



City Council Staff Report

DATE: December 14, 2016

NEW BUSINESS

SUBJECT: APPROVAL OF A PARTIAL RELEASE OF THE PERFORMANCE DEED OF TRUST FOR BLOCK A-1, BLOCK B, AND BLOCK C OF THE DOWNTOWN PALM SPRINGS PROJECT

FROM: David H. Ready, City Manager

BY: City Attorney

SUMMARY

This action recommends that the City Council authorize the City Manager to execute three Substitution of Trustee and Deed of Partial Reconveyance documents to release the Performance Deed of Trust on Block A-1 (new surface parking lot behind West Elm), Block B (new commercial retail building under construction), and Block C (new commercial retail building under construction).

RECOMMENDATION:

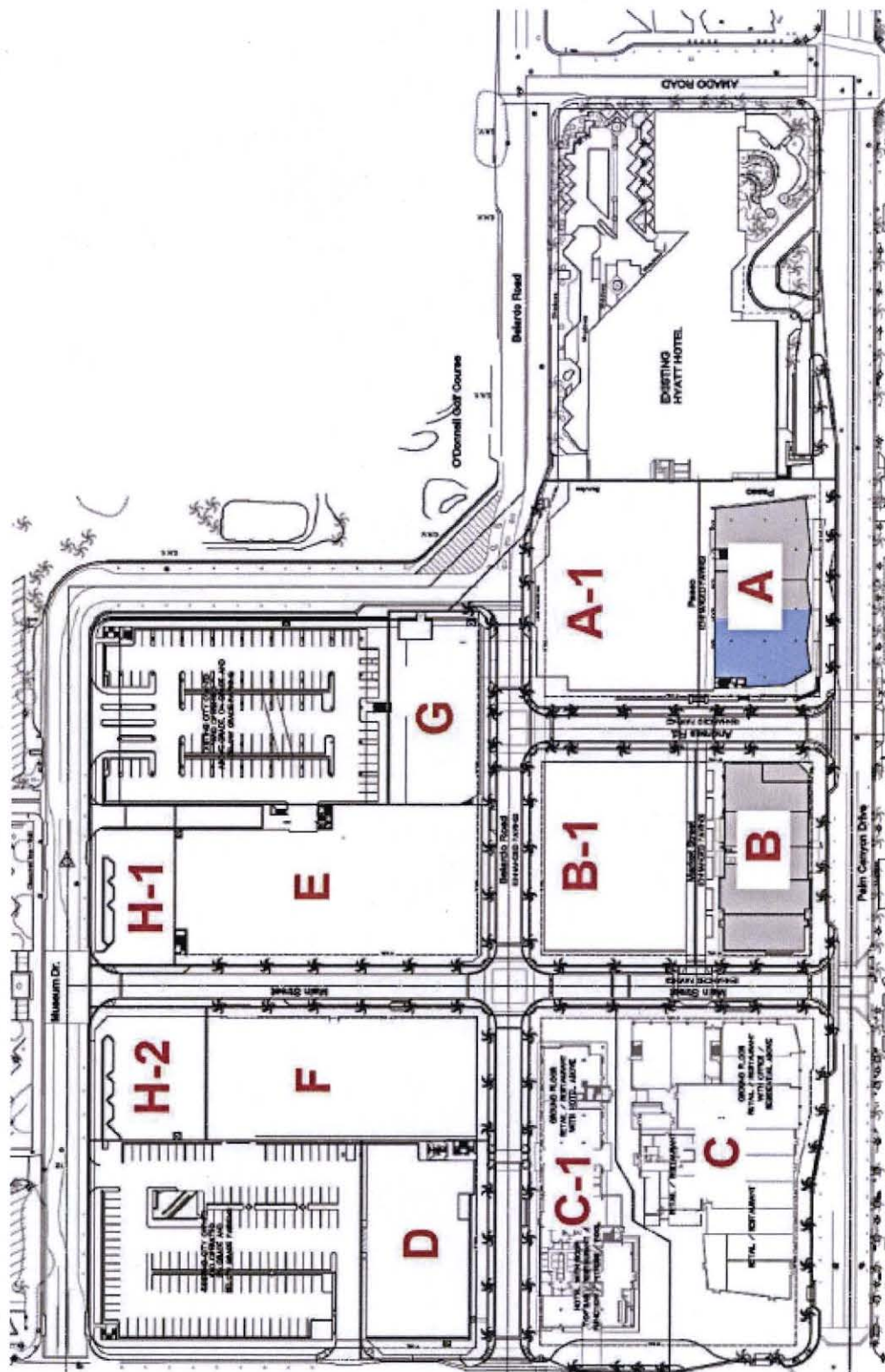
Authorize the City Manager to execute a Substitution of Trustee and Deed of Partial Reconveyance by and between the City of Palm Springs (Beneficiary) and Palm Springs Promenade, LLC, (Trustor) for Block A-1, Block B, and Block C; (A6144)

STAFF ANALYSIS:

On December 2, 2009, the City Council adopted Ordinance No. 1764, adopting the Museum Market Plaza Specific Plan, Case No. 5.1204, (the "Specific Plan").

