



Planning Commission Staff Report

DATE: April 8, 2015

SUBJECT: A REQUEST BY FUNKEY BAR, INC FOR AN ART MURAL APPLICATION FOR AN EXISTING MURAL ON THE COMMERCIAL BUILDING AT 340 N. PALM CANYON DRIVE. (CASE 15-002 MUR). (FF)

FROM: Flinn Fagg, AICP, Director of Planning Services

SUMMARY

This is a request for recommendation of approval of an Art Mural Application for an existing mural on the commercial building at 340 N. Palm Canyon Drive.

RECOMMENDATION:

Recommend approval of the mural to City Council, subject to the Conditions of Approval included as Exhibit "A" (attached).

ISSUES:

- The mural was completed in October 2013 prior to the adoption of the City's mural ordinance; however, the applicant did receive AAC approval to repaint the building to its current color in January 2013.

BACKGROUND:

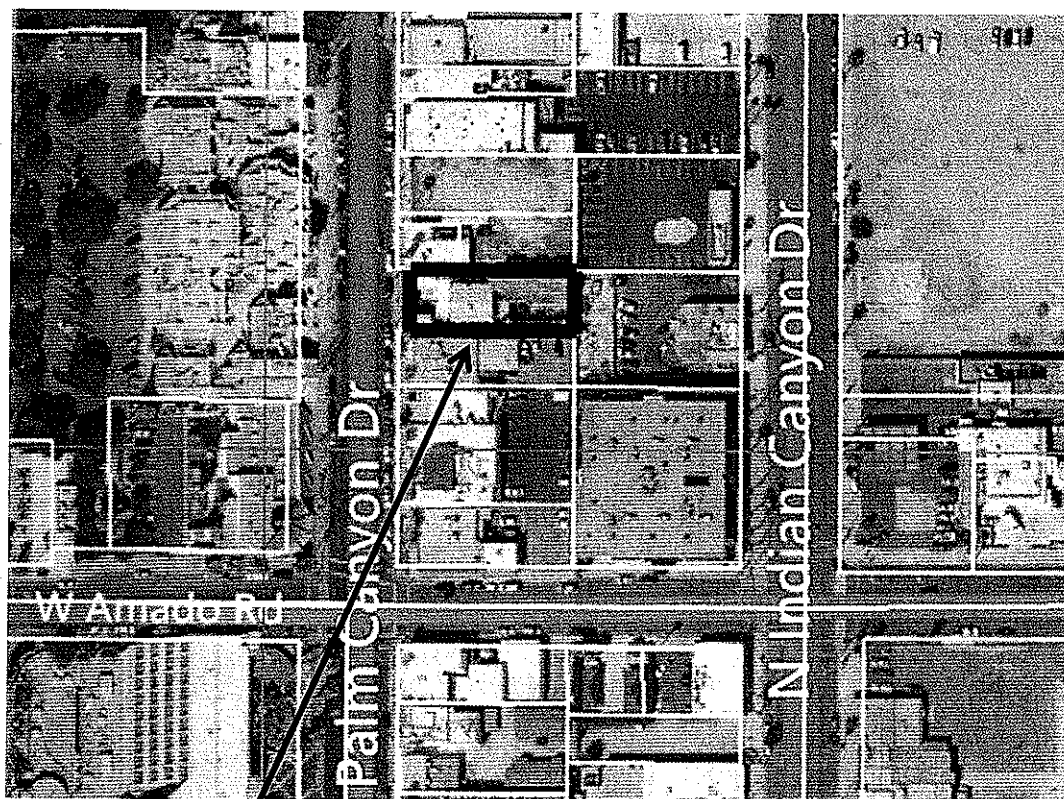
<i>Related Relevant City Actions by Planning, Fire, Building, etc.</i>	
01/07/13	The AAC recommended approval of a building repaint (Case No. 3.3527 MAA).
06/04/14	The City Council approved Ordinance #1853, establishing the regulations and approval process for art murals.
03/23/15	The AAC reviewed the application (15-002 MUR) and recommend approval to the Planning Commission, subject to conditions.

<i>Most Recent Ownership</i>	
05/05/06	Project 92

<i>Field Check</i>	
03/17/15	Staff visited site to observe existing conditions

Notification	
03/10/15	Notice sent to all property owners within 500 feet of the mural site for the Planning Commission meeting scheduled for April 8, 2015.

