



CITY COUNCIL STAFF REPORT

October 7, 2015

CONSENT AGENDA

Subject: APPROVAL OF AN ENCROACHMENT LICENSE ISSUED TO DEAD OR ALIVE LLC, FOR CERTAIN PRIVATE IMPROVEMENTS LOCATED 150 E. PALM CANYON DRIVE, IN SECTION 23, TOWNSHIP 4 SOUTH, RANGE 4 EAST; ENGINEERING FILE ENCROACHMENT LICENSE (EL) 15-01.

From: David H. Ready, City Manager

Initiated by: Public Works and Engineering Department

SUMMARY

Approval of this item will approve the issuance of an Encroachment License to Dead or Alive LLC, for installation of an overhead light fixture on an existing building soffit overhang with lighting, and a wrought iron fence for patrons for the property located at 150 E. Palm Canyon Drive.

RECOMMENDATION:

- 1) Approve Agreement No. ____; an Encroachment License between the City of Palm Springs and Dead or Alive, LLC, a California Limited Liability Corporation, for installation of an overhead light fixture on an existing building overhang, with existing lighting, and a wrought iron fence located in the public right-of-way located at 150 E. Palm Canyon Drive; 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 City Engineer to require additional liability protection for the City, a formal agreement through an Encroachment License is required.

ITEM NO. 20

On August 25, 2015, Christine Soto, managing member of Dead or Alive LLC, submitted an application to the Engineering Department to place an overhead light fixture and a wrought iron fence in front of her proposed establishment, the Dead or Alive Lounge located at 150 E. Palm Canyon Drive. The property/right-of-way line is located 18 feet from the face of curb, which places it approximately 2 feet in front of the doorway to the establishment (shown as Exhibit C-1 of the License). The building suite is located adjacent to, and south of, the Mirasol Mexican Restaurant along the curve from South Palm Canyon Drive to East Palm Canyon Drive. Field review revealed an existing building overhang with existing lighting along with the proposed improvements encroaching into City right-of-way (shown as Exhibit C-2 of the License). The proposed light fixture would encroach approximately 10 feet into the right-of-way (shown as Exhibit C-3 of the License).

On September 9, 2015, the Planning Commission reviewed and unanimously approved Conditional Use Permit (Case 5.1381 CUP) to operate a beer and wine lounge at the property located at 150 E. Palm Canyon Drive. The CUP permits seating for three (3) patrons in the patio area, a portion of which is within City right-of-way (as shown as Exhibit C-2). On September, 16, 2015, the City Council reviewed and unanimously approved the Resolution of Convenience or Necessity allowing the issuance of a license to serve beer and wine at this location.

The applicant has obtained and provided the required indemnification and insurance coverage stipulated by the License. Staff recommends approval of the Encroachment License to Dead or Alive, LLC, allowing the encroachment of the certain private improvements into the public right-of-way located at 150 E. Palm Canyon Drive.

ENVIRONMENTAL IMPACT:

Section 21084 of the California Public Resources Code requires Guidelines for Implementation of the California Environmental Quality Act ("CEQA"). The Guidelines are required to include a list of classes of projects which have been determined not to have a significant effect on the environment and which are exempt from the provisions of CEQA. In response to that mandate, the Secretary for Resources identified classes of projects that do not have a significant effect on the environment, and are declared to be categorically exempt from the requirement for the preparation of environmental documents. In accordance with Section 15301 "Existing Facilities," Class 1 projects consist of the operation, repair, maintenance, permitting, leasing, licensing, or minor alteration of existing public or private structures, facilities, mechanical equipment or topographical features involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination. Therefore, installation of the private improvements authorized by the Encroachment License is considered categorically exempt from CEQA.