On September 7, 2011, the City Council adopted Resolution No. 23018, authorizing the City and Palm Springs Promenade, LLC, (the "Developer") to enter into a Project Financing Agreement ("PFA" – Agreement No. 6144) applicable to the financing, development, redevelopment, creation and refurbishment of public and private improvements within the Specific Plan area. The PFA included, among other things, a Site Plan and Project Description depicting the proposed improvements, including new public streets described as Main Street, Andreas Road, and the Belardo Road extension. The currently approved configuration of the Specific Plan area is shown on the following page.

ITEM NO. 5.A.



Section 2(b)(10) of the PFA required that the Developer provide to the City a Performance Trust Deed to encumber the Specific Plan area, which was recorded concurrently with the close of escrow with the City's acquisition of the various parcels from the Developer. The Performance Trust Deed was used to secure the Developer's performance required under the PFA, with respect to completion of the Private Improvements and Public Improvements identified in the PFA. The Performance Trust Deed was recorded as Document No. 2012-0298857 on June 27, 2012, encumbering the various parcels of land located within the Specific Plan area, with the City as Beneficiary.

On September 17, 2014, the City Council approved Amendment 4 to the PFA; Section 8 of Amendment 4 related to the Performance Trust deed, and states:

As part of the PFA, Developer provided City with a Performance Trust Deed to secure obligations of Developer under the PFA to complete Private Improvements. The parties acknowledge that plans for development of the Project have evolved and changed over time, and that such changes, while significantly improving the overall Project, greatly increase Developer costs. Such increased costs can only be funded by substantial construction loans, and such loans can only be obtained if the City released the Performance Deed of Trust. The City is strongly in support of such changes and has agreed, and hereby does agree, to incrementally reconvey the Performance Trust Deed on a parcel by parcel basis concurrently with the recordation of any loan to fund all Private Improvements on each such parcel to be constructed within the DFP Area, so long as 100% of the costs to complete such improvements are fully funded by the construction loan and/or Developer funds as determined by the lender and reviewed by the City Manager or the City Manager's designee at a location in the Coachella Valley identified by the lender. In turn, Developer has agreed, and hereby does agree, that expenditures from any such loan will require prior approval of the IFC Agent, as contemplated by original requirements of the PFA.

On December 17, 2014, the City Council approved a purchase agreement to acquire Block E from the Developer, and also authorized the partial release of the Performance Deed of Trust for Block A (West Elm Building) and Block C-1 (Kimpton Hotel) on the basis that the Developer was proceeding to secure loans for construction of these buildings.

Concurrently with the City's acquisition of Block E (identified as Parcel 6 of the underlying Parcel Map 36446), on December 30, 2014, the City executed and recorded a partial release of the Performance Deed of Trust for Block E given the City's new ownership of it. The partial reconveyance was recorded as Document No. 2015-0000801 on January 2, 2015.

Following the Developer's execution of a construction loan for the Kimpton Hotel on Block C-1, on March 24, 2015, the City executed and recorded a partial release of the Performance Deed of Trust for Block C-1 pursuant to Section 8 of Amendment 4 of the PFA, and the City Council's authorization of such release on December 17, 2014. The partial reconveyance was recorded as Document No. 2015-0144181 on April 9, 2015.

Following the Developer's execution of a construction loan for the West Elm Building on Block A, on October 6, 2015, the City executed and recorded a partial release of the Performance Deed of Trust for Block A pursuant to Section 8 of Amendment 4 of the PFA, and the City Council's authorization of such release on December 17, 2014. The partial reconveyance was recorded as Document No. 2015-0456333 on October 16, 2015.

The Developer has proceeded to obtain construction loans to complete the retail buildings located on Block B and Block C, and pursuant to Section 8 of Amendment 4 of the PFA, staff recommends that the City Council authorize the City Manager to execute partial release of the Performance Deed of Trust for Blocks B and C.

