



CITY COUNCIL STAFF REPORT

DATE: DECEMBER 17, 2014

UNFINISHED BUSINESS

SUBJECT: APPROVE A PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS WITH PALM SPRINGS PROMENADE, LLC RELATED TO THE ACQUISITION OF THE EVENT CENTER SPACE, PROVISION OF ADDITIONAL ON-SITE PARKING AND IMPROVED PARKING MANAGEMENT RIGHTS, ALLOCATION AND SHARING OF CERTAIN COSTS AND FEES; AUTHORIZE ADDITIONAL CITY REQUESTED EVENT CENTER AND PARKING STRUCTURE WORK; AND APPROVAL OF A PARTIAL RELEASE OF THE PERFORMANCE DEED OF TRUST FOR BLOCK C-1 AND BLOCK A OF PALM SPRINGS DOWNTOWN PROJECT.

FROM: David H. Ready, City Manager

BY: Community & Economic Development Department

SUMMARY

On September 29, 2011, the City and Palm Springs Promenade, LLC ("Developer") entered into a Project Financing Agreement ("PFA"), as amended, that relates to the financing, development, redevelopment, creation, and refurbishment of Public and Private Improvements in the Desert Fashion Plaza area of downtown Palm Springs.

This action recommends approval of adding additional public parking for the new Downtown Palm Springs redevelopment project, apportions fee expenditures between the City and Developer, approves additional City requested change orders associated with the Event Center/Parking Structure, and authorizes partial releases of the Performance Deed of Trust to secure construction loans for the project.

RECOMMENDATION:

1. Approve Purchase Agreement and Escrow Instructions with Palm Springs Promenade administered by First American Title Company, Escrow Holder, File No.: RIW-4765919 (SE), Dated November 10, 2014.

ITEM NO. 4A

2. Authorize the provision of additional City requested work consistent with the Scope of Work Related to the Event Center Preparation and Parking Structure Upgrades, Approved by City Council on November 17, 2014.
3. Approve a Partial Release of Performance Deed of Trust By and Between the City of Palm Springs (Beneficiary) and Palm Springs Promenade, LLC (Trustor) for Block A and Block C-1.
4. Authorize the City Manager to execute all documents and/or agreements in a form approved by the City Attorney necessary or appropriate to implement the approvals and authorizations described in this Recommendation.

Discussion

Event Center and Additional Parking within the Project Area

At the meeting of September 17, 2014, City Council approved the purchase of the Event Center, identified as Block E in the Project Financing Agreement as amended (PFA), for a discounted price of \$4,500,000, for use as public open space. This parcel has been valued at \$5,300,000 based on a valuation report performed by CBRE Appraisal Services. The CBRE value was based upon the existing Specific Plan density and land use allowance, and the entitlement of the parcel for 65,000-70,000 square feet of commercial space plus 165 upper level residential units.

Moreover, as part of the agreement, the Developer agreed to use the proceeds of the sale of Block E for the construction of 188 +/- parking spaces below Block B, thereby increasing the total amount of parking within the project area approximately 20% by relieving the City's approximately 1,000 on-site spaces from the additional parking burden related to serving future development on Block B (Pursuant to the PFA, all development within the boundaries of the adopted specific plan which conforms to the specific plan is considered adequately served by existing parking and the Developer is not required to provide additional parking to serve development that is consistent with the specific plan. Thus, any additional parking provided in conjunction with development projects on the project site will have the effect of increasing available public parking in the City's parking structure).

In an effort to further increase the amount of available public parking, and while the project is currently under construction, staff is proposing an additional 108 +/- parking spaces below the surface areas of Block F. To accomplish this, we propose a new agreement for the purchase of the Event Center Space for the full value (an additional \$800,000), requiring the Developer to build not 188 new spaces, rather, 296 +/- additional underground parking spaces at the site. The new parking spaces will be constructed in conjunction with the development of Block B and Block F and will further relieve, by a cumulative 30%, the City's approximately 1,000 on-site spaces from the additional parking burden related to serving future development on Block B and Block F.