FISCAL IMPACT:

None


SUBMITTED:

Prepared by:

Approved by:



Marcus L. Fuller, MPA, P.E., P.L.S.
Assistant City Manager/City Engineer



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

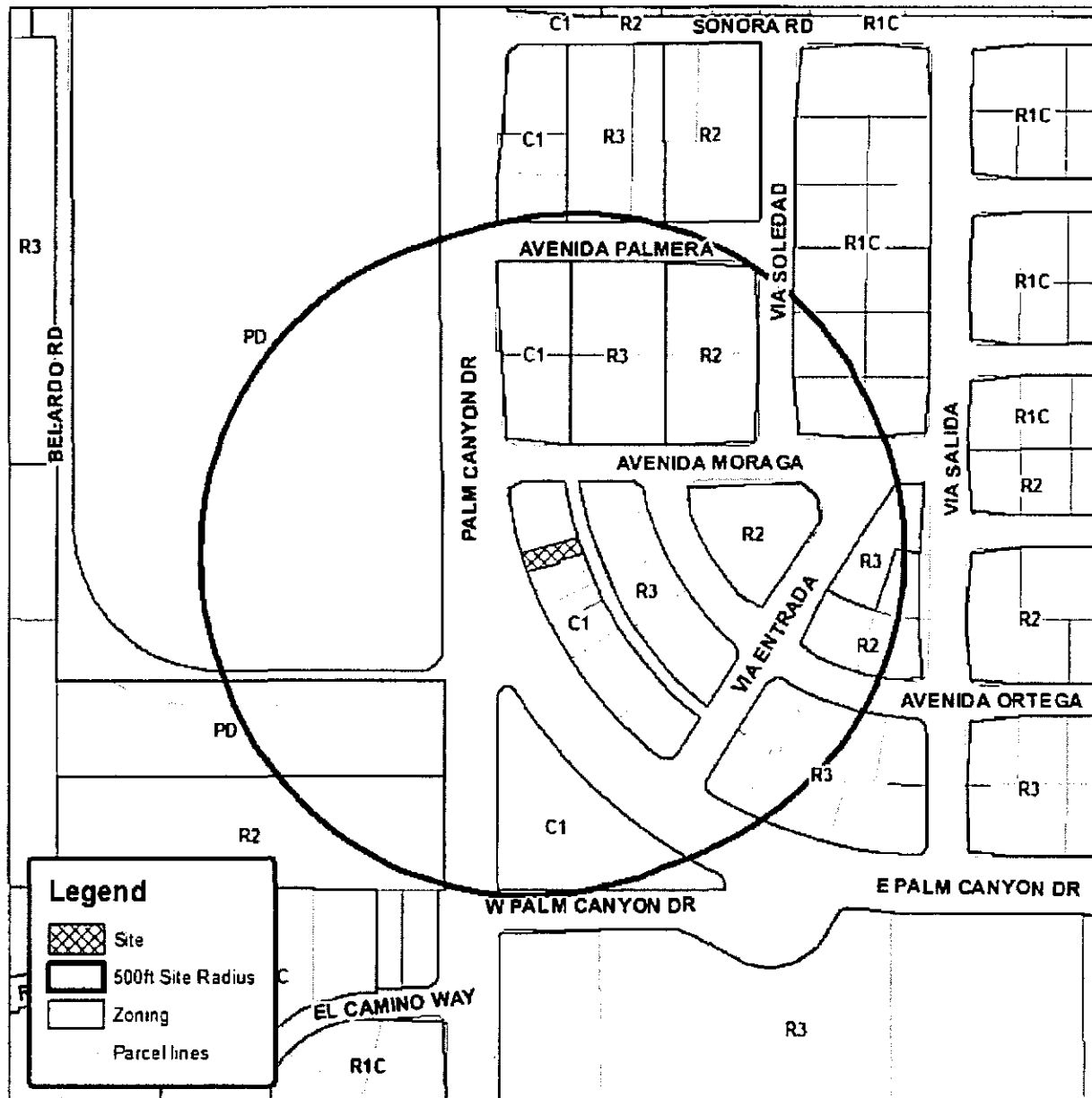
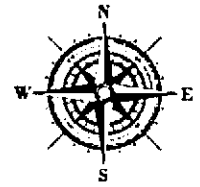
ATTACHMENTS:

1. Vicinity Map
2. Encroachment License

ATTACHMENT 1



Department of Planning Services Vicinity Map



CITY OF PALM SPRINGS

ATTACHMENT 2

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)

Filing Fee Exempt Per Government Code 6103
EL 15-01

ENCROACHMENT LICENSE

THIS ENCROACHMENT AGREEMENT ("Agreement") is entered into this ____ day of _____, 2015, by and between **Dead or Alive LLC, a California Limited Liability Corporation ("Applicant")**, whose address is **536 S. Calle Santa Rosa, Palm Springs, CA 92264-7414** and the **CITY OF PALM SPRINGS**, a California charter city and Municipal Corporation ("City"), whose address is P.O. Box 2743, 3200 E. Tahquitz Canyon Way, Palm Springs, CA 92263.