Details of Application Request	
Site Area	
Net Area	0.17 acres



Subject Site: 340 N. Palm Canyon Drive

Surrounding Property	Existing General Plan Designations	Existing Land Use	Existing Zoning Designations
Subject Property	CBD (Central Business District)	Cocktail Lounge Use	CBD (Central Business District)
North	CBD (Central Business District)	Liquor Store Use	CU (Civic Uses) CBD (Central Business District)
South	CBD (Central Business District)	Restaurant Use	CBD (Central Business District)
East	CBD (Central Business District)	Restaurant/Retail Use	CBD (Central Business District)

<i>Surrounding Property</i>	<i>Existing General Plan Designations</i>	<i>Existing Land Use</i>	<i>Existing Zoning Designations</i>
West	CBD (Central Business District)	Office/Retail Use	CBD (Central Business District)

ANALYSIS:

The applicants have requested approval of an existing mural that is located on the west façade of the commercial building at 340 N. Palm Canyon Drive. The mural is entitled "The Mountain Charmers," and depicts two females holding a California kingsnake. The mural was created by artists Angelina Christina and FinDAC in October 2013. The installation of the mural preceded the City's mural ordinance, which was adopted in June 2014; approval of this application by City Council will satisfy the requirements of the mural approval process.

The approval process for murals is identified in Section 5.81.030 of the Palm Springs Municipal Code; the application must be reviewed by AAC, the Planning Commission, the Public Arts Commission, and is then forwarded to City Council for action. The AAC reviewed the mural on March 23, 2015, and recommended approval of the application subject to the conditions proposed by staff. The AAC found that the mural was in harmony with the color and architecture of the building. The Public Arts Commission is scheduled to review the mural at their meeting of April 9, 2015; the recommendations of the Planning Commission and the Public Arts Commission will be forwarded to the City Council for consideration.

As part of the approval criteria listed in Section 5.81 of the code, the Planning Commission is to review mural applications for compatibility as to location and placement on the structure, and other applicable requirements of the zoning code. The mural has been reviewed under the Architectural Review criteria listed in Section 94.04.00(D), as detailed under the Findings section listed below.

The applicant has submitted a maintenance plan for the mural, as required by Section 5.81.020 of the Palm Springs Municipal Code. The maintenance plan indicates that a UV-refracting clear coat has been applied to the mural to reduce fading, and that the façade is gently pressure washed on a regular basis to remove dust and grime. The applicant indicates that in the event the mural is defaced or graffiti is painted on the wall, the artists would be engaged to repair the mural.

FINDINGS – ART MURAL REGULATIONS AND REQUIREMENTS:

Palm Springs Municipal Code Section 5.81.040 requires that the owner of the property on which the mural is placed shall deliver to the City a covenant for recordation, providing that the mural will be maintained at all times in full compliance with code

requirements. The covenant shall be required as a condition of approval of this request.

Palm Springs Municipal Code Section 5.81.050 outlines the following regulations for art murals:

1. *The mural shall remain in place, without alternation, for a minimum period of two years.*

If approved, the mural shall be required to remain in place for two years from the date of City Council approval. The two-year requirement will be included as a standard condition of approval.

2. *No part of a mural shall exceed the height of the structure to which it is tiled, painted, or affixed.*

The mural occupies the majority of the front façade of the building facing Palm Canyon Drive. The mural does not exceed the height of the structure.

3. *No part of a mural shall extend more than six (6) inches from the plane of the wall upon which it is tiled, painted, or affixed.*

The mural is painted directly on the building surface, and does not project from the wall plane.

4. *No mural may consist of, or contain, electrical or mechanical components, or changing images (moving structural elements, flashing or sequential lights, lighting elements, or other automated methods that result in movement, the appearance of movement, or change of mural image or message, not including static illumination turned off and back on not more than once every 24 hours).*

The mural does not consist of or contain any electrical or mechanical components.

5. *No mural shall be placed on a lot that is improved with only one single-family residential structure and accessory structures.*

The mural is painted on a commercial building, and is located within a commercial zoning district.

6. *No mural shall be arranged and illuminated in a manner that will produce light intensity of greater than three foot candles above ambient lighting, as measured at the property line of the nearest residentially zoned property.*

A condition of approval will be included to limit the intensity of light in accordance with code requirements.

7. *Digitally printed image murals shall receive approval of both the Fire Department and Department of Building and Safety.*

The mural is directly painted on the building façade, and does not use any digitally printed images. No approval shall be required from the Fire Department or the Department of Building and Safety.

