribe (the "Tribe"), and the City of Palm Springs, a municipal corporation under the laws of

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the State of California (the “City”), entered into a land use contract (the Land Use Contract”) concerning the manner in which the City would act as the Tribe’s agent for the enforcement of Tribal land use measures on all of the trust lands of the Agua Caliente Indian Reservation located within the city limits of the City. Since then, the Tribe and the City have executed Supplements Nos. 1 and 2 to that Land Use Contract. The Assistant Secretary of the Interior for Indian Affairs duly approved this Land Use Contract with its two supplements on May 18, 1987.

The Tribe and the City now modify that Land Use Contract in the following way. Effective upon the execution of this Supplement No. 3 by the authorized representatives of both the Tribe and the City, the original Land Use Contract is hereby amended by the addition of the following new language to be inserted immediately following “to Indian trust lands geographically located within the City on lines 2 and 3 of paragraph 11.1, of p. 2 of the Land Use Contract:

except for those parcels of land whose legal description is found on Exhibits A, B, and C hereto.

In all other respects, the said Land Use Contract remains in full force and effect.

Dated December 22, 1994

AGUA CALIENTE BAND OF CAHUILLA INDIANS (“Tribe”)

By:

Richard M. Milanovich, Chairman

CITY OF PALM SPRINGS (“City”)

By:

Lloyd Maryanov, Mayor

Judith Sumich, City Clerk

Dated: February 5, 1995

ATTEST:

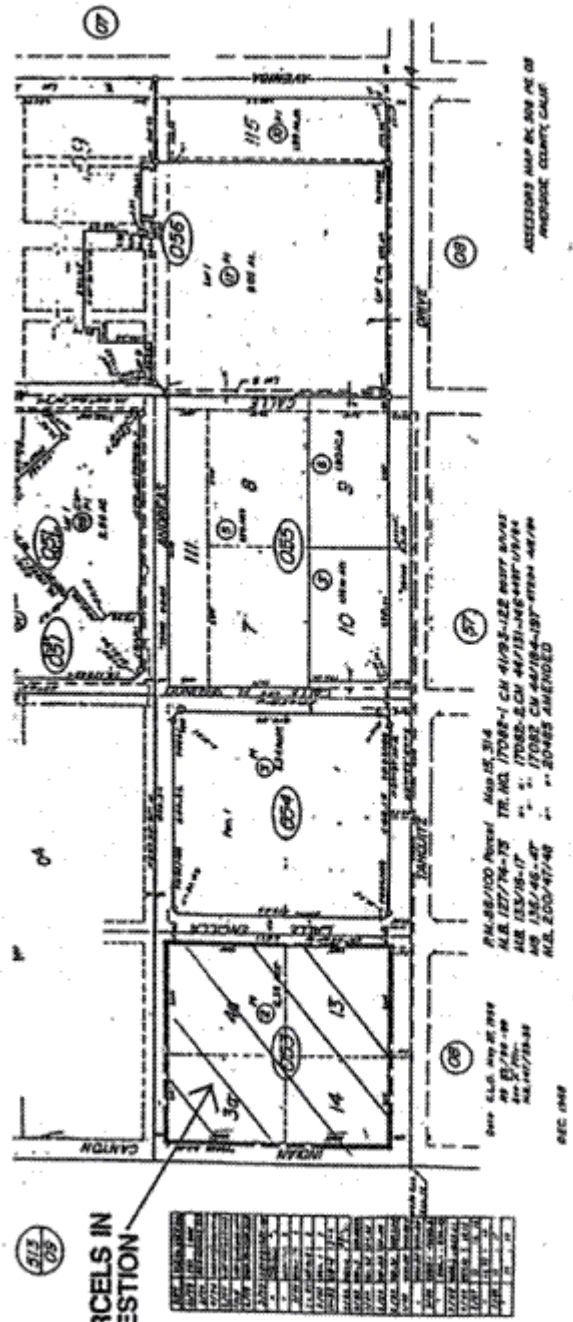
**EXHIBIT A**

**LEGAL DESCRIPTION**

Lots 3a, 4a, 13, 14, 67, 68, 69, and 70 of Section 14, T. 4 S., R. 4 E., S.B.B.M.