Additionally, on March 2, 2016, the City Council approved an Amendment to the Specific Plan, which changed the land use designation for Block A-1 from commercial/residential uses to a permanent surface parking lot use. On the basis that no building can be constructed on Block A-1 at this time given the current land use specified in the Amended Specific Plan, and the Developer has completed construction of the required surface parking lot facility, staff recommends that City Council authorize the City Manager to execute partial release of the Performance Deed of Trust for Block A-1.

It is important to note that the partial release of the Performance Deed of Trust for Blocks A-1, B and C has no effect on the remainder of the Performance Deed of Trust which continues to encumber Parcels D, F and G.

A copy of the Substitution of Trustee and Deed of Partial Reconveyance for Block A-1, Block B, and Block C are attached as Attachment 1.

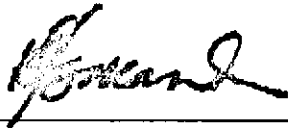
ENVIRONMENTAL IMPACT:

The requested City Council action is not a "Project" as defined by the California Environmental Quality Act (CEQA). Pursuant to Section 15378(a), a "Project" means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. The requested action is to authorize execution of partial releases of the Performance Deed of Trust, and is exempt from CEQA pursuant to Section 15378(b), in that a "Project" does not include: (5) Organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment.

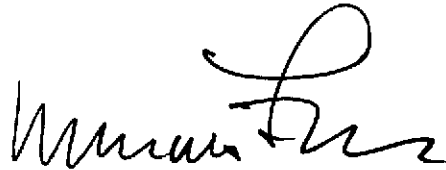
FISCAL IMPACT:

None.

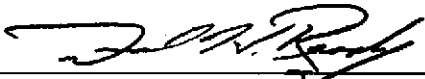
SUBMITTED:



Douglas Holland, Esq.
City Attorney



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



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

Attachments:

Substitution of Trustee and Deed of Partial Reconveyance (3)

ATTACHMENT 1

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

Palm Springs Promenade, LLC
555 S. Sunrise Way, Suite 200
Palm Springs, CA 92264

APN 513-560-042

SUBSTITUTION OF TRUSTEE AND DEED OF PARTIAL RECONVEYANCE

The undersigned, City of Palm Springs, a California charter city and municipal corporation, as the owner and holder of the Note secured by that certain Deed of Trust dated June 27, 2012, made by Palm Springs Promenade, LLC, a California limited liability company, as Trustor to Fidelity National Title Company, a California corporation as trustee for City of Palm Springs, a California charter city and municipal corporation, as beneficiary, which Deed of Trust was recorded on 06/27/2012, as Instrument No. 212-0298857 of Official Records in the Office of the County Recorder of Riverside, California, hereby substitutes itself, City of Palm Springs, a municipal corporation and charter city, as Trustee in place of the current Trustee thereunder.

City of Palm Springs, a California charter city and municipal corporation, hereby accepts said appointment as trustee and under the above Deed of Trust, and as successor Trustee, and pursuant to the request of said owner and holder and in accordance with the provisions of said Deed of Trust, DOES HEREBY PARTIALLY RECONVEY, WITHOUT WARRANTY, TO THE PERSON OR PERSONS LEGALLY ENTITLED THERETO, the estate as shown on Exhibit "A" attached hereto and made a part hereof, now held by it under said Deed of Trust.

The remaining property described in said Deed of Trust shall continue to be held by said Trustee under the terms thereof as provided in said Deed of Trust. This Partial Reconveyance is made without affecting the personal liability of any person or any entity for the payment of the indebtedness mentioned as secured thereby or the unpaid portion thereof, nor shall it affect any rights or obligations of any of the parties of said Deed of Trust as to the remaining property.

IN WITNESS WHEREOF, City of Palm Springs, a California charter city and municipal corporation, as the owner and holder of the above described Note and beneficial interest, and as Successor Trustee, has caused this instrument to be executed, as to each respective interest.

[SIGNATURES ON NEXT PAGE]

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

Dated: _____

David H. Ready, City Manager

Attest:

Approved as to form:

James Thompson, City Clerk

Douglas C. Holland, City Attorney

EXHIBIT "A"

Parcel 2 of Certificate of Compliance No. 15-02B recorded as Instrument No. 2015-0171415 on April 28, 2015, as further described herein:

ALL THAT PORTION OF PARCEL 1 OF PARCEL MAP 36446, AS FILED IN PARCEL MAP BOOK 238 AT PAGES 31 THROUGH 34 INCLUSIVE, RIVERSIDE COUNTY RECORDS, DESCRIBED FOLLOWS;

COMMENCING AT THE NORTHEAST CORNER OF SAID PARCEL 1, THENCE SOUTH 89°-52'-00" WEST ALONG THE NORTH LINE OF SAID PARCEL 1, A DISTANCE OF 59.07 FEET;

THENCE SOUTH 00°-08'-00" EAST, A DISTANCE OF 0.50 FEET;

THENCE SOUTH 89°-55'-24" WEST, A DISTANCE OF 44.63 FEET;

THENCE SOUTH 00°-08'-00" EAST, A DISTANCE OF 1.47 FEET;

THENCE SOUTH 89°-54'-13" WEST, A DISTANCE OF 33.33 FEET TO THE ***TRUE POINT OF BEGINNING***;

THENCE SOUTH 00°-08'-00" EAST, A DISTANCE OF 226.95 FEET TO THE SOUTHERLY LINE OF SAID PARCEL 1;

THE FOLLOWING SIX COURSES ARE ALONG THE SOUTHERLY, WESTERLY AND NORTHERLY LINES OF SAID PARCEL 1;

THENCE SOUTH 89°-52'-00" WEST, A DISTANCE OF 161.55 FEET

THENCE NORTH 45°-08'-00" WEST, A DISTANCE OF 11.31 FEET

THENCE NORTH 00°-08'-00" WEST, A DISTANCE OF 182.94;

THENCE NORTH 17°-56'-26" EAST, A DISTANCE OF 14.47 FEET;

THENCE NORTH 44°-33'-50" EAST, A DISTANCE OF 31.44 FEET;

THENCE NORTH 89°-54'-13" EAST, A DISTANCE OF 142.95 FEET TO THE TRUE POINT OF BEGINNING.

CONTAINING 38,077 SQ.FT / 0.87 AC. MORE OR LESS

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

Palm Springs Promenade, LLC
555 S. Sunrise Way, Suite 200
Palm Springs, CA 92264

APN 513-560-043

SUBSTITUTION OF TRUSTEE AND DEED OF PARTIAL RECONVEYANCE

The undersigned, City of Palm Springs, a California charter city and municipal corporation, as the owner and holder of the Note secured by that certain Deed of Trust dated June 27, 2012, made by Palm Springs Promenade, LLC, a California limited liability company, as Trustor to Fidelity National Title Company, a California corporation as trustee for City of Palm Springs, a California charter city and municipal corporation, as beneficiary, which Deed of Trust was recorded on 06/27/2012, as Instrument No. 212-0298857 of Official Records in the Office of the County Recorder of Riverside, California, hereby substitutes itself, City of Palm Springs, a municipal corporation and charter city, as Trustee in place of the current Trustee thereunder.

City of Palm Springs, a California charter city and municipal corporation, hereby accepts said appointment as trustee and under the above Deed of Trust, and as successor Trustee, and pursuant to the request of said owner and holder and in accordance with the provisions of said Deed of Trust, DOES HEREBY PARTIALLY RECONVEY, WITHOUT WARRANTY, TO THE PERSON OR PERSONS LEGALLY ENTITLED THERETO, the estate as shown on Exhibit "A" attached hereto and made a part hereof, now held by it under said Deed of Trust.

The remaining property described in said Deed of Trust shall continue to be held by said Trustee under the terms thereof as provided in said Deed of Trust. This Partial Reconveyance is made without affecting the personal liability of any person or any entity for the payment of the indebtedness mentioned as secured thereby or the unpaid portion thereof, nor shall it affect any rights or obligations of any of the parties of said Deed of Trust as to the remaining property.

IN WITNESS WHEREOF, City of Palm Springs, a California charter city and municipal corporation, as the owner and holder of the above described Note and beneficial interest, and as Successor Trustee, has caused this instrument to be executed, as to each respective interest.

[SIGNATURES ON NEXT PAGE]

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

Dated: _____

David H. Ready, City Manager

Attest:

Approved as to form:

James Thompson, City Clerk

Douglas C. Holland, City Attorney

EXHIBIT "A"

Parcel 2 of Parcel Map No. 36446 filed in the office of the County Recorder, County of Riverside, State of California, on December 15, 2014 in Book 238 of Parcel Maps at pages 31 through 34.

