



City Council Staff Report

Date: June 3, 2015

CONSENT

Subject: APPROVE EASEMENT AGREEMENT AND COVENANT WITH VILLAS DE LAS FLORES ASSOCIATION FOR THE MAINTENANCE OF CITY TREES ADJACENT TO VILLAS DE LAS FLORES CONDOMINIUM DEVELOPMENT

From: Douglas Holland, City Attorney

SUMMARY

The City owns approximately 48 palm trees along the boundary between the Villas de Las Flores condominium project and city owned property. For several years, the Property Association of the condominium project has trimmed and maintained these trees under the mistaken understanding that these trees were on condominium property. The City and the Association have agreed that the City will pay the Association the amount of \$7,800 for tree trimming costs incurred by the Association between January 1, 2009 and December 15, 2015. In addition, the City will grant the Association with an easement to continue to maintain the city owned trees with the proviso the City will reimbursement the Association for the its costs in maintaining these trees. The Association will provide documentation to the City Manager regarding the costs and to ensure that these costs are consistent with costs for similar services provided to the Association.

RECOMMENDATION:

Approve the Easement Agreement and Covenant with Villas de Las Flores Association for the maintenance of city trees adjacent to the Villas de Las Flores Condominium Development and authorize the City Manager to execute this Covenant Agreement on behalf of the City.

Douglas Holland, City Attorney

David Ready, City Manager

Attachment: Easement Agreement and Covenant

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

**Office of the City Clerk
City of Palm Springs
3200 East Tahquitz Canyon Way
Palm Springs, CA**

(SPACE ABOVE LINE FOR RECORDER'S USE)

**EASEMENT AGREEMENT AND COVENANT
(Running with the Land)**

THIS EASEMENT AGREEMENT AND COVENANT (Running with the Land) ("Agreement") is entered into by and between the VILLAS DE LAS FLORES ASSOCIATION, a California nonprofit mutual benefit corporation ("ASSOCIATION") and the CITY OF PALM SPRINGS, a California municipal corporation ("CITY"), and is effective as of the date provided for in this Agreement. ASSOCIATION and CITY may sometimes be referred to in this Agreement collectively as "Parties" and individually as "Party."

RECITALS

A. ASSOCIATION is a California nonprofit mutual benefit corporation organized and existing under Civil Code section 4000, et seq., for the purpose of managing the condominium development commonly known as Villas de las Flores in the City of Palm Springs, County of Riverside, State of California, in accordance with the Declaration of Covenants, Conditions and Restrictions recorded on February 26, 1973, as Instrument No. 24296, Official Records of Riverside County, California, and all amendments and supplements ("CC&Rs").

B. Pursuant to the CC&Rs, ASSOCIATION has the right and duty to manage, maintain and control the real property consisting of its common area and more particularly described as: ("Association Property").

Lots 1, 2 and 3 of Tract 4770-2, in the City of Palm Springs, County of Riverside, State of California, as per Map recorded in Book 80, Pages 58 through 59, in the Office of the County Recorder of said County.

C. CITY is the owner of the Tahquitz Creek Golf Course, which is adjacent to the Association Property, and has the right and duty to maintain and control that property, legally described provided in Exhibit A to this Agreement ("City Property").

D. ASSOCIATION and CITY wish to resolve a dispute concerning the ownership of and responsibility for the forty-eight (48) palm trees in nineteen (19) clusters along the boundary

between the Association Property and the City Property (forty-four (44) trees in seventeen (17) clusters on the Association's north boundary, four (4) trees in two (2) clusters on the ASSOCIATION'S west corner boundary) (the "Subject Trees"); and

E. For many years, ASSOCIATION caused the Subject Trees to be trimmed annually and otherwise managed and maintained, under the belief that the Subject Trees were on Association Property; and

F. ASSOCIATION continued to trim and maintain the Subject Trees in order to avoid damage to the common area roofs of nearby condominiums from falling palm fronds and to maintain the attractiveness of the area; and

G. In or about 2012, ASSOCIATION hired a surveyor to locate lot line markers and discovered that the Subject Trees are on City Property, and, thereafter, requested that the CITY take over responsibility for the Subject Trees; CITY declined to do so, but granted consent to ASSOCIATION to continue trimming, managing and maintaining the Subject Trees; and

H. On June 5, 2013, ASSOCIATION obtained a topographic survey ("Survey"), which is attached to this Agreement as Exhibit "A" and incorporated into this Agreement by this reference; and

I. The Parties agree that the Survey confirms that the Subject Trees are located on City Property and CITY acknowledges its responsibility for the costs of maintaining, managing and trimming the Subject Trees; and

J. There are several other types of trees located on City Property, including eucalyptus trees, that are in close proximity to the Association Property and that, due to age or disease, pose a risk of damage to persons or to the common area roofs of nearby condominiums (the "Adjacent Trees"); and

K. By way of this Agreement, CITY wishes to give and ASSOCIATION wishes to receive a nonexclusive easement over a portion of the City Property described in Recital C ("Easement Area") for the purpose of maintaining, managing, and trimming the Subject Trees and for the purpose of removing Adjacent Trees from City Property that pose a danger to persons or property; and

L. The Parties intend that this Agreement be made and entered into pursuant to the provisions of California Civil Code § 1468, in effect as of the date of this Agreement, and that this Agreement shall run with the land of the Parties and that it shall benefit and be binding upon each of the successor owners of ASSOCIATION and CITY.