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EXHIBIT B



PARCELS IN QUESTION

Tribal Council/City Agr 1324 with City Approved Suppl 1-4, Appendix 2

PARCELS SUBJECT TO LAND USE AGREEMENT EXCEPTION 12/94 EXHIBIT "b"

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SUPPLEMENT NO. 4

**AGREEMENT #1324 LAND USE CONTRACT BETWEEN THE CITY OF PALM  
SPRINGS AND THE AGUA CALIENTE BAND OF  
CAHUILLA INDIANS**

On July 26, 1977, the Agua Caliente Band of Cahuilla Indians, a federally recognized Indian tribe (the “Tribe”), and the City of Palm Springs, a municipal corporation under the laws of the State of California (the “City”), entered into a land use contract (the “Land Use Contract”) concerning the manner in which the City would act as the Tribe’s agent for the enforcement of Tribal land use measures on all of the trust lands of the Agua Caliente Indian Reservation located within the city limits of the City. Since then the Tribe and the City have executed Supplements Nos. 1, 2 and 3 to that Land Use Contract. The Assistant Secretary of the Interior for Indian Affairs duly approved this Land Use Contract with its two supplements on May 18, 1987, and the Tribal Council duly approved the third supplement on Dec. 22, 1994.

The Tribe and the City now modify that Land Use Contract in the following way. Effective upon the execution of this Supplement No. 4 by the authorized representatives of both the Tribe and the City, the original Land Use Contract is hereby amended by the addition of the following new language to be inserted immediately following “to Indian trust lands geographically located within the city” on lines 2 and 3 of paragraph 11.1 of p. 2 of the Land Use Contract:

except for those parcels of land whose legal description is found on Exhibits A, B, C, D and E, hereto

Said Exhibits A, B and C were previously approved on 12/11/94. In all other respects, the said Land Use Contract remains in full force and effect.

Dated: July 27, 1995

AGUA CALIENTE BAND OF INDIANS (“Tribe”)

By:

Richard M. Milanovich, Chairman

CITY OF PALM SPRINGS (“City”)

Dated: July 27, 1995

APPROVED BY THE CITY COUNCIL

By:

Lloyd Maryanov, Mayor

ATTEST:

Judith Sumich, City Clerk



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**EXHIBIT “D”  
LEGAL DESCRIPTION**

That portion of Block 2 of Section 14, Township 4 south, range 4 east, San Bernardino base and meridian, in the county of Riverside, State of California as shown by corrected plat accepted September 7, 1927, described as follows:

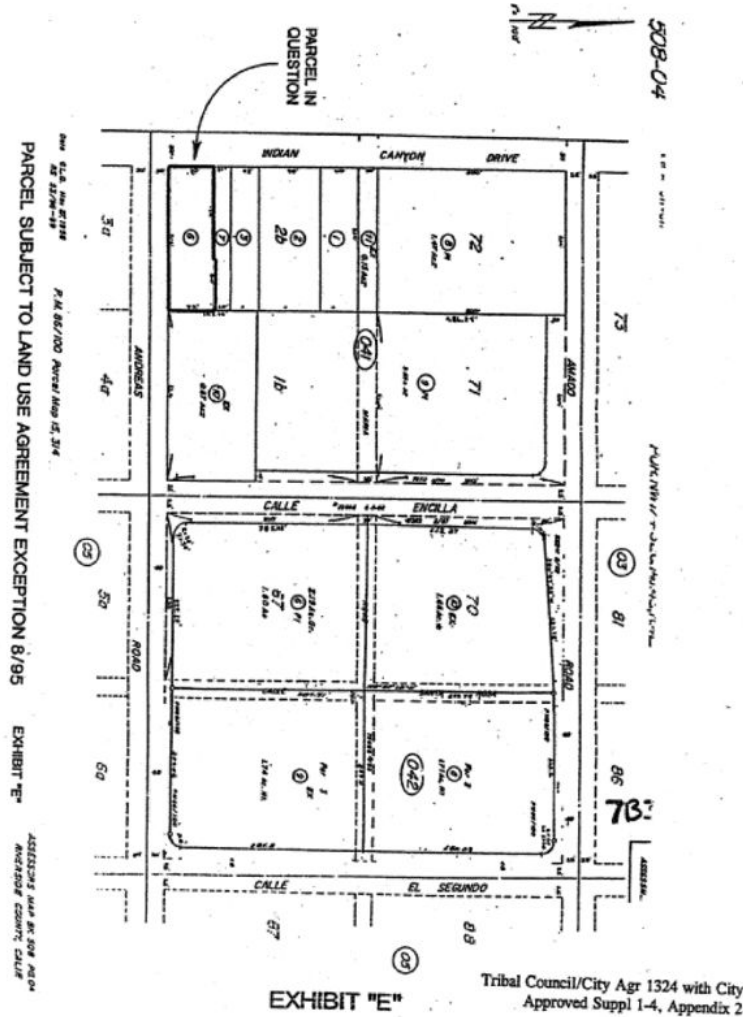
Beginning at a point on the westerly line of said block, 233.00 feet southerly from the northwest corner thereof; thence southerly on the west line of said block, 70.00 feet; thence easterly and parallel with the northerly line of said block 264.00 feet to the easterly line thereof;