8. *A mural shall not be created without the final authorization of the Palm Springs City Council.*

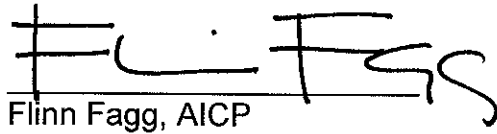
The mural was established in 2013 prior to the adoption of the City's regulations for murals. However, approval of this application will bring the mural into conformance to the City's approval process requirements. Should the City Council deny this application, the mural will need to be removed and the building repainted.

FINDINGS – ARCHITECTURAL REVIEW REQUIREMENTS:

In addition the regulations listed previously, the Architectural Advisory Committee shall review the submitted application for conformance to the applicable requirements listed in Section 94.04.00(D), as discussed in the table below:

Item	Guideline	Conforms?	Staff Evaluation
1	Is the proposed development compatible with the character of adjacent and surrounding developments?	No	While the dark paint color used on the building differs greatly from the color of surrounding buildings, the color was recommended for approval by the AAC in January 2013. The scale of the mural is appropriate relative to the scale of the façade, but exceeds the scale of most other visual elements or building decoration of adjacent and surrounding buildings.

Item	Guideline:	Conforms?	Staff Evaluation:
2	Is the proposed development of good composition, materials, textures, and colors?	Yes	As noted above, the paint color of the building differs dramatically from surrounding properties, but works in harmony with the other elements of the façade. The mural assists in enlivening a building façade with little fenestration or architectural detailing.
3	Harmonious relationship with existing and proposed adjoining developments and in the context of the immediate neighborhood/community, avoiding both excessive variety and monotonous repetition, but allowing similarity of style, if warranted	N/A	N/A
4	Maximum height, area, setbacks and overall mass, as well as parts of any structure (buildings, walls, screens, towers or signs) and effective concealment of all mechanical equipment	N/A	N/A
5	Building design, materials and colors to be sympathetic with desert surroundings	Yes	The dark wall color is not generally chosen for a desert location, but has received approval previously.
6	Harmony of materials, colors and composition of those elements of a structure, including overhangs, roofs, and substructures which are visible simultaneously	Yes	The mural generally works in harmony with the architectural features of the building. The two female figures frame the entrance to the business; the body of the snake drapes from the projecting sign just under the cornice line at the north end of the building, frames the arch of the central doorway, and then trails down the awning at the south end of the building. The colors of the mural, signage, awnings, and trim are consistent.

A handwritten signature in black ink, appearing to read 'Flinn Fagg', written over a horizontal line.

Flinn Fagg, AICP
Director of Planning Services

Attachments:

1. Draft AAC Minutes – March 23, 2015
2. Mural Photograph
3. Justification Letter and Maintenance Plan

RESOLUTION NO. _____

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF PALM SPRINGS, CALIFORNIA, RECOMMENDING APPROVAL OF CASE NO. 15-002 MUR FOR AN ART MURAL ON THE COMMERCIAL BUILDING AT 340 N. PALM CANYON DRIVE, ZONE C-B-D.

WHEREAS, Funkey BAR, Inc. ("Applicant") has filed an application with the City pursuant to Section 5.81 of the Palm Springs Municipal Code for the approval of an existing art mural on the commercial building at 340 N. Palm Canyon Drive, Zone C-B-D; and

WHEREAS, on March 23, 2015, the Architectural Advisory Committee met and voted to recommend approval of the application to the Planning Commission, subject to conditions; and

WHEREAS, the application is not considered a project pursuant to the terms of the California Environmental Quality Act ("CEQA"), as it will not cause a direct or indirect physical change in the environment pursuant to Section 21065 of the Public Resources Code; and

WHEREAS, notice was provided to all property owners within 500 feet of the location of the mural prior to the Planning Commission meeting in accordance with Section 5.81.030(a) of the Palm Springs Municipal Code; and

WHEREAS, the Planning Commission has carefully reviewed and considered all of the evidence presented in connection with the hearing on the application, including, but not limited to, the staff report, and all written and oral testimony presented.

THE PLANNING COMMISSION DOES HEREBY FIND AS FOLLOWS:

SECTION 1. Pursuant to the California Environmental Quality Act (CEQA), the mural is not a project under Section 21065 of the Public Resources Code.

