



CITY COUNCIL STAFF REPORT

DATE: December 18, 2013 CONSENT CALENDAR

SUBJECT: LICENSE AGREEMENT WITH PB REALTY INVESTMENT, INC. FOR PLACEMENT OF LAWN CHAIR ON PRIVATE PROPERTY AT THE SKYLARK HOTEL, 1466 NORTH PALM CANYON DRIVE.

FROM: David H. Ready, City Manager

BY: Community & Economic Development

SUMMARY

This action is to approve the placement of the artwork *Lawn Chair* on private property located at 1466 North Palm Canyon Drive, in front of the Skylark Hotel. The Owner of the property is willing to enter into a License Agreement for Placement of Artwork on Private Property with the right to give a 30 day notice to remove Artwork at Owner's discretion.

RECOMMENDATION:

1. Approve License Agreement with, PB Realty Investments, Inc. for placement of *Lawn Chair* on private property at the Skylark Hotel, 1466 North Palm Canyon Drive.
2. Authorize City Manager to execute all necessary documents.

STAFF ANALYSIS:

On November 10, 2005 the Public Arts Commission voted 4/1 to approve a recommendation to purchase the sculpture *Lawn Chair*. On September 8, 2006 City Council approved the Commission's recommendation to install the artwork at the Pepper Tree Inn, located at 622 North Palm Canyon Drive. At that time the site was undeveloped and served as a temporary location for the artwork. The cost to install the sculpture was approximately \$2,600, including footings and minor landscaping treatments.

On January 12, 2010 the current property owner of 622 North Palm Canyon Drive removed the artwork from this location due to business renovations.

At the May 12, 2011 Public Arts meeting the Commission voted 4/0 to pursue reinstallation of *Lawn Chair* at The Corridor, 515 North Palm Canyon Drive, on the

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southwest corner of Palm Canyon Drive and West Chino Drive. The Owner was willing to enter into a License Agreement for Placement of Artwork on private property and the recommendation was approved by City Council. However, immediately following Council approval the property Owner was able to lease the site which was then remodeled into an outdoor dining space.

At the November 14, 2013 Public Arts meeting the Commission voted 7/0 to recommend reinstallation of Lawn Chair at the Skylark Hotel, 1466 North Palm Canyon Drive. This location currently has a concrete pad and lighting installed. Placement at this site allows the sculpture to remain in a high profile location on Palm Canyon Drive. The Owner is willing to enter into a long term License Agreement for Placement of Artwork with the obligation to give the City a 30 day notice to remove the sculpture at his discretion if the artwork impedes use of the site. The Owner will also be held harmless from and against any and all claims or liabilities arising from the placement of the artwork on this site. The cost to install the sculpture will be approximately \$1,500.

The Agreement provides that ownership and maintenance of the artwork remain with the City of Palm Springs.

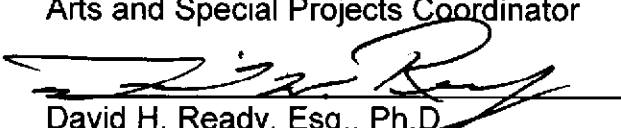
In accordance with the Public Arts Ordinance No. 1479 Chapter 3.37 the site meets the criteria under Section 3.37.080(a) Art Site Acceptability.

FISCAL IMPACT:

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

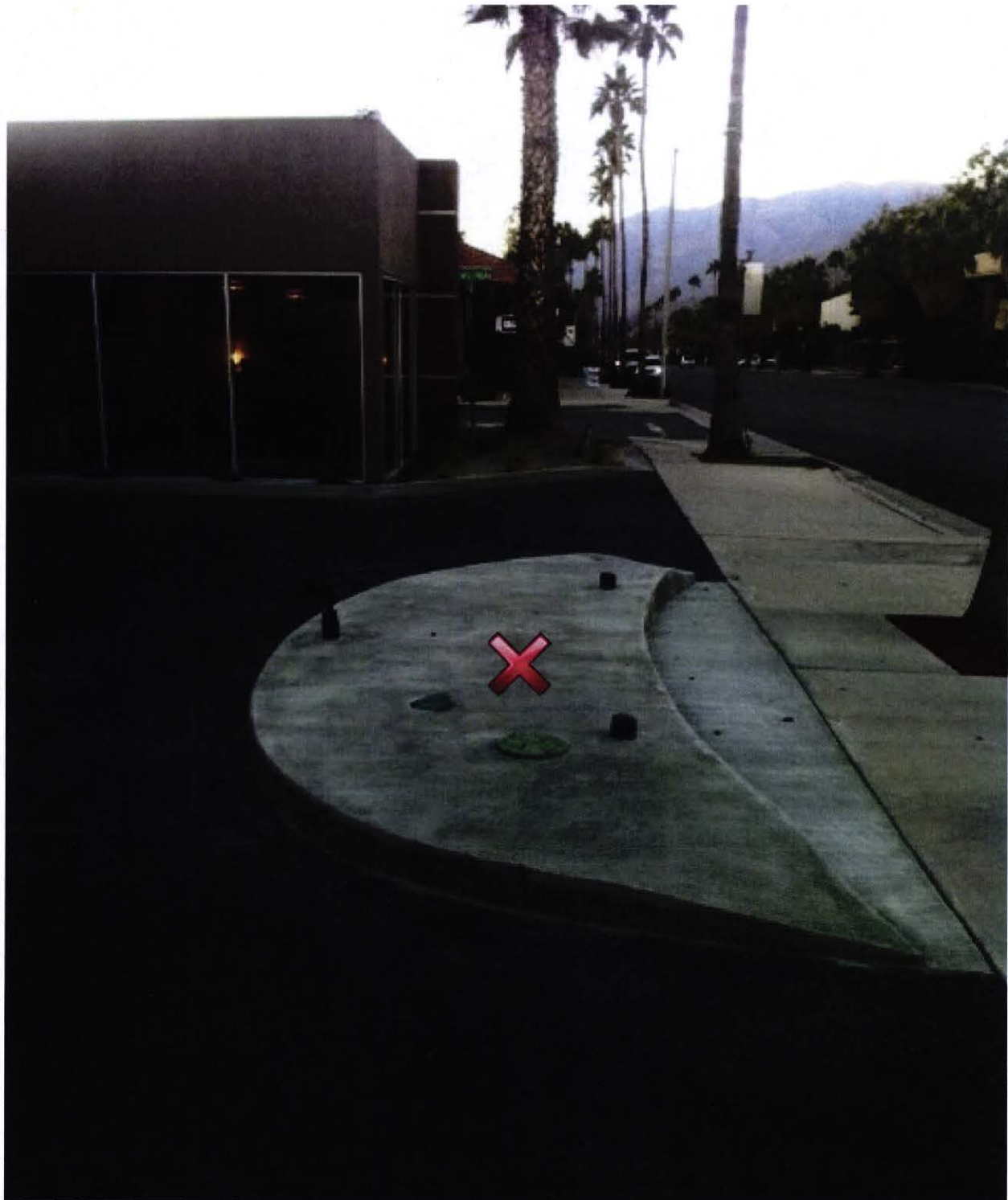

Jennifer Henning
Arts and Special Projects Coordinator


John Raymond, Director of Community
and Economic Development


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

Attachments:
Proposed Site
License Agreement for Placement of Artwork on Private Property

PROPOSED SITE



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

This LICENSE AGREEMENT FOR PLACEMENT OF ART ON PRIVATE PROPERTY ("Agreement") is entered into as of _____, 2013 by and between the CITY OF PALM SPRINGS, a municipal corporation ("City") and PB REALTY INVESTMENT, INC. ("Owner").

RECITALS:

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

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

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

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

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

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

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

4. City Representative. The City Manager, or his designee, a Contract Officer of the City ("City Manager"), shall be the City's designated representative with

respect to this Agreement. Under the direction of the City Council, the City Manager shall have the authority to give approvals or consents required hereunder and to otherwise act on behalf of the City for purposes of this Agreement.

5. Owner and Representative. The Owner is the owner of certain property ("Property") generally known as 1466 North Palm Canyon Drive, Skylark Hotel, as shown on Exhibit "B" attached hereto and incorporated herein. The Owner has agreed to a License Agreement for the placement of Artwork on a portion of the Owner's property which portion is generally depicted and described as the "Site" on Exhibit "B".

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

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

8. Compliance with the Law. City hereby agrees to comply with all applicable statutes, ordinances, orders, laws, rules and regulations, and the requirements of all federal, state and municipal governments and appropriate departments, commissions, boards and offices thereof, which may be applicable to the display of Artwork on the Site or to the use or manner of use of the Site. Without in any way limiting the foregoing, City agrees to comply with The Visual Artists Rights Act of 1990 (17 U.S.C. 101, *et seq.*).

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

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

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

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

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

"OWNER"

PB REALTY INVESTMENT, INC.