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

Palm Springs Promenade, LLC
555 S. Sunrise Way, Suite 200
Palm Springs, CA 92264

APN 513-560-075, 513-560-076, 513-560-077

SUBSTITUTION OF TRUSTEE AND DEED OF PARTIAL RECONVEYANCE

The undersigned, City of Palm Springs, a California charter city and municipal corporation, as the owner and holder of the Note secured by that certain Deed of Trust dated June 27, 2012, made by Palm Springs Promenade, LLC, a California limited liability company, as Trustor to Fidelity National Title Company, a California corporation as trustee for City of Palm Springs, a California charter city and municipal corporation, as beneficiary, which Deed of Trust was recorded on 06/27/2012, as Instrument No. 212-0298857 of Official Records in the Office of the County Recorder of Riverside, California, hereby substitutes itself, City of Palm Springs, a municipal corporation and charter city, as Trustee in place of the current Trustee thereunder.

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The remaining property described in said Deed of Trust shall continue to be held by said Trustee under the terms thereof as provided in said Deed of Trust. This Partial Reconveyance is made without affecting the personal liability of any person or any entity for the payment of the indebtedness mentioned as secured thereby or the unpaid portion thereof, nor shall it affect any rights or obligations of any of the parties of said Deed of Trust as to the remaining property.

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[SIGNATURES ON NEXT PAGE]

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

Dated: _____

David H. Ready, City Manager

Attest:

Approved as to form:

James Thompson, City Clerk

Douglas C. Holland, City Attorney

EXHIBIT "A"

Parcel A of Parcel Merger No. 16-04 recorded as Instrument No. 2016-0464206 on October 21, 2016, as further described herein:

PARCEL "A"

ALL THOSE PORTIONS OF PARCEL B AND C OF LOT LINE ADJUSTMENT 14-04, RECORDED AS INSTRUMENT NO. 2015-0000800, RIVERSIDE COUNTY RECORDS, DESCRIBED AS FOLLOWS;

BEGINNING AT THE NORTHWEST CORNER OF SAID PARCEL C OF SAID LOT LINE ADJUSTMENT 14-04, THENCE SOUTH 00°-08'-00" EAST, ALONG THE WEST LINE OF SAID PARCEL C, A DISTANCE OF 160.33 FEET;

THE FOLLOWING FOUR COURSES ARE ALONG THE WESTERLY LINES OF SAID PARCEL B;

THENCE SOUTH 30°-08'-00" EAST, A DISTANCE OF 30.75 FEET;

THENCE SOUTH 00°-08'-00" EAST, A DISTANCE OF 29.46 FEET;

THENCE SOUTH 60°-08'-00" EAST, A DISTANCE OF 42.80 FEET;

THENCE SOUTH 00°-08'-00" EAST, A DISTANCE OF 129.68 FEET TO THE SOUTH LINE OF SAID PARCEL B;

THE FOLLOWING ELEVEN COURSES ARE ALONG THE SOUTHERLY, EASTERLY AND NORTHERLY LINES OF SAID PARCEL B, ALSO BEING THE NORTHERLY RIGHT OF WAY LINE OF TAHQUITZ CANYON WAY AND THE WESTERLY RIGHT OF WAY OF PALM CANYON DR. AND THE SOUTHERLY RIGHT OF WAY LINE OF MAIN STREET;

THENCE NORTH 89°-50'-25" EAST, A DISTANCE OF 8.11 FEET

THENCE NORTH 77°-50'-11" EAST, A DISTANCE OF 57.70 FEET

THENCE NORTH 89°-50'-25" EAST, A DISTANCE OF 52.37 FEET TO A POINT ON A TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 25.00 FEET, A LINE RADIAL TO SAID CURVE AT SAID POINT BEARS NORTH 00°-09'-35" WEST;

THENCE NORTHEASTERLY ALONG THE ARC OF SAID CURVE AN ARC DISTANCE OF 39.26 FEET THROUGH A CENTRAL ANGLE OF 89°-58'-25", A LINE RADIAL TO SAID CURVE AT SAID POINT BEARS SOUTH 89°-52'-00" WEST;

THENCE NORTH 00°-08'-00" WEST, A DISTANCE OF 152.51 FEET;

THENCE NORTH 11°-17'-39" EAST, A DISTANCE OF 70.66 FEET;

THENCE NORTH 00°-08'-00" WEST, A DISTANCE OF 37.23 FEET;

THENCE NORTH 44°-52'-00" EAST, A DISTANCE OF 4.24 FEET;

EXHIBIT "A"
(Continued)

THENCE NORTH 00°-08'-00" WEST, A DISTANCE OF 57.45 FEET;

THENCE NORTH 45°-08'-00" WEST, A DISTANCE OF 15.56 FEET;

THENCE SOUTH 89°-52'-00" WEST, A DISTANCE OF 200.34 FEET TO *THE TRUE POINT OF BEGINNING.*

CONTAINING 63,987 SQ.FT./ 1.47 AC. MORE OR LESS

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