NOW, THEREFORE, in consideration of the covenants contained in this Agreement and other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. Incorporation of Recitals. The above stated Recitals are incorporated into this Agreement by this reference and the Parties specifically agree that all of the facts set forth in the Recitals are true and correct.
2. Grant of Easement. CITY hereby grants to ASSOCIATION, its successors and assigns, a nonexclusive easement ("Easement") over the City Property, for the purpose of trimming, managing, and maintaining the Subject Trees, and removing Adjacent Trees with the prior approval of the City Manager of CITY or the City Manager's designee. The effective date of this Easement shall be January 1, 2009.
3. Reimbursement of Future Costs. CITY shall reimburse ASSOCIATION the costs of trimming, managing and maintaining the Subject Trees and removing Adjacent Trees. Beginning on or after December 15, 2014, ASSOCIATION will bill CITY for the services of ASSOCIATION'S landscaping contractors and arborists to perform the work.
4. Reimbursement of Past Costs. On execution of this Agreement, CITY shall pay ASSOCIATION the sum of \$7,800.00, which represents the expenses incurred by the ASSOCIATION to trim, manage and maintain the Subject Trees from January 1, 2009, to December 14, 2015. The Association shall submit such documentation as the City Manager of the City or the City Manager's designee may reasonably require to document such expenses and to ensure that the costs are reasonably consistent with costs for similar services provided to the Association.
5. Indemnification. ASSOCIATION agrees to indemnify CITY, its officers, officials, agents, representatives, volunteers and employees, and to save and hold them harmless, and to defend them at ASSOCIATION'S sole expense, from any liability or claims, demands, damages, costs or judgments that CITY, its officers, officials, agents, representatives, volunteers and employees may suffer arising out of or related to the Easement or the trimming, management and maintenance of the Subject Trees and removal of Adjacent Trees on the Easement Area; provided, however, that ASSOCIATION'S obligation to indemnify shall not extend to any claim, demand, damage, cost, or judgment arising out of CITY'S sole gross negligence or willful misconduct.
6. Insurance. ASSOCIATION agrees to continuously maintain comprehensive general liability insurance for bodily injury and property damage, for the benefit of CITY for any liability or claims, demands, damages, costs or judgments that CITY, its officers, officials, agents, representatives, volunteers and employees may suffer as a result of any liability or claims, demands, damages, costs or judgments against them arising out of or related to the Easement or ASSOCIATION'S trimming, management and maintenance of the Subject Trees and removal of Adjacent Trees, on the Easement Area. Such policies shall name CITY as an additional insured. ASSOCIATION'S insurance policy shall be considered to provide the primary insurance coverage for all such liability or claims, demands, damages, costs or judgments, and CITY'S insurance coverage shall be considered to provide the

secondary insurance coverage in the event CITY also maintains insurance policies which provide insurance coverage to CITY for any such liability of claims, demands, damages, cost or judgments.

7. Attorneys' Fees. In the event a lawsuit is filed or arbitration commenced between the parties to resolve any controversy, claim or dispute regarding the terms and provisions set forth in this Agreement, the prevailing Party shall be entitled to recover from the nonprevailing Party its costs of suit or arbitration, including reasonable attorneys' fees as may be fixed by the court or arbitrator.
8. Construction. The section headings have been inserted for convenience only, and shall not be considered or referred to in resolving questions of interpretation or construction. Whenever the context requires, the singular shall include the plural, and the masculine shall include the feminine and neuter.
9. Inurement. The Easement created in this Agreement shall run with the land and be binding upon and inure to the benefit of the Parties and their successors, assigns and grantees.
10. Enforceability of Provisions. If any provision or part of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.
11. Entire Agreement. This Agreement and any exhibits constitute the entire agreement between the Parties pertaining to the subject matter of the Agreement and the final, complete and exclusive expression of the terms and conditions of the Agreement. Prior agreements, representations, negotiations and understandings of the Parties, oral or written, express or implied, are superseded and merged into this Agreement.
12. Modification. This Agreement may not be modified in any respect or rescinded, in whole or in part, except by an instrument in writing, duly executed and acknowledged by both of the Parties, their successors or assigns.
13. Severability. If any term, covenant, condition or provision of this agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.
14. California Law. This Agreement is made in, and shall be construed in accordance with, the laws of the State of California.
15. Recordation/Effective Date. This Agreement shall be effective upon its execution by the Parties and its recordation in the Office of the County Recorder, County of Riverside, State of California.

16. Any notices, requests, demands, instructions or other communications in conjunction with this Covenant shall be personally delivered, mailed via first class mail or emailed to the parties as follows:

To CITY: Office of the City Manager
3200 E. Tahquitz Canyon Way
Palm Springs, California 92262

To ASSOCIATION: Board of Directors
Villas de las Flores Association
c/o Personalized Property Management
68950 Adelina Road
Cathedral City, California 92234
Attn: Shelly Ruegsegger, CMCA
Sruegsegger@ppminternet.com

IT IS SO AGREED.

“ASSOCIATION”
VILLAS DE LAS FLORES
ASSOCIATION, a California nonprofit
mutual benefit corporation

Dated: _____

By: _____
Name: _____
Title: President

Dated: _____

By: _____
Name: _____
Title: Secretary

“CITY”
CITY OF PALM SPRINGS, a California
municipal corporation

Dated: _____

By: _____
Name: _____
Title: _____

Approved as to Form:

Attest:

City Attorney

City Clerk

STATE OF CALIFORNIA)
)
COUNTY OF RIVERSIDE)

On _____, before me, _____, a Notary Public, 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.

Notary Public)
STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE)

On _____, before me, _____, a Notary Public, 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.

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Notary Public