SECTION 2. Pursuant to Section 5.81.050, "Regulations," of the Palm Springs Municipal Code, the Planning Commission finds:

1. *The mural shall remain in place, without alternation, for a minimum period of two years.*

If approved, the mural shall be required to remain in place for two years from the date of City Council approval. The two-year requirement will be included as a standard condition of approval.

2. *No part of a mural shall exceed the height of the structure to which it is tiled, painted, or affixed.*

The mural occupies the majority of the front façade of the building facing Palm Canyon Drive. The mural does not exceed the height of the structure.

3. *No part of a mural shall extend more than six (6) inches from the plane of the wall upon which it is tiled, painted, or affixed.*

The mural is painted directly on the building surface, and does not project from the wall plane.

4. *No mural may consist of, or contain, electrical or mechanical components, or changing images (moving structural elements, flashing or sequential lights, lighting elements, or other automated methods that result in movement, the appearance of movement, or change of mural image or message, not including static illumination turned off and back on not more than once every 24 hours).*

The mural does not consist of or contain any electrical or mechanical components.

5. *No mural shall be placed on a lot that is improved with only one single-family residential structure and accessory structures.*

The mural is painted on a commercial building, and is located within a commercial zoning district.

6. *No mural shall be arranged and illuminated in a manner that will produce light intensity of greater than three foot candles above ambient lighting, as measured at the property line of the nearest residentially zoned property.*

A condition of approval will be included to limit the intensity of light in accordance with code requirements.

7. *Digitally printed image murals shall receive approval of both the Fire Department and Department of Building and Safety.*

The mural is directly painted on the building façade, and does not use any digitally printed images. No approval shall be required from the Fire Department or the Department of Building and Safety.

8. *A mural shall not be created without the final authorization of the Palm Springs City Council.*

The mural was established in 2013 prior to the adoption of the City's regulations for murals. However, approval of this application will bring the mural into conformance to the City's approval process requirements. Should the City Council deny this application, the mural will need to be removed and the building repainted.

SECTION 3. Pursuant to Section 94.04.00(D) of the Palm Springs Zoning Code, the Planning Commission finds:

1. *Is the proposed development compatible with the character of adjacent and surrounding developments?*

While the dark paint color used on the building differs greatly from the color of surrounding buildings, the color was recommended for approval by the AAC in January 2013. The scale of the mural is appropriate relative to the scale of the façade, but exceeds the scale of most other visual elements or building decoration of adjacent and surrounding buildings.

2. *Is the proposed development of good composition, materials, textures, and colors?*

As previously noted, the paint color of the building differs dramatically from surrounding properties, but works in harmony with the other elements of the façade. The mural assists in enlivening a building façade with little fenestration or architectural detailing.

3. *Building design, materials and colors to be sympathetic with desert surroundings*

The dark wall color is not generally chosen for a desert location, but has received approval previously.

4. *Harmony of materials, colors and composition of those elements of a structure, including overhangs, roofs, and substructures which are visible simultaneously*

The mural generally works in harmony with the architectural features of the building. The two female figures frame the entrance to the business; the body of the snake drapes from the projecting sign just under the cornice line at the north end of the building, frames the arch of the central doorway, and then trails down the awning at the south end of the building. The colors of the mural, signage, awnings, and trim are consistent.

Resolution No. _____

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NOW, THEREFORE, BE IT RESOLVED that based upon the foregoing, the Planning Commission hereby recommends approval of Case No. 15-002 MUR, subject to the conditions of approval attached herein as Exhibit A.

ADOPTED this 8th day of April, 2015.

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

CITY OF PALM SPRINGS, CALIFORNIA

Flinn Fagg, AICP
Director of Planning Services

RESOLUTION NO. _____

EXHIBIT A

Case 15-002 MUR

An Art Mural for a commercial building located at 340 N. Palm Canyon Drive

April 8, 2015

CONDITIONS OF APPROVAL

Before final acceptance of the project, all conditions listed below shall be completed to the satisfaction of the Director of Planning Services, the Director of Building and Safety, or the Director of Community and Economic Development, depending on which department recommended the condition.

Any agreements, easements or covenants required to be entered into shall be in a form approved by the City Attorney.