Additionally, where PFA 4 authorized an amendment to the Grant Deed that conveyed the Parking Facilities to authorize the City the discretion to prohibit overnight parking (as the City Council may designate by resolution) in Block A between the hours of 3:00 am and 6:00, the proposed Purchase Agreement and Escrow Instructions will expand the City's discretion regarding its ability to manage the use of the parking structure. The City's ability to prohibit parking between 3:00 am and 6:00 would include Block A and the city owned parking areas south of Block F and impose time restrictions for all parking areas in the parking structure with the exception of the top floor of the parking structure. These additional negotiated rights will allow the City to provide greater "free parking management.

Change Order improvements

On November 17, 2014, the City Council approved a Change Order Log and Additional Scope of Work for work undertaken by the Developer at the request of and on behalf of the City pursuant to the PFA, as amended. As described in that report, the City will scope, design, bid, and contract for the construction of the Event Center separately from the Project Financing Agreement, but because of the inter-relatedness of the site with the surrounding private development, a number of activities need to be or have been undertaken on the City's behalf. These are infrastructure improvements that are required and will have been already completed by the time the City undertakes the construction of the Event Center on its own. This scope of work is attributed to and benefits the Event Center. Thus the actions on tonight's agenda includes authorization for the completion of the work described in the Project Change Order Log (PCO Log) and Scope of Work reviewed and approved on November 17, 2014.

Development Mitigation Fees

In the Original PFA, the City agreed to waive all development mitigation fees associated with the Public Improvements, provide credits or waivers of development mitigation fees of the City to the extent of prior improvements and facilities had been previously developed, and "cooperate with" the Developer "in efforts to mitigate and reduce" development mitigation fees.

Although the final fees associated with the project cannot be calculated at this time, consistent with the general intent of these provisions, Purchase Agreement and Escrow Instructions provide for the following allocation and sharing of fees and related costs associated with the PFA for all phases of the Project, west of Palm Canyon Drive, and subject to the Museum Market Plaza Specific Plan:

Fees Paid to Outside Agencies/Funds Established by Ordinance

	<u>Developer</u>	<u>City</u>
School Fee	100%	0%
TUMF Fee	100%	0%
Drainage Fee	100%	0%
Plan Check	100%	0%
Sewer Inspection	100%	0%
Sewer Main	100%	0%
Sewer Agreement	100%	0%
Sewer Connection Fee	100%	0%
Public Arts Fee	50%*	50%
Quimby Parks Fee	50%	50%
Developer and City Litigation Costs	50%	50%

Fees Paid to City for Entitlement Services

Building Permit	50%	50%
SMIP Tax	50%	50%
Microfilm	50%	50%
Permit Issuance	50%	50%
Construction Tax	50%	50%
Dbf. Fee/RMW/Misc.	50%	50%
Construction Permit	50%	50%
Misc. Filing Fee	50%	50%
Planning Fee	50%	50%
Technology Fee	50%	50%
General Plan Maint. Fee	50%	50%

*(Developer can receive credit for public art approved as part of the project)

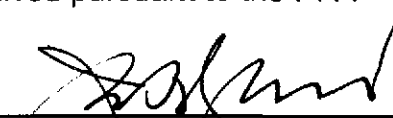
Performance Trust Deed

Staff is also recommending approval of a Partial Release of the Performance Deed of Trust for Block A and Block C-1. PFA, as amended, created the ability of the City to approve partial releases of the Performance Deed of Trust lien, pursuant to certain conditions, and only as blocks receive financing and ready to proceed with construction. As part of the PFA, the Developer provided the City with a Performance Trust Deed to secure its obligations to complete the Private Improvements. In order to accommodate funding of construction loans for the project, the City will incrementally re-convey the Performance Trust Deed on a parcel by parcel basis concurrently with the recordation of any loan to fund Private Improvements on each parcel, as long as 100% of the costs to complete the improvements are fully funded by the construction loan and/or Developer

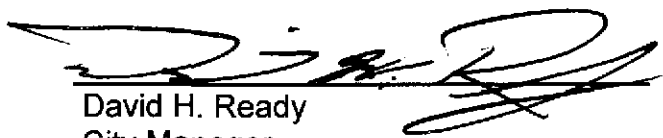
funds as determined by the lender and reviewed by a financial consultant identified by the City Manager to perform the review.