Thence northerly on the easterly line of said block, 73.00 feet; thence westerly and parallel with the northerly line of said block 80.00 feet; thence southerly 3.00 feet; thence westerly and parallel with the northerly line of said block 104.00 feet to the point of beginning; said “Block 2” is referred to as “Block 2-B” on plat showing amended lottings of Bureau of Land Management, dated May 27, 1958, premises being identical.

Excepting therefrom that portion lying within Indian Avenue.

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EXHIBIT "E"



SUPPLEMENT #5

TO LAND USE CONTRACT BETWEEN THE CITY OF PALM SPRINGS AND THE AGUA CALIENTE BAND OF CAHUILLA INDIANS AGREEMENT #1324 R19449, 1-6-099

On July 23, 1977, the Agua Caliente Band of Cahuilla Indians, a federally-recognized Indian tribe (the "Tribe") and the City of Palm Springs, California, a municipal corporation organized under the laws of the State of California (the "City"). entered into a land use contract (the "Land Use Contract") concerning the manner in which the City would act as the agent of the Tribe for the enforcement of Tribal land use measures on all of the trust lands of the Agua Caliente Indian Reservation located within the city limits of the City, as specified in that Land Use Contract. Since then, the Tribe and the City have entered into Supplements Nos. 1, 2, 3, and 4, and the Assistant Secretary of the Interior for Indian Affairs has approved that Land Use Contract.

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The subject of Supplement Nos. 3 and 4 to that Land Use Contract has been the removal of certain specified parcels of land from the scope of the Land Use Contract, as the Tribe acquired those parcels and wished to devote them to specific uses outside the scope of the Land Use Contract. Since then, it has become clear that many further such supplements will be needed, on a parcel-by-parcel basis, as the Tribe acquires further parcels of land within the city limits of the City of Palm Springs. In order to eliminate the necessity of numerous further supplements for this purpose, the Tribe and the City now wish to make a further amendment to the Land Use Contract that will automatically remove parcels of land from the scope of the Land Use Contract as the Tribe acquires title to them, without the necessity of separate supplements to the Land Use Contract for each such parcel.

Therefore, effective upon the execution of this Supplement No. 5 by the authorized representatives of the Tribe and the City, the Land Use Contract is now hereby further modified and amended in the following ways:

1. Immediately following the language “except for those parcels of land whose legal description is found on Exhibits A, B, C, D, and E, hereto”, which language was added by Supplement No. 4 to the Land Use Contract, the following new language is hereby added to paragraph 11.1. of p.2:

And except for any other parcels of land which now are, or in the future will be, acquired by the Tribe within the city limits of the City. The land excluded from the Land Use Agreement by this Supplement 5 shall be subject to the terms of the Cooperation Agreement dated January 6, 1999 between the same parties.

2. Immediately following items a. in paragraph 11.1, of p.2, the following new language is added:

In order to inform the City that the Tribe has acquired a particular new parcel of land, so as to remove it from the scope of this Land Use Contract, the Tribe will transmit to the City Clerk of the City, within 10 days of such acquisition, a resolution identifying each such parcel and the date of the acquisition of each such parcel by the Tribe.

In all other respects, the Land Use Contract, as previously supplemented and amended, remains in full force and effect.

Dated: February 2, 1999

AGUA CALIENTE BAND OF CAHUILLA INDIANS (the “Tribe”)

By:

Richard M. Milanovich, Chairman

Approved by the Tribal Council by Resolution No. 52-97

CITY OF PALM SPRINGS (the “City”)

Dated: 2/3, 1999

ATTEST:

City Clerk

By:

Will Kleindienst, Mayor

Approved by the City Council by Resolution No. 19449, 1-6-99