



## City Council Staff Report

Date: June 16, 2010

CONSENT CALENDAR

Subject: APPROVAL OF AN ENCROACHMENT LICENSE TO PRESCOTT PLACE LLC, FOR BUILDING OVERHANG SOLAR SHADES EXTENDING INTO THE RIGHT-OF-WAY AT 901 N. PALM CANYON DRIVE

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

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### SUMMARY

Approval of this item will approve the issuance of an Encroachment License to Prescott Place, LLC, for construction of building overhang solar shades extending into the right-of-way at 901 N. Palm Canyon Dr.

### RECOMMENDATION:

- 1) Approve Agreement No. \_\_\_\_\_, an Encroachment License between the City of Palm Springs and Prescott Place, LLC, a California limited liability company, for construction of building overhang solar shades extending into the right-of-way at 901 N. Palm Canyon Dr.; and
- 2) Authorize the City Manager to execute all necessary documents.

### STAFF ANALYSIS:

Chapter 14.16 of the Palm Springs Municipal Code requires an encroachment permit to be issued for any improvements constructed in the public right-of-way. Additionally, whenever other improvements of a type of use determined by the Director of Public Works to require additional liability protection for the City, a formal agreement through an Encroachment License is required.

On September 17, 2008, the City Council approved a two-story mixed use commercial/residential building located at 901 N. Palm Canyon Dr., called "the Nichols Building" (Tentative Tract Map 35999). Included as part of the Council's approval of the project was a requirement that an Encroachment License be issued for construction of building overhang solar shades extending into the right-of-way.

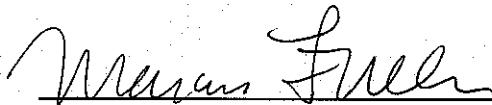
The building overhang solar shades extend six feet and six inches (6'-6") out into the right-of-way above the first story at a height well above pedestrians on the sidewalk below. An Encroachment License has been prepared for construction and maintenance of the solar shades into the right-of-way at 901 N. Palm Canyon Dr. It is recommended that the City Council approve the Encroachment License for this facility, obligating Prescott Place, LLC, to the requirements outlined in the agreement.

FISCAL IMPACT:

None.

SUBMITTED:

Prepared by:



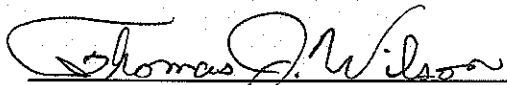
Marcus L. Fuller  
Assistant Director of Public Works

Recommended by:

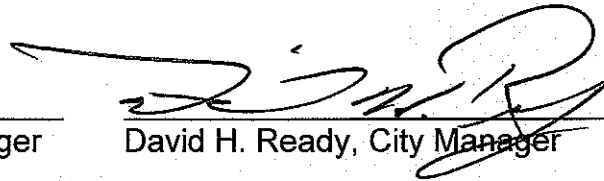


David J. Barakian  
Director of Public Works/City Engineer

Approved by:



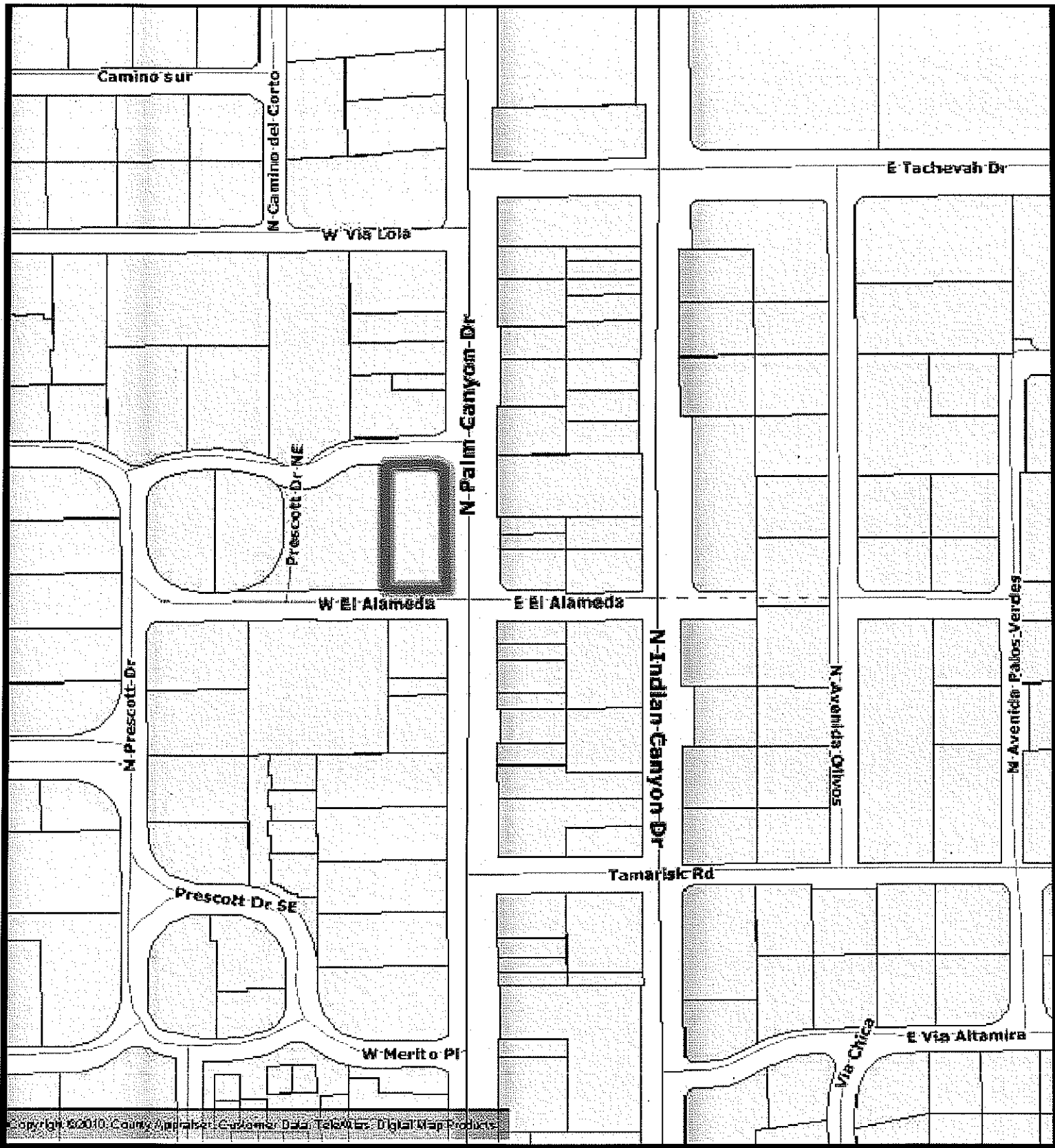
Thomas J. Wilson, Asst. City Manager



David H. Ready, City Manager

Attachments:

1. Vicinity Map
2. Encroachment License



**VICINITY MAP**  
**EL 09-03**



300 ft

CityGIS

**ATTACHMENT 2**  
**ENCROACHMENT LICENSE**

FREE RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

CITY OF PALM SPRINGS  
PO Box 2743  
Palm Springs, CA 92263-2743  
Attn: Engineering Division  
City Clerk

(For Recorder's Use Only)

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Filing Fee Exempt Per Government Code 6103

### ENCROACHMENT LICENSE

THIS ENCROACHMENT AGREEMENT ("Agreement") is entered into this 14<sup>TH</sup> day of **May, 2009**, by and between **Prescott Place, LLC, a California Limited Liability Company** ("Applicant"), whose address is **879 N Palm Canyon Drive, Palm Springs, CA 92262** and the CITY OF PALM SPRINGS, a California charter city ("City"), whose address is P.O. Box 2743, 3200 E. Tahquitz Canyon Way, Palm Springs, CA 92263.

### RECITALS:

A. Applicant is the **owner** of a portion of that certain real property located in the City of Palm Springs, County of Riverside, State of California commonly known as **901 N. Palm Canyon Drive, Palm Springs, Ca 92262 (APN 505-263-006)**, more particularly described on **Exhibit "A"** attached hereto and incorporated herein by reference ("Applicant Property"). City is the owner of certain fee and/or easement interests in that certain real property located in the City of Palm Springs, County of Riverside, State of California adjacent to the Applicant Property and encroachment is more particularly described in **Exhibit "B"** hereto ("City Property").

B. Applicant desires to maintain **building overhang solar shades** to be placed in a portion of the public right-of-way hereto on the City property which encroachment is more particularly show on **Exhibit "C"** ("Encroachment"), and detailed on **Exhibit "D"**. City has agreed to grant to Applicant an encroachment permit ("Permit") for the Encroachment in accordance with Chapter 14.16 of the City of Palm Springs Municipal Code on the condition that Applicant executes this Agreement.