RECITALS:

A. Applicant is the lessee of that certain real property located in the City of Palm Springs, County of Riverside, State of California commonly known as **150 E. Palm Canyon Drive, Palm Springs, CA 92264-8822 (APN 508-346-015)** 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 a **36" high wrought iron fence, 2 foot diameter light fixture** 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-1", "C-2" AND "C-3"** ("Encroachment"). 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.

Dead or Alive Bar LLC, a California Limited Liability Corporation

Christine Soto

"Applicant"

(NOTARY STATEMENT ON FOLLOWING PAGE)

ATTEST:

CITY OF PALM SPRINGS, A California Charter City and Municipal Corporation

James Thompson, City Clerk
City of Palm Springs, CA

David H. Ready, City Manager
City of Palm Springs, CA

APPROVED AS TO FORM:

APPROVED BY CITY COUNCIL:

Date _____

Agreement No. _____

Douglas Holland, City Attorney
City of Palm Springs, CA

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
) SS.
COUNTY OF _____)

On _____ before me, _____, Notary Public
Date
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 signatures(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. (Seal)

Witness my hand and official seal.

Signature of Notary

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document, to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
)
) SS.
COUNTY OF _____)

On _____ before me, _____, Notary Public
Date
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 signatures(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. (Seal)

Witness my hand and official seal.

Signature of Notary

EXHIBIT "A"

LEGAL DESCRIPTION OF APPLICANT PROPERTY

A PORTION OF LOT 16 AND LOT 17, BLOCK G, SHOWN ON MAP OF PALM HIGHLANDS, ON FILE IN BOOK 19, PAGE 10 OF MAPS, RECORDS OF COUNTY OF RIVERSIDE, CALIFORNIA.

EXHIBIT "B"

LEGAL DESCRIPTION OF CITY PROPERTY AND ENCROACHMENT

A 10 FT. WIDE X 30 FT. LONG AREA, WITHIN EAST PALM CANYON DRIVE, SHOWN AS LOT A, AND DESIGNATED AS STATE HIGHWAY, ADJOINING LOTS 16 AND 17, BLOCK G, ON MAP OF PALM HIGHLANDS, ON FILE IN BOOK 19, PAGE 10 OF MAPS, RECORDS OF COUNTY OF RIVERSIDE, CALIFORNIA.

