



City Council Staff Report

DATE: January 4, 2017 NEW BUSINESS

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

FROM: David H. Ready, City Manager

BY: Office of the City Attorney

SUMMARY

This action amends the City Council's prior action on December 14, 2016, to authorize the City Manager to execute a Substitution of Trustee and Deed of Partial Reconveyance document to release the Performance Deed of Trust on Block A-1 (new surface parking lot behind West Elm), in exchange for Block B-1 (future Virgin Hotel site).

RECOMMENDATION:

- 1) Rescind the City Council's action on December 14, 2016, authorizing 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; and
- 2) 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 B-1; (A6144)

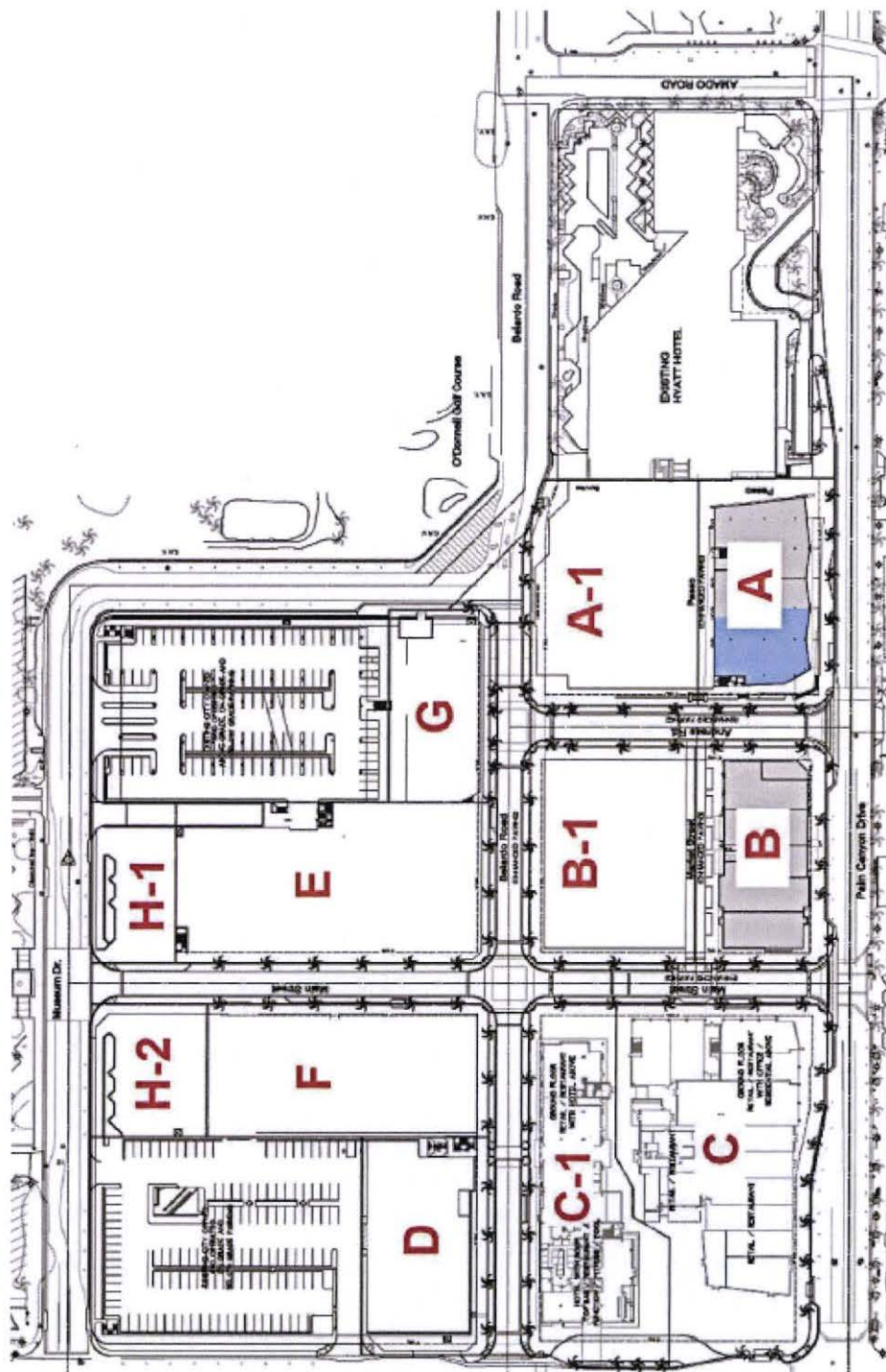
STAFF ANALYSIS:

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

ITEM NO. 5.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 below.



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 14, 2016, the City Council took action to authorize the City Manager to execute a partial release of the Performance Deed of Trust for Blocks B and C, in light of the fact that the Developer has obtained construction loans to complete the retail buildings on those parcels. The City Council also authorized the City Manager to execute a partial release of the Performance Deed of Trust for Block A-1 where the Developer recently completed a surface parking lot.

On December 20, 2016, the Developer notified the City that its construction lender was requiring as security collateral Block B-1 (the site of the future Virgin Hotel). Initially, the Developer was offering to its construction lender Blocks A-1 and B as security collateral, however, as noted in the Developer's letter, its construction lender is requiring the underground parking garage that has been constructed underneath all of Block B as collateral, and is not accepting as collateral Block A-1. A copy of the Developer's

request is included