NOW THEREFORE, the parties hereto agree as follows:

1.0 **License.** The City hereby grants to Applicant a license revocable or relocatable with or without cause at any time by the City to construct and/or maintain the Encroachment upon all of the terms and conditions of the Permit and this Agreement ("License").

## **2.0 Covenants.**

**2.1 In General.** Applicant hereby agrees to construct, maintain, relocate and remove the Encroachment in accordance with Chapter 14.16 of the City of Palm Springs Municipal Code, as amended from time to time.

**2.2 Maintenance.** Applicant shall maintain, repair and replace the Encroachment and the City Property so as to keep the Encroachment and such area in a neat, clean, first class condition and in good order and repair, free of weeds, trash and debris at all times. All tables, chairs, or other items shall be kept in a clean, safe condition, and shall not be placed in a manner that impedes or prevents pedestrian traffic. In the event Applicant does not maintain the Encroachment and the City Property as required herein, the City may terminate the License as more particularly provided in Section 3.0.

**2.3 Indemnity.** Applicant hereby agrees to indemnify and defend the City, its officers, agents and employees against and to hold and save each of them harmless from, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities (collectively "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the location, construction, maintenance, relocation or removal of the Encroachment, but excluding such claims or liabilities arising from the sole negligence or willful misconduct of the City, its officers, agents or employees, who are directly responsible to City, and in connection therewith:

- (a) Applicant will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;
- (b) Applicant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities and Applicant agrees to save and hold the City, its officers, agents and employees harmless therefrom;
- (c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Applicant for such damages or other claims arising out of the location, construction, maintenance, relocation or removal of the Encroachment, Applicant agrees to pay the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including, but not limited to, legal costs and attorneys fees.

**2.4 Covenants Running With the Land.** The covenants and restrictions by Applicant set forth in this Agreement: (a) are made for the direct benefit of the City Property; (b) will constitute covenants running with the land and equitable servitudes; (c) will bind Applicant and every person having any fee, leasehold or other interest in any portion of the Applicant Property at any time or from time to time; and (d) will inure to the benefit of the City and every person having any fee, leasehold or other interest in the City Property at any time or from time to time.

### 3.0 Insurance.

3.1 **Insurance Requirement.** During the entire term of this License, Licensee shall procure and maintain public liability and property damage insurance, at its sole expense, in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit, insuring against all liability of Licensee and its authorized representatives arising out of and in connection with the Encroachment or Licensee's use of the Encroachment. Such public liability and property damage insurance shall also provide for and protect the Licensor against incurring any legal cost in defending claims for alleged loss.

3.2 **Primary Policy; Additional Insured.** All such insurance as required by this Section 6 shall be primary insurance and shall name the City as additional insured.

3.3 **Insurance Increase.** Not more frequently than one (1) time every three (3) years, if, in the opinion of the City Manager or the City's insurance broker, the amount of public liability and property damage insurance coverage at that time is not adequate, the City Manager may require modifications to this coverage.

3.4 **Insurance Company.** All insurance required under this Section 8 shall be issued by an insurance company authorized to do business in the State California, with a financial rating of at least A-3A status as rated in the most recent edition of Best's Insurance Reports or such comparable report should Best's Insurance Reports no longer be available.

3.5 **Modification or Cancellation of Policy.** All insurance required pursuant to this Section 8 shall contain an endorsement requiring thirty (30) days written notice from the insurance company to both parties before cancellation or change in the coverage, scope, or amount of any policy. Each policy, or a certificate of the policy, together with evidence of the payment of premiums, shall be deposited by Licensee with the City at the commencement of the term, and on a renewal policy not less than twenty (20) days before expiration of the term of the policy.

4.0 **Termination.** The License is terminable with or without cause by the City at any time. Applicant shall remove the Encroachment and restore the City Property to its former condition, at Applicant's sole cost and expense, within thirty (30) days of written notice from the City. In the event Applicant fails to remove the Encroachment and restore the City Property within said time period, the City shall have the right to do so without notice. Applicant shall immediately reimburse the City for all expenses required to remove the Encroachment and restore the Property. Said amounts shall accrue interest from the date expended by the City at the maximum non-usurious interest rate permitted by law.