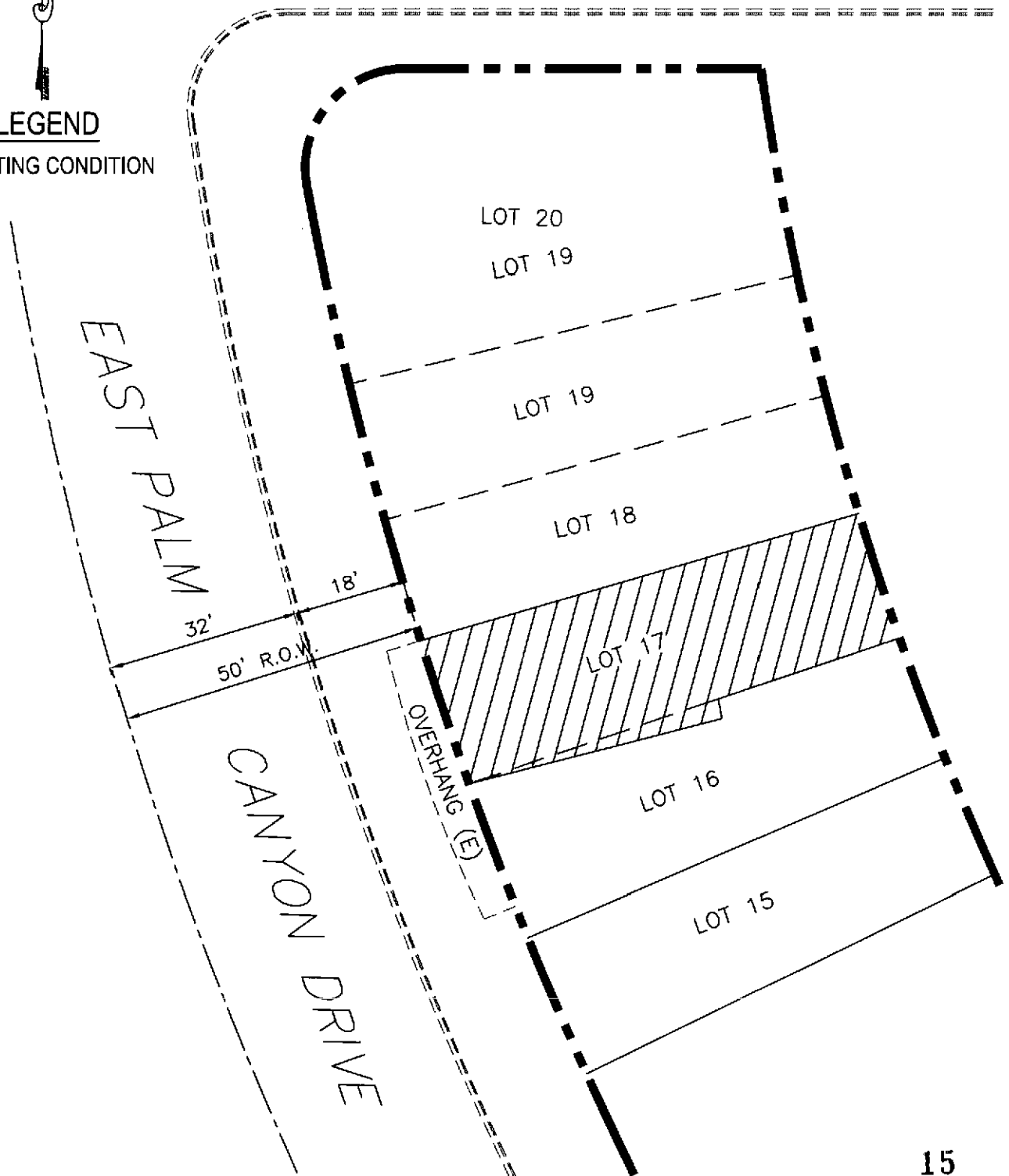
EXHIBIT "C-1"

A VENIDA OLANCHA



LEGEND

(E) = EXISTING CONDITION



15

Por. Lot 16 & 17, Block G, MB 019/010, PALM HIGHLANDS, R.C.R.

ENCROACHMENT AGREEMENT
150 E. PALM CANYON DRIVE
LOCATION PLAN

DESIGN BY:

FUP

SCALE:

NTS

FILE NO.:

EL 15-01

CHECKED BY:

MLF

DATE

09/14/15

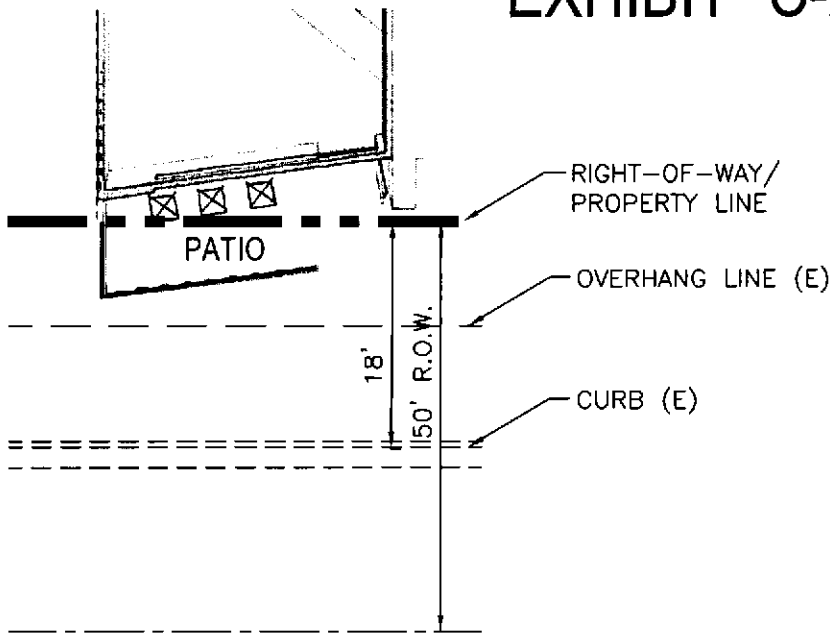
SHEET NO.:

1 OF 3

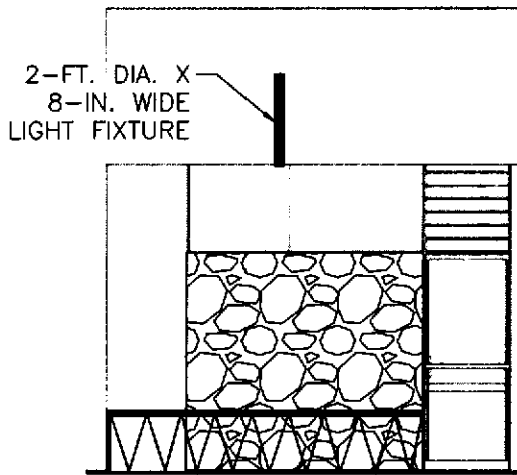
EXHIBIT "C-2"

LEGEND

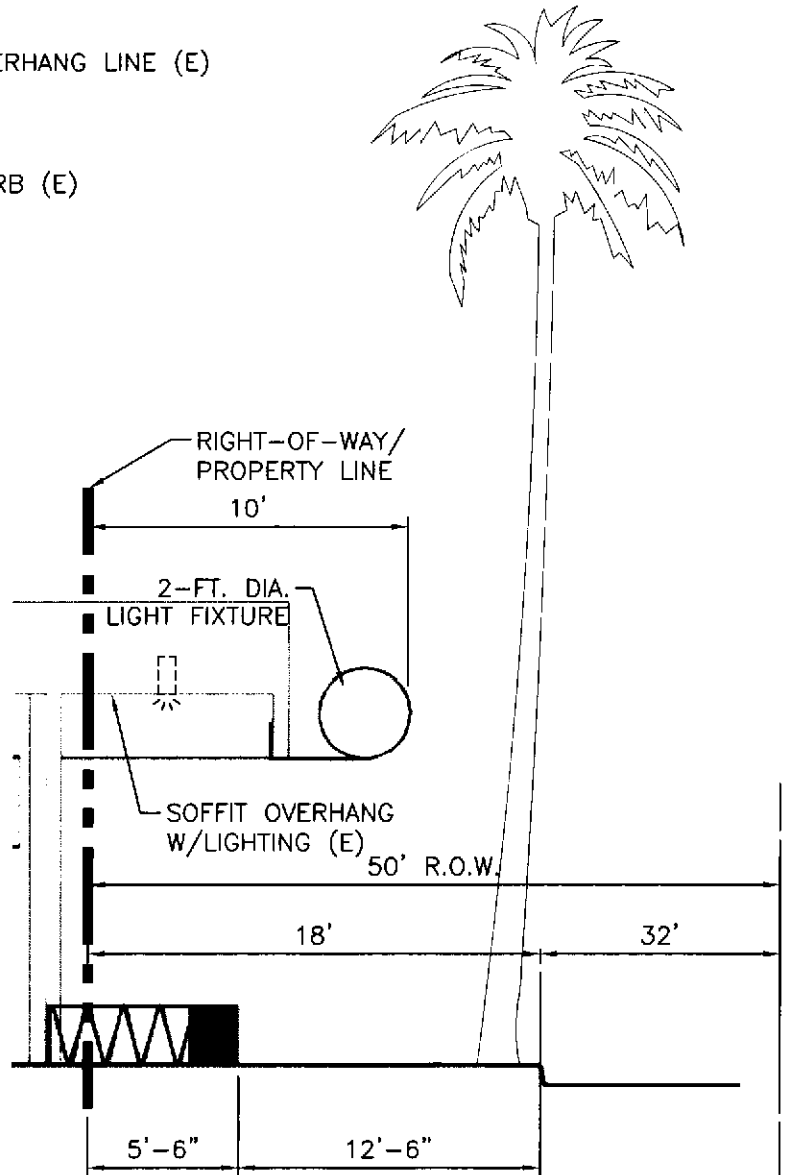
(E) = EXISTING CONDITION



PLAN



EAST ELEVATION



SOUTH ELEVATION

Por. Lot 16 & 17, Block G, MB 019/010, PALM HIGHLANDS, R.C.R.