Fiscal Analysis

The Amendment to the Escrow Instructions increases the City's expenditure on the Event Center by \$800,000, to be paid for from City's "Property Acquisition" Account Number 260-4500-59437-Measure J. With the exception of Attorney's fees, the City's portions of fees are not due to third parties; rather they are "in-house" fees that will be waived pursuant to the PFA



John S. Raymond, Director of
Community & Economic Development



David H. Ready
City Manager



Douglas C. Holland
City Attorney

- Attachments:
Purchase Agreement and Escrow Instructions
Partial Release of Performance Deed of Trust

PARTIAL RELEASE OF PERFORMANCE DEED OF TRUST

This AGREEMENT FOR A PARTIAL RELEASE OF PERFORMANCE DEED OF TRUST ("Agreement"), made effective as of the date fully executed, is by and between the City of Palm Springs, a California municipal corporation and charter city ("City"), and Palm Springs Promenade, LLC, a California limited liability company ("Developer"), with reference to the following:

A. City is the beneficiary under a Performance Trust Deed duly recorded with the Official Records of Riverside County, California ("Trust Deed"), which encumbers, among other properties, the real property described on Exhibit 1 attached hereto ("Block C-1"), and the real property described on Exhibit 2 attached hereto ("Block A").

B. The purpose of the Trust Deed is to promote and secure development of improvements within certain downtown areas. Blocks C-1 and A were originally slated primarily for commercial and office facilities, however, as redevelopment concepts evolved, it was determined that, in terms of economic revitalization, it would be preferable to develop a new first class hotel on Block C-1, with commercial and office facilities on Block A. It was also determined that implementation of such concepts would substantially increase redevelopment and revitalization costs.

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. In order to effectuate purposes of the Trust Deed and promote economic revitalization, City agrees (a) that concurrently with the recordation of a construction loan for the hotel (and related improvements) on Block C-1, City will release and reconvey the lien of the Trust Deed on Block C-1 so long as one hundred percent (100%) of estimated costs to complete the hotel are fully funded by the construction loan and/or Developer funds, as determined by the construction lender and confidentially reviewed by a financial consultant identified by the City Manager, and (b) that concurrently with the recordation of a construction loan for the commercial and office facilities (and related improvements) on Block A, City will release and reconvey the lien of the Trust Deed on Block A so long as one hundred percent (100%) of estimated costs to complete such facilities are fully funded by the construction loan and/or Developer funds, as determined by the construction lender and confidentially reviewed by a financial consultant identified by the City Manager.

2. For purposes of development, City agrees (a) that Developer may convey title to Block C-1 to a new development entity so long as such new entity is controlled by Developer or current members of Developer and agrees to assume and comply with any and all obligations of Developer to City with respect to Block C-1, and (b) that Developer may convey title to Block A to a new development entity so long as such new entity is controlled by Developer or current members of Developer and agrees to assume and comply with any and all obligations of Developer to City with respect to Block A.

3. This Agreement represents the entire agreement and understanding of the parties with respect to the matters contained herein, and there are no other agreements or understandings with respect to such matters other than as set forth herein.

4. Each party agrees to and shall do and perform such other and further acts and execute and deliver such other and further documents as may be reasonably necessary, expedient or convenient to effectuate the intents and purposes hereof.

5. Whenever this Agreement contemplates approval or consent of any party, such approval or consent shall not be unreasonably withheld, conditioned or delayed.

6. Each of the recitals herein and exhibits attached hereto are incorporated into and made a part of this Agreement.

7. In the event of any dispute, arbitration or litigation arising out of this Agreement, or the breach or performance of it, the prevailing party shall be entitled, in addition to injunctive relief and damages as appropriate, to an award of reasonable attorney's fees and costs.

8. Each party represents and warrants to the other that such party has full right, power and authority to execute and enter into this Agreement, and perform in accordance with the terms hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement and made it effective as and when specified above.

DEVELOPER: PALM SPRINGS PROMENADE, LLC
A California limited liability company
By: _____
Title: _____
Dated: _____

CITY: CITY OF PALM SPRINGS
A California municipal corporation and charter city
By: _____
Title: _____
Dated: _____

ATTEST: _____
City Clerk

APPROVED AS
TO LEGAL FORM: _____
City Attorney



First American Title Company
500 South Palm Canyon, Suite
210 Palm Springs, CA 92264
760)469-8895
Fax - (866)302-6799

PURCHASE AGREEMENT AND ESCROW INSTRUCTIONS

To: **First American Title Company, Escrow Holder**
Sharon Elkins, Escrow Officer

File No.: **RIW-4765919 (SE)**
Date: **November 10, 2014**
Estimated Closing Date: **December 09, 2014**
Purchase Price: **\$5,300,000.00**

Re: **Block E of Palm Springs Promenade, Palm Springs, CA 92262 ("Property")**
City of Palm Springs ("Buyer")
Palm Springs Promenade, LLC ("Seller")

This escrow has been opened pursuant to Section 3 that certain agreement entitled "**Fourth Amendment to Project Financing Agreement**" ("PFA 4") dated as of **October 30, 2014** by and between the above Buyer and Seller (collectively the "Parties") on the Property described above and as further legally described in the Preliminary Report issued in connection with this escrow. The terms and conditions of PFA 4 and the terms of this Purchase Agreement are incorporated herein by reference and also constitute instructions to Escrow Holder.

The Buyer and Seller agree that Block E, as shown on the attached Site Plan (Exhibit "A"), shall be conveyed by Seller and acquired by Buyer in fee and without condition or limitation except as expressly provided in the Instructions and as provided under PFA 4. Block E shall be improved, used, operated, and maintained in accordance with the following:

A. Escrow. An escrow ("Escrow") has been be opened with a local escrow office of First American Title Insurance Company ("Escrow Holder"), and this Purchase Agreement and Escrow Instructions ("Instructions") and any additional instructions reasonably requested by Escrow Holder, shall be promptly executed and delivered by the parties. The close of Escrow shall occur within 10 days of the execution and delivery of the Instructions and Block E will then be conveyed by seller to Buyer in accordance with the terms hereof and the terms of the Project Financing Agreement.

B. Value. Prior to execution of Instructions, City requested and received a Valuation Report dated January 17, 2014, which valued Block E at the sum of \$5,300,000. City will pay \$5,300,000 for Block E and such sum will be delivered at close of Escrow. Said funds shall be used to create additional parking to the extent provided in Section C below.

C. Additional Parking. Developer agrees that all funds received per Section B above, will be deposited directly into the Private Improvement account and be released, upon authorizations from the IFC Agent and will be used to construct approximately 188+/- new underground parking spaces below surface areas of Blocks B and B-1, Market Street, and Andreas Street and 108+/- parking spaces below surface areas of Block F. Such new spaces are depicted on Exhibit B attached hereto and will be constructed approximately concurrently with streets to be constructed adjacent to and in the vicinity of Blocks B and F. Deposit of the funds per Section B above into the Private Escrow Improvement account and use of such funds as provided in this Section C will satisfy the Developer's obligation to deposit \$2,000,000.00 into the Private Escrow Account as required under Section 2.8(6) of the PFA.

D. Use of Parking. The new parking spaces below Blocks B and B-1 as described above will be designated for use by occupants of development constructed within Blocks A, B, B-1, C, C-1, D, F, and G, and the guests and invitees of the occupants of such development, and the new parking spaces below Block F will be designated for use by occupants of development constructed within Block F and the guests and invitees of the occupants of such development.

E. Title. Prior to execution of the Instructions, City received a current Preliminary Title Report ("PTR") issued by First American Title Insurance Company ("Title Company") covering Block E, and copies of all recorded exceptions to title shown by the PTR. City has approved the PTR and all such exceptions, and will take title subject to such exceptions and standard title insurance policy exclusions and exceptions. At close of Escrow, City will receive a CLTA title insurance policy issued by the Title Company in the face amount of \$5,300,000.

F. Amendment of Grant Deed for Parking. The Parties agree to amend the Grant Deed conveying the Parking Facilities as provided in the PFA to allow the City Council with the discretion to (1) prohibit parking in the underground parking area in Block A and all parking on and within the city owned parking areas south of Block F between the hours of 3:00 am and 6:00 am as the City Council may designate by resolution and (2) place time limit restrictions on parking in the Parking Facilities (but not including the top floor of the parking structure) after consulting with Seller.

G. Cooperation on Fees and Costs. Pursuant to Section 2 of the PFA, the Buyer agreed to waive all development mitigation fees associated with the Public Improvements, provide credits or waivers of development mitigation fees of the Buyer to the extent of prior improvements and facilities had been previously developed, and "cooperate with" Seller "in efforts to mitigate and reduce" development mitigation fees. Consistent with the general intent of these provisions, the Parties agree to the following allocation and sharing of fees and related costs associated with the development of the DFP area:

Fees Paid to Outside Agencies/Funds Established by Ordinance

	Seller:	City:
School Fee	100%	0%
TUMF Fee	100%	0%
Drainage Fee	100%	0%
Plan Check	100%	0%
Sewer Inspection	100%	0%
Sewer Main	100%	0%
Sewer Agreement	100%	0%
Sewer Connection Fee	100%	0%
Public Arts Fee	50% *	50%
Park (Quimby) Fee	50%	50%
Buyer and Seller Litigation Expenses	50%	50%

Fees Paid to City for Entitlement Services

Building Permit	50%	50%
Plan Check	50%	50%
SMIP Tax	50%	50%
Microfilm	50%	50%
Permit Issuance	50%	50%
Construction Tax	50%	50%
Dbl. Fee/RMW/Misc.	50%	50%
Construction Permit	50%	50%
Misc. Filing Fee	50%	50%
Planning Fee	50%	50%
Technology Fee	50%	50%
General Plan Maint. Fee	50%	50%

*Developer can receive credit for public improvements approved as part of the project

It is also anticipated that additional change orders for Public Improvements will be required during the period such improvements are constructed and for which the Buyer will be obligated. In the event the City Manager determines that it is reasonable or appropriate to waive, offset, or otherwise pay all or a portion of any of Seller's fee obligations as provided in this Section G, any amounts waived, offset, or otherwise authorized by City Manager shall be deemed a dollar for dollar credit and offset to any amounts owed to Seller for any change order to the Public Improvements for which the Buyer may otherwise be obligated to pay.

H. The provisions of Sections 3A, 3B, 3C, and 10 of the Fourth Amendment of the PFA are deemed amended and superseded by the provisions of these Instructions including Sections A, B, C, D, and E above. The Buyer and Seller ratify the provisions of Sections 3D, 3E, 3F, 3G, and 3H of PFA 4 and confirm that such provisions remain in full force and effect.

First American Title Company will act as Escrow Holder for the Parties pursuant to the applicable section of said Agreement subject to the following term and conditions.

General Provisions: Escrow Holder's duties and responsibilities in this escrow are subject to the General Provisions. To the extent that the Instructions are inconsistent with the General Provisions, the terms of the General Provisions shall control as to Escrow Holder's rights, duties, and responsibilities.

Additional Grant Deed Terms: The Grant Deed shall include the following language (in addition to usual and customary terms and terms appropriate and consistent with the Instructions): "This Grant Deed and the conveyance herein is subject to terms and provisions of Sections 3.D, 3.E, 3.F and 3.H contained in an agreement entitled "Fourth Amendment to PFA" between the City of Palm Springs, a California municipal corporation and charter city, and Palm Springs Promenade, LLC, a California limited liability company, which agreement is on file in the records of the City Clerk of the City of Palm Springs."

Clarification of Purchase Agreement Terms:

Sales Price: The sales price of the Real Property is **\$5,300,000.00**

Opening Date: The opening of escrow date has been determined to be **November 6, 2014.**

Close of Escrow: The estimated settlement date is **December 29, 2014.**

Title Approval: Buyer acknowledges receipt of a copy of the Preliminary Report issued in connection with this escrow for the above-referenced property and containing the legal description of the property which is the subject of this escrow.

Buyer approves the contemplated policy form and acknowledges that the Policy of Title Insurance shall be subject to all exceptions shown on the Preliminary Report except:

1. Delinquent general and special taxes, assessments and/or bonds
2. Voluntary and/or involuntary liens created by Seller or prior owner not assumed by Buyer
3. Deed(s) of Trust not assumed by Buyer
4. The following items which are specifically disapproved by Buyer: _____
Buyer initial(s): _____

(Buyer: please list above the numbers of the specific exceptions on the preliminary report which are disapproved and initial.)

The policy shall also be subject to any deeds of trust and or other voluntary liens executed by Buyer as part of this escrow and general and special taxes and assessments which as of the date of close of escrow are a lien not yet due and payable.

Buyer further acknowledges that First American Title Company has not examined the public records for any involuntary liens that may be of record against the undersigned Buyer(s).

Buyer understands that, should there be any involuntary liens recorded against the Buyer at the time Buyer acquires title, these involuntary liens will become liens on the title to the property.

Estimated Settlement Statement: Upon Close of Escrow, Escrow Holder is instructed to disburse in accordance with the executed "Estimated Settlement Statement" without further instruction from the parties hereto.

Local Transfer Forms: Buyer and Seller acknowledge that local ordinances may require the completion and submittal of certain certificates or applications, orPage 2 of 3 physical modifications such as sewer laterals, in

connection

with the transfer of ownership of the subject property, referred to herein as "Local Transfer Obligations." Buyer and Seller further acknowledge and agree that the completion or submittal of these Local Transfer Obligations

shall be handled outside of escrow and are not the responsibility of Escrow Holder. Specifically, Escrow Holder is not responsible for: 1) identifying or advising regarding any such requirements, 2) furnishing, completing or submitting forms, or 3) paying or disbursing any funds in connection therewith. Buyer and Seller authorize and instruct Escrow Holder to close this escrow without inquiry or concern regarding the status of any Local Transfer Obligations.

In the event Escrow Holder agrees to receive any forms for forwarding to other parties or governmental agencies, Escrow Holder will be performing such actions as an accommodation only, and shall have no responsibility for the sufficiency or completeness of the documents, nor any responsibility for follow up or correction of any deficiencies. If Escrow Holder has transmitted any type of filing fee on behalf of the parties by its check and the check remains un-negotiated and becomes stale-dated or is returned to Escrow Holder by the agency, the parties instruct Escrow Holder to void its check and disburse the funds to the Buyer. Any related forms that are returned to Escrow Holder shall also be forwarded to the Buyer.

Satisfaction of Executory Terms: Pursuant to the Purchase Agreement, the consummation of the escrow is subject to satisfaction of certain executory terms and provisions which are not the responsibility of Escrow Holder. The Parties shall be solely responsible for determining such satisfaction and the Buyer and Seller execution of the Estimated Closing Statement, deposit of Grant Deed and funds for closing with Escrow Holder shall be deemed that such executory terms have been fully satisfied or are otherwise waived (as to Escrow Holder's duties) and Escrow Holder's receipt of the above described documents shall constitute a direction to Escrow Holder to close the Escrow. This provision is for the benefit of Escrow Holder only and not to be deemed a waiver or release of contractual obligations between the principals hereto.

Funds Held Fee: In the event that funds remain in escrow for any reason more than 90 days after the close of escrow, or if escrow has not closed 90 days after the estimated closing date set forth in the existing escrow instructions to Escrow Holder ("Dormancy Period"), Escrow Holder will make reasonable efforts to notify the parties regarding same. If funds remain in escrow beyond the Dormancy Period, a monthly "funds held fee" of \$25.00 shall accrue for each month or fraction of a month thereafter that the funds, or any portion thereof, remain in escrow. Escrow Holder is instructed to deduct the monthly funds held fee directly from the funds held in escrow on a monthly or other periodic basis (i.e. quarterly, semi-annually, etc.). The parties agree to pay these sums to compensate Escrow Holder for administering, monitoring, accounting, reminders and other notifications and processing of the funds so held in accordance with this provision.

Document/Funds Delivery: After close of escrow, all documents, funds and statements are to be sent to the undersigned at the addresses provided to Escrow Holder.

SELLER:

Palm Springs Promenade, LLC, a California limited liability company

By: John Wessman, Managing Partner

Forwarding Address: _____

Phone: _____

BUYER:

City of Palm Springs, a California municipal corporation and charter city

By: David H. Ready, City Manager

Forwarding Address: _____

Phone: _____
