



City Council Staff Report

DATE: May 4, 2016

CONSENT

SUBJECT: APPROVE A CONSENT TO EASEMENT AS THE HOLDER OF A PERFORMANCE DEED OF TRUST THAT BURDENS BLOCK A1 IN THE DOWNTOWN PALM SPRINGS PROJECT FOR A SIDEWALK IMMEDIATELY SOUTH OF THE HYATT HOTEL FOR THE BENEFIT OF THE HYATT HOTEL

FROM: David Ready, City Manager

BY: Douglas Holland, City Attorney

SUMMARY

The City has been asked to consent to the recordation of an easement over property immediately south of the Hyatt Hotel. The City holds the beneficial interest in the performance deed of trust that burdens Block A1 and other properties in the Downtown Palm Springs project area. The sidewalk easement is part of an improvement project on the south side of the Hyatt and will ensure the provision of pedestrian access to a newly remodeled entrance to the Hyatt Hotel. The consent to the easement will not impair the City's interest in the performance deed of trust which will continue in full force and effect on the remainder of Block A1.

RECOMMENDATION:

Authorize the City Manager to execute the Consent to Easement on behalf of the City of Palm Springs as the beneficiary of the Performance Deed of Trust.

STAFF ANALYSIS:

Palm Springs Promenade, LLC, provided the City with a Performance Deed of Trust to secure the PSP's obligations to complete private improvements under the Project Financing Agreement. The current request is for a sidewalk easement for the benefit of the Hyatt Hotel along the southern wall of the Hyatt Hotel. This sidewalk will be constructed over Blocks A and A1 in the Downtown Palm Springs Project and is intended to provide pedestrian access to a newly constructed entrance to the Hyatt. (On the map attached to the proposed Consent to Easement, Block A is referred to as Parcel 1 and Block A1 is referred to as Parcel 2.) This easement and the pedestrian

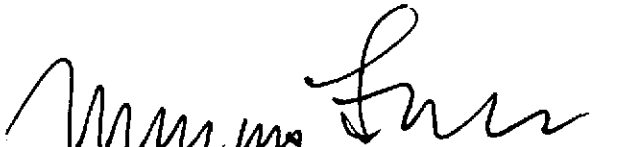
ITEM NO. 2.K.

use of the easement are consistent with the plans for development of the properties. As the holder of an interest in these properties by virtue of the Performance Deed of Trust, the City has been asked to consent to the easement. Staff recommends the Council approve the Consent to Easement and authorize the City Manager to execute the Consent.

Pursuant to the 4th Amendment to the Project Financing Agreement, the City agreed to incrementally reconvey the Performance Deed of Trust on a parcel by parcel basis concurrently with the recordation of any loan to fund all private improvements on each such parcel. To date the City has only approved reconveyances for Blocks C1 and A. The current request is not a request for reconveyance and will not impair the City's interests under the Performance Deed of Trust which will continue in full force and effect.

ENVIRONMENTAL ANALYSIS

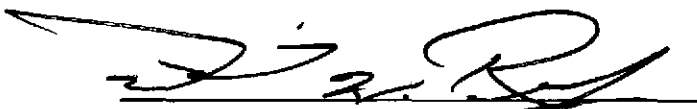
Pursuant to California Environmental Quality Act ("CEQA") Guidelines Section 15060(c)(2) the proposed consent to easement is exempt from CEQA because the activity will not result in a direct or reasonably foreseeable indirect adverse physical change in the environment.