16

ENCROACHMENT AGREEMENT
150 E. PALM CANYON DRIVE
PLAN ELEVATIONS

DESIGN BY:

FUP

SCALE:

NTS

FILE NO.:

EL 15-01

CHECKED BY:

MLF

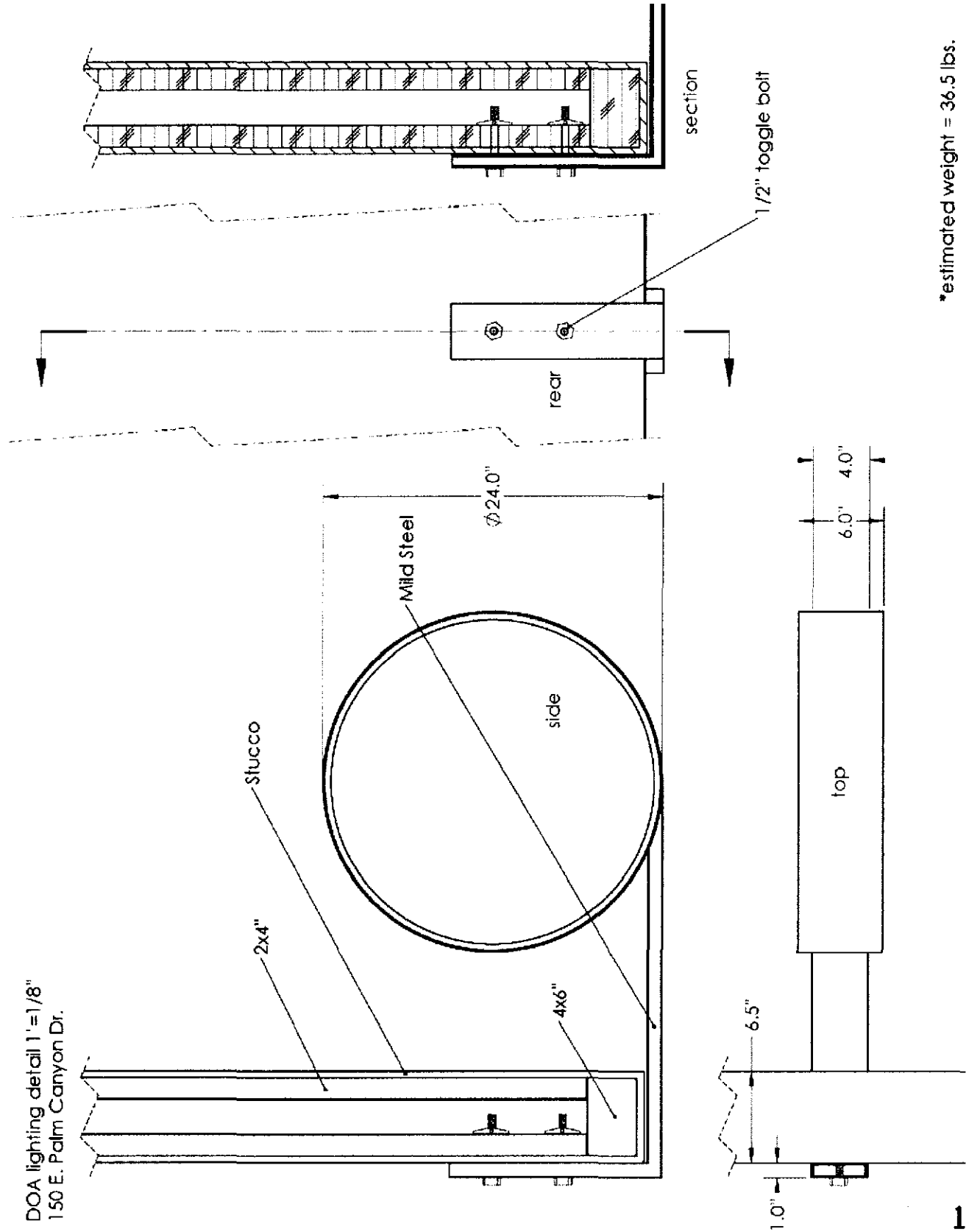
DATE

09/14/15

SHEET NO.:

2 OF 3

EXHIBIT "C-3"



*estimated weight = 36.5 lbs.

ENCROACHMENT AGREEMENT
 150 E. PALM CANYON DRIVE
 LIGHT FIXTURE DETAIL

DESIGN BY: FUP	SCALE: NTS	FILE NO.: EL 15-01
CHECKED BY: MLF	DATE: 09/14/15	SHEET NO.: 3 OF 3