ADMINISTRATIVE CONDITIONS

- ADM 1. Project Description. This approval is for the project described per Case 15-002 MUR, except as modified by the conditions below.
- ADM 2. Reference Documents. The site shall be developed and maintained in accordance with the approved plans, date stamped March 11, 2015, on file in the Planning Division, except as modified by the conditions below.
- ADM 3. Conform to all Codes and Regulations. The project shall conform to the conditions contained herein, all applicable regulations of the Palm Springs Zoning Ordinance, Municipal Code, and any other City County, State and Federal Codes, ordinances, resolutions and laws that may apply.
- ADM 4. Minor Deviations. The Director of Planning or designee may approve minor deviations to the project description and approved plans in accordance with the provisions of the Palm Springs Zoning Code.
- ADM 5. Indemnification. The owner shall defend, indemnify, and hold harmless the City of Palm Springs, its agents, officers, and employees from any claim, action, or proceeding against the City of Palm Springs or its agents, officers or employees to attach, set aside, void or annul, an approval of the City of Palm Springs, its legislative body, advisory agencies, or administrative officers concerning Case 15-002 MUR. The City of Palm Springs will promptly notify the applicant of any such claim, action, or proceeding against the City of Palm Springs and the applicant will either undertake defense of the

matter and pay the City's associated legal costs or will advance funds to pay for defense of the matter by the City Attorney. If the City of Palm Springs fails to promptly notify the applicant of any such claim, action or proceeding or fails to cooperate fully in the defense, the applicant shall not, thereafter, be responsible to defend, indemnify, or hold harmless the City of Palm Springs. Notwithstanding the foregoing, the City retains the right to settle or abandon the matter without the applicant's consent but should it do so, the City shall waive the indemnification herein, except, the City's decision to settle or abandon a matter following an adverse judgment or failure to appeal, shall not cause a waiver of the indemnification rights herein.

ADM 6. Covenant. The owner of the property on which the mural is installed shall execute and deliver to the Office of the City Clerk a covenant for recordation in a form approved by the City Attorney. The covenant shall provide that the mural will be installed and maintained at all times in full compliance with this Chapter. In addition, the covenant shall remain in force for as long as the mural exists.

ADM 7. Maintenance Plan. The property owner(s) and successors and assignees in interest shall maintain and repair the mural in accordance with the maintenance plan approved in conjunction with this application. This condition shall be included in the recorded covenant agreement for the property as required by the City.

ADM 8. Minimum Time Period. The mural shall remain in place, without alteration, for a minimum period of two (2) years; the two (2) year time period shall commence upon the effective date of the approval. An "alteration" includes any change to the permitted mural, including, but not limited to, any change to the image(s), materials, colors, or size of the permitted mural. "Alteration" does not include naturally occurring changes to the mural caused by exposure to the elements or the passage of time or that result from the maintenance or repair of the mural. Such minor changes may include slight and unintended deviations from the original image, colors, or materials that occur when the permitted mural is repaired due to the passage of time or the result of vandalism.

A mural may be removed within the first two years of the date of registration under the following circumstances:

- The property on which the mural is located is sold; or
- The structure or property is substantially remodeled or altered in a way that precludes continuance of the mural; or
- The property undergoes a change of use authorized by the Department of Building and Safety;

- The owner of a mural may request permission from the City Manager to remove a mural prior to the expiration of the two (2) year period, which the City Manager may grant upon making a finding that the continued maintenance of the mural is not feasible and that the early removal of the mural is not a furtherance of off-site commercial advertising.

ADM 9. Right to Appeal. Decisions of an administrative officer or agency of the City of Palm Springs may be appealed in accordance with Municipal Code Chapter 2.05.00. Permits will not be issued until the appeal period has concluded.

ADM 10. Grounds for Revocation. Non-compliance with any of the conditions of this approval or with City codes and ordinances may result in proceedings to revoke the approval. In addition, violations of the City Codes and Ordinances will result in enforcement actions which may include citations, arrest, temporary business closure, or revocation of this permit in accordance with law.

PLANNING DEPARTMENT CONDITIONS

PLN 1. Lighting. Illumination of the mural shall be limited in accordance with the requirements of Section 5.81.050(G) of the Palm Springs Municipal Code.

PLN 2. Removal of Mural. Should the mural be removed or the building be repainted in the future, the property owner shall submit a Minor Architectural Review application for approval prior to repainting the building.

END OF CONDITIONS

Member Song asked about the maintenance plan for the mural.

NATHAN OTTO, applicant, provided background information on the mural.

Member Song said she likes that it fits the building and it will be maintained.

Member Secoy-Jensen said she supports the project with the conditions.

M/S/C (Fredricks/Cassady, 6-1 absent Fauber) Approve, as submitted with staff's recommendations.