By: _____
Name: Ronald de Klerk
Its: Vice President of Operations

"CITY"

CITY OF PALM SPRINGS,
a municipal corporation

ATTEST:

By: _____
City Clerk

By: _____
City Manager

APPROVED AS TO FORM:

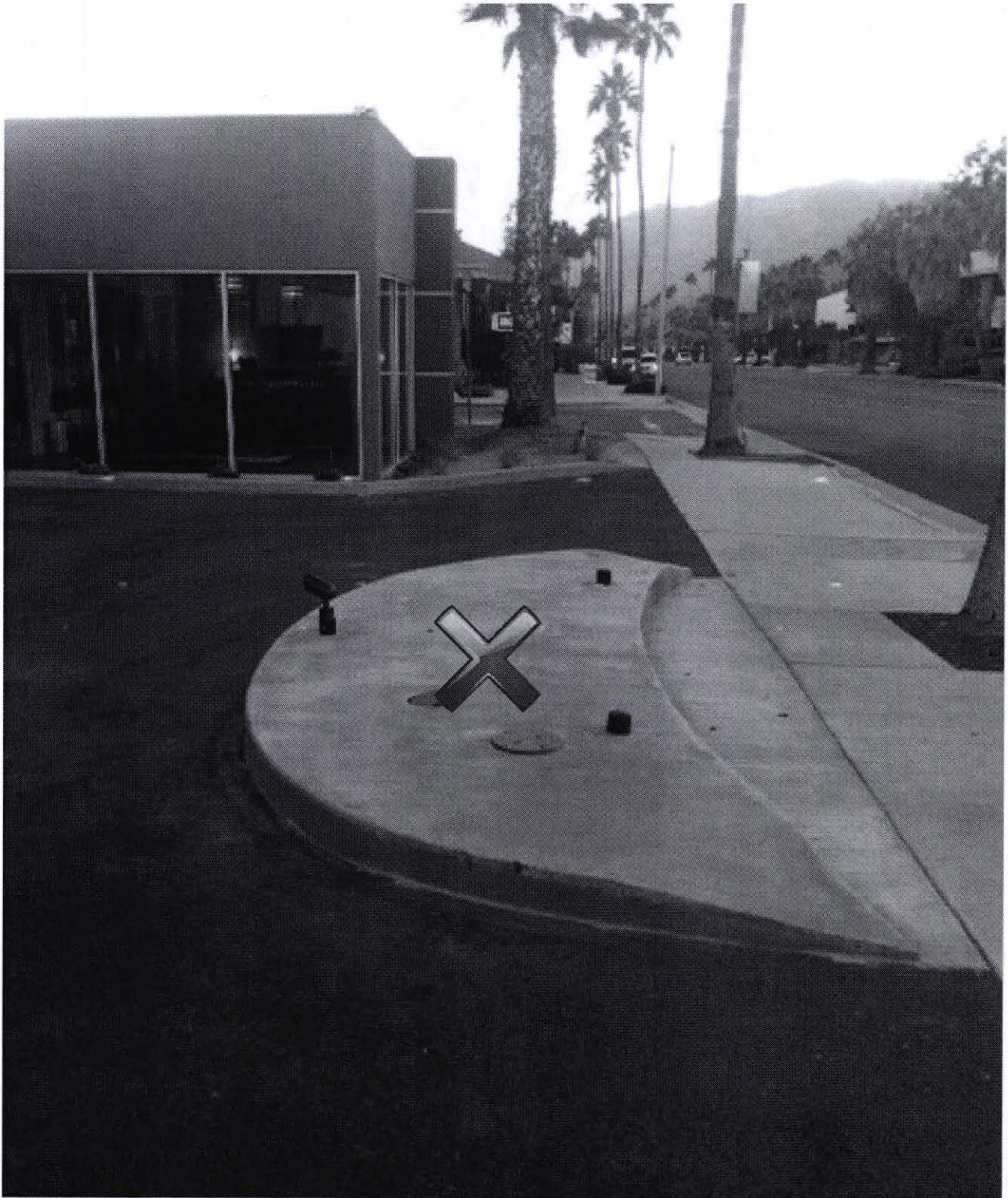
EXHIBIT "A"

(Artwork)



*Blue McRight "Lawn Chair"
7'6" long by 5' high by 42" wide, steel upholstered with artificial grass*

EXHIBIT "B"
ART WORK LOCATION
1466 NORTH PALM CANYON DRIVE



ACKNOWLEDGMENT

State of California
County of _____

On _____ before me, _____,
(here insert name and title of the officer)

personally appeared _____

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 _____

(Seal)