Marcus Fuller, Assistant City Manager/
City Engineer



Douglas Holland, City Attorney



David Ready, City Manager

Attachment: Consent to Easement

CONSENT TO EASEMENT

City of Palm Springs

This Consent to Easement is made by the undersigned ("Promenade Mortgagee"), the beneficiary under that certain Performance Deed of Trust granted by Promenade to Fidelity National Title Company, a California corporation, as trustee for the benefit of Promenade Mortgagee, dated June 12, 2012, and recorded on June 27, 2012 as Instrument number 2012-0298857 in the office of the Riverside County Recorder (as heretofore or hereafter amended, modified, restated or replaced, the "Promenade Deed of Trust"). The undersigned Promenade Mortgagee does hereby execute this Consent to Easement to acknowledge its consent to the conveyance of a non-exclusive sidewalk easement over and on Parcel 2 of the Certificate of Compliance, Instrument # 2015-0171415, Recorded in the Office of the Riverside County Recorder on April 28, 2015 ("Subject Property") and as depicted and described in Exhibit A to this Consent and Subordination ("Easement") for the benefit of RBD Hotel Palm Springs LLC, a Delaware limited liability company ("RBD"). Promenade Mortgagee hereby acknowledges and agrees that its right, title, interest and estate by virtue of the Promenade Deed of Trust and the other documents and instruments executed and delivered to or for the benefit of Promenade Mortgagee in connection with the Promenade Deed of Trust (collectively, the "Promenade Loan Documents") in and to the Subject Property shall be subject and subordinate to the Easement. The undersigned Promenade Mortgagee hereby evidences such consent, approval, agreement and subordination by causing its duly authorized officer to sign and deliver this Consent to Easement, which is given for the sole purpose of consenting to the Easement and subordinating the undersigned's interest under the Promenade Deed of Trust to such Easement. Except for such consent and subordination, the Promenade Deed of Trust is ratified and confirmed in all other respects, and no real or personal property encumbered by the Promenade Deed of Trust shall be affected hereby and all real or personal property encumbered by the Promenade Deed of Trust shall remain as security for the indebtedness described in the Promenade Deed of Trust.

PROMENADE MORTGAGEE:

City of Palm Springs, a municipal corporation and charter city

By: _____

Name: _____

Its: _____

[NOTARY ACKNOWLEDGMENT FOLLOWS]

ACKNOWLEDGMENT

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

County of _____

On April ____, 2016, 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.

Signature _____ (Seal)

EXHIBIT "E"