9. FUNKEY BAR, INC. REQUESTING APPROVAL OF AN ART MURAL APPLICATION FOR AN EXISTING MURAL ON THE COMMERCIAL BUILDING AT 340 N. PALM CANYON (CASE 15-002 MUR). (FF)

Director Fagg provided an overview of the existing mural.

Member Secoy-Jensen asked if there have been complaints. (There have been informal complaints.)

Member Song asked if there is any specific limitation on the size of the murals.

Member Cassady said this one is more of a clear-cut mural and fits the building well and supports it.

M/S/C (Secoy-Jensen/Fredricks, 6-1 absent Fauber) Approve, as submitted with staff's recommendations.

COMMITTEE MEMBER COMMENTS:

No comments.

STAFF MEMBER COMMENTS:

No comments.

ADJOURNMENT:

The Architectural Advisory Committee adjourned at 5:02 pm to the next regular meeting at 3:00 pm on April 6, 2015, Council Chamber, City Hall, 3200 East Tahquitz Canyon Way, Palm Springs.

Flinn Fagg, AICP
Director of Planning Services

Flinn Fagg

From: Cindy Cairns
Sent: Thursday, March 26, 2015 2:41 PM
To: Jay Thompson; John Raymond; Flinn Fagg
Subject: FW: Murals Approved by AAC
Attachments: image001.jpg; image002.jpg

Please see email below. I've already responded to Ms. Smith but the City Manager has asked that I forward her email and comments to you so they can be included in the next agendas for the Public Arts and Planning Commission, and City Council meeting when they visit this issue.

Thanks... Cindy



Cindy Cairns | Executive Services Administrator
City of Palm Springs | Office of the City Manager
3200 E. Tahquitz Canyon Way, Palm Springs, CA 92262
Office: 760.322.8362 | Fax: 760.323.8207 | Email: Cindy.Cairns@palmsspringsca.gov

Palm Springs City Hall is open 8 am – 6 pm Monday through Thursday, and closed on Fridays

From: Citymanager - Mail Login
Sent: Wednesday, March 25, 2015 3:20 PM
To: Cindy Cairns
Subject: FW: Murals Approved by AAC

From: Joan-Steve Smith[SMTP:PS.COOL@VERIZON.NET]
Sent: Wednesday, March 25, 2015 3:19:29 PM
To: Citymanager - Mail Login
Subject: Murals Approved by AAC
Auto forwarded by a Rule

Hi David,

I am a long time PS resident. I was flabbergasted to read in yesterday's Desert Sun that the Architectural Advisory Committee enthusiastically approved the following two murals. I didn't make my opinion know previously about the Bar mural because I thought there was no way it would ever be approved. That "mural" is dark, dreary and almost verging on evil-- it is certainly gruesome. The Hot Purple Energy "mural" looks like a giant advertisement.

Neither mural is an asset for Palm Springs and the new image you are promoting The bar is being set very low with these two murals and will set a precedent for more ugly, inappropriate "murals" to come.

Thank you for your attention.
Joan Smith

Justification Letter

To Whom It May Concern,

We believe the mural at 340 N. Palm Canyon should be allowed to stay because it is a work of art, and by already being in the city's downtown fabric for almost two years it has made a statement to and been accepted by the city of Palm Springs. The two artists Angelina Christina aka Starfighter and FinDac are world renowned street artists and have been not only recognized countless times for their work but also are generally paid a significant amount of money to do so. Major cities such as New York, Denver, Minneapolis, Vancouver, etc have embraced their work together in their cities and Palm Springs should do the same. Both artists have been invited to paint murals at Art Basel and Angelina has painted murals for the Coachella Music Festival as well. There have been no major issues that we are aware of in the last year and a half of it being painted and I don't see any to come.

15-002

RECEIVED

MAR 11 2015

**PLANNING SERVICES
DEPARTMENT**

Maintenance Plan

The mural at 340 N. Palm Canyon has been covered with a UV refracting clear coat paint so the colors will not fade in the sun. The mural has already been in place 16 months and looks good as new. We also pressure wash any dust and grime off the walls every other month or so to keep it clean. If there were the unfortunate scenario where the mural was defaced or altered the artists live in LA and visit frequently so we should be able to resolve any issues if they were to arise. But as mentioned previously the mural has been in place quite some time and has not been defaced or altered and still looks the same as day one.

15-002

RECEIVED

MAR 11 2015

**PLANNING SERVICES
DEPARTMENT**



Two women
by the artist
of the building