### 5.0 Miscellaneous.

**5.1 Notices.** Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent prepaid, first-class mail to the addresses listed on the first page of this Agreement. Either party may change its address by notifying the other party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy two (72) hours from the time of mailing if mailed pursuant to this Section 4.1.

**5.2 Attorneys Fees.** In any action between the parties hereto seeking enforcement of this Agreement, or in connection with the License or the Permit, the prevailing party in such action shall be entitled to have and to recover from the other party its reasonable attorneys' fees and other reasonable expenses in connection with such action or proceeding in addition to its recoverable court costs.

**5.3 Amendment or Modification.** This Agreement may not be modified or amended except by written agreement executed by the then-owner of the Applicant Property and the City Property and recorded in the Office of the County Recorder, County of Riverside, California.

**5.4 Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.


**5.5 Severability.** The invalidity or unenforceability of any provision of this Agreement with respect to a particular party or set of circumstances shall not in any way affect the validity and enforceability of any other provision hereof or the same provision when applied to another party or to a different set of circumstances.

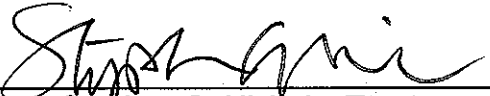
**5.6 Recordation.** This License shall be recorded in the Office of the County Recorder, Riverside County, California, and it shall serve as notice to all parties succeeding to the interest of Licensee or the city that their use of the Licensee Property and the City Property shall be benefited and/or restricted in the manner herein described.



IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

Prescott Place, LLC, a California Limited Liability Company  
(Benson & Nichols Trust, dated February 13, 2003 - its Sole Member and Manager)

  
\_\_\_\_\_  
Sarah J. Benson, Trustee

  
\_\_\_\_\_  
Stephen C. Nichols, Trustee

"Applicant"

(APPLICANT MUST HAVE SIGNATURE NOTARIZED)


~~CITY OF PALM SPRINGS, a  
Municipal Corporation~~

~~By: \_\_\_\_\_  
Marcus Fuller  
Asst. Public Works Director/  
Asst. City Engineer~~

~~"City"~~

(ASST. CITY ENGINEER MUST HAVE SIGNATURE NOTARIZED)

~~APPROVED AS TO OWNERSHIP & LEGAL  
DESCRIPTION~~

~~By:   
\_\_\_\_\_  
Felipe Primera  
Engineering Assistant~~

(NOTARY STATEMENTS ON FOLLOWING PAGE)

ATTEST:

CITY OF PALM SPRINGS,  
a California charter city

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

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

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

APPROVED BY CITY COUNCIL:

Minute Order No. \_\_\_\_\_

Date: \_\_\_\_\_

Agreement No.: \_\_\_\_\_

**ACKNOWLEDGMENT**

State of California  
County of Riverside )

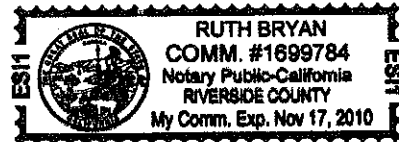
On May 14, 2009 before me, Ruth Bryan, Notary Public  
(insert name and title of the officer)

personally appeared Sarah J. Benson and Stephen C. Nichols,  
who 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.

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 *Ruth Bryan* (Seal)



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF APPLICANT PROPERTY**

LOT 111 OF MERITO VISTA, AS SHOWN BY MAP ON FILE IN BOOK 12, PAGE 94 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THE WESTERLY 132 FEET, CONVEYED TO JAMES V. GUTHRIE BY DEED RECORDED ON NOVEMBER 19, 1937 IN BOOK 352, PAGE 180 OF OFFICIAL RECORDS.

ALSO EXCEPTING THEREFROM THE SOUTHERLY 3.55 FEET AND THE EASTERLY 20 FEET THEREOF.

**EXHIBIT "B"**

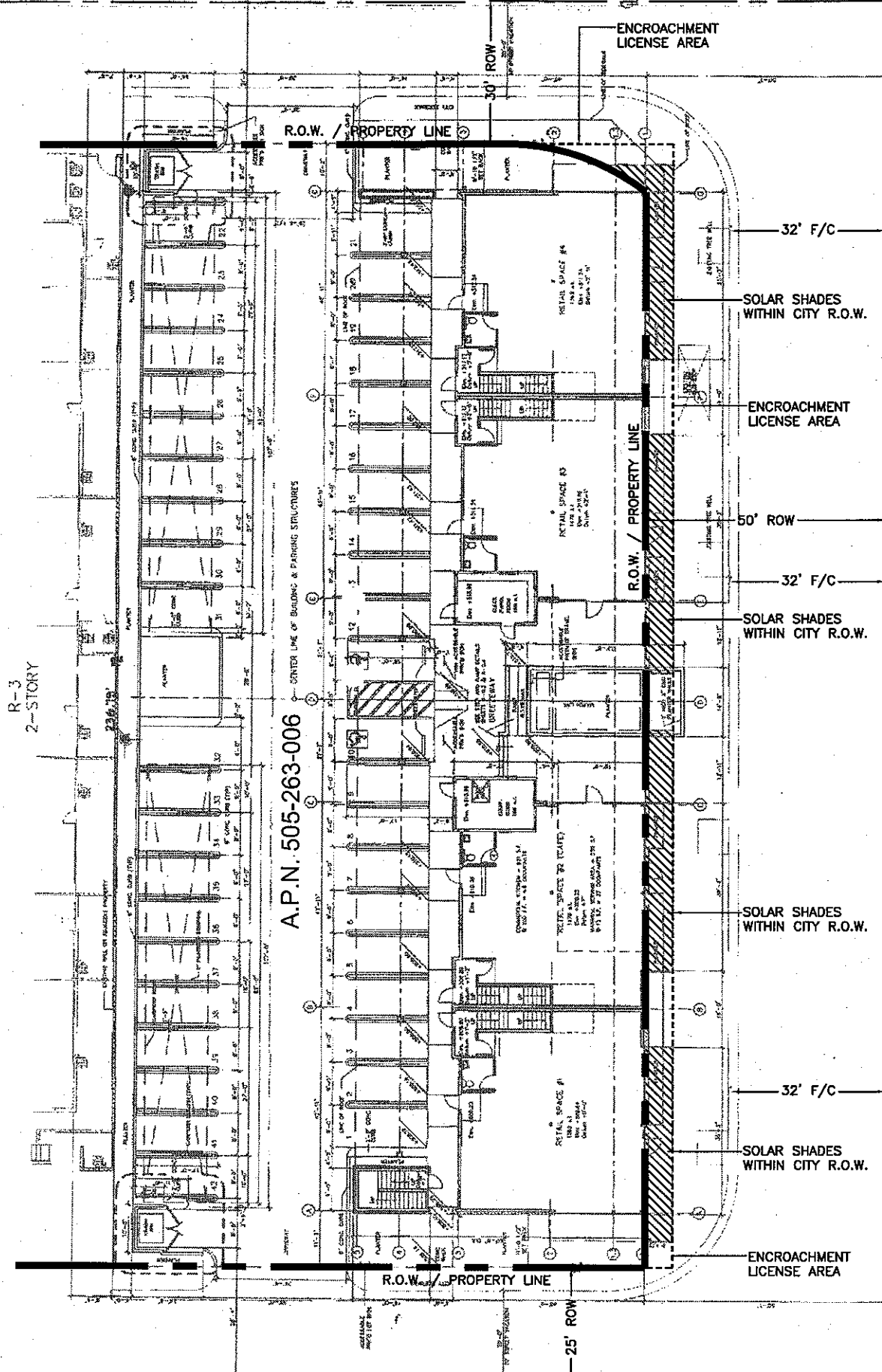
**LEGAL DESCRIPTION OF CITY PROPERTY AND ENCROACHMENT**

A PORTION OF NORTH PALM CANYON ROAD, 50 FEET WIDE HALF STREET, SHOWN IN RIVERSIDE COUNTY ROAD ABSTRACT 6210, ALSO SHOWN AS "COUNTY HIGHWAY", IN MAP OF MERITO VISTA, ON FILE IN BOOK 12, PAGE 94 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, ALONG WITH A PORTION OF HERMOSA PLACE, SHOWN AS SUCH, IN MAP OF MERITO VISTA, ON FILE IN BOOK 12, PAGE 94 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, AS SHOWN ON EXHIBIT "C".

ATTACHMENT 3  
EXHIBITS "C" & "D"

# EXHIBIT "C"

HERMOSA PLACE



N. PALM CANYON DRIVE

SITE PLAN - 901 N. PALM CANYON DRIVE

SCALE: 1" = 10'-0"



# EXHIBIT "D"