PARCEL 2
 CERT. OF COMPLIANCE
 INST. # 2015-0171415
 REC. APRIL 28, 2015

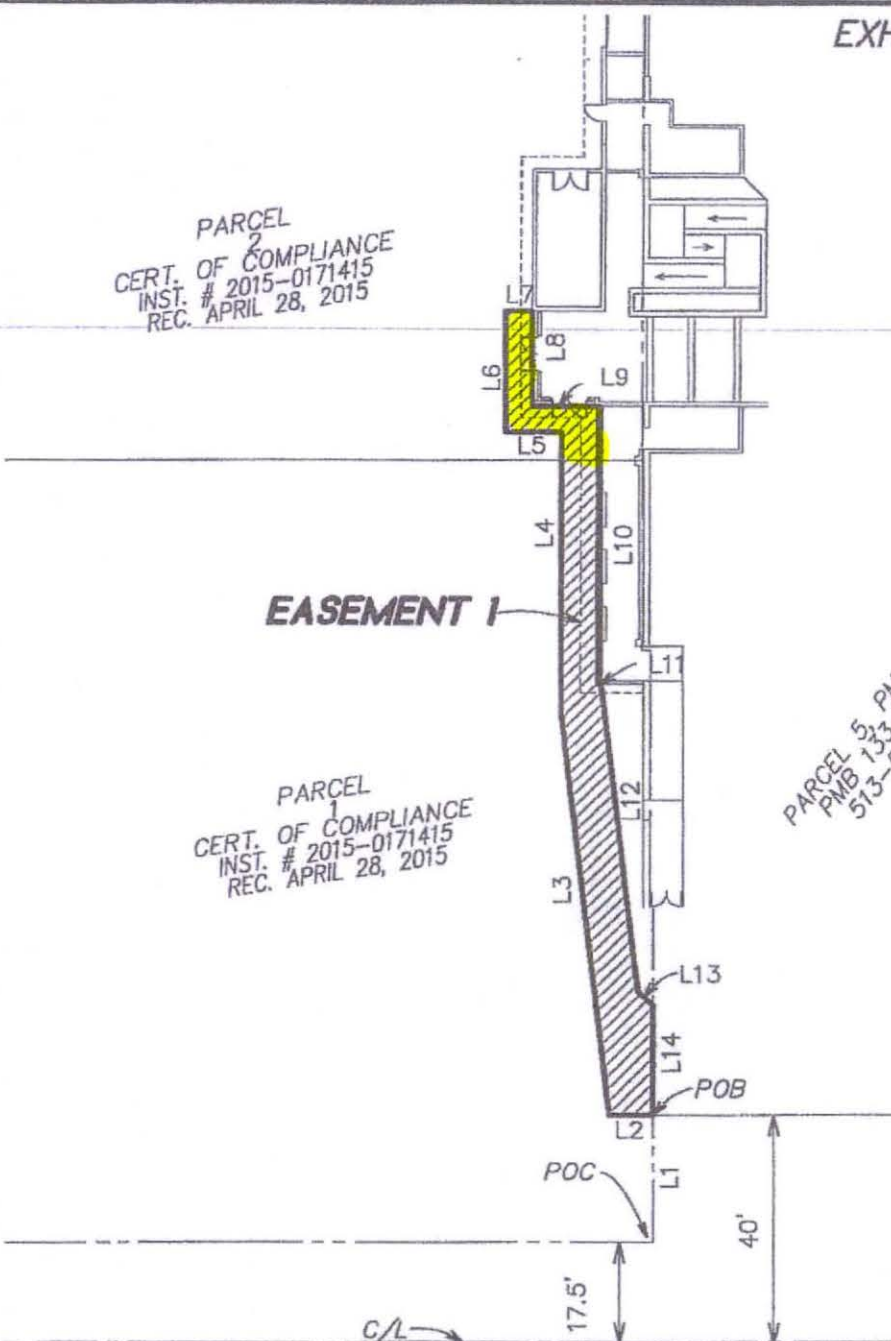
PARCEL 1
 CERT. OF COMPLIANCE
 INST. # 2015-0171415
 REC. APRIL 28, 2015



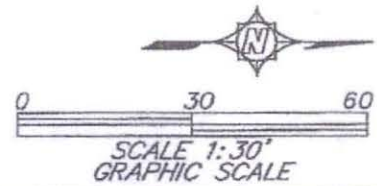
PARCEL 5, PM 20326
 PMB 133/81-85
 513-560-005

EASEMENT I

| LINE TABLE | | |
|------------|-------------|--------|
| # | BEARING | LENGTH |
| L1 | S89°52'00"W | 22.50' |
| L2 | S00°08'00"E | 7.43' |
| L3 | S83°13'50"W | 70.88' |
| L4 | S89°52'00"W | 48.08' |
| L5 | N00°08'00"W | 9.58' |
| L6 | N89°52'00"E | 21.17' |
| L7 | N00°08'00"W | 4.50' |
| L8 | N89°52'00"E | 16.67' |
| L9 | N00°08'00"W | 11.39' |
| L10 | N89°52'00"E | 48.58' |
| L11 | N00°08'00"W | 0.48' |
| L12 | N83°13'50"E | 54.03' |
| L13 | N44°52'00"E | 3.63' |
| L14 | N89°52'00"E | 19.17' |



PALM CANYON DR.



| | | | |
|--|-----------------------|--------------------|----------------------|
| SIDEWALK EASEMENT LEGAL DESCRIPTION: SEE EXHIBIT "E" | DESIGN BY: A.M.S. | SCALE: 1" = 30' | FILE NO.: |
| | CHECKED BY: J.L.S. | W.O. # 13-110 | SHEET NO.: 1 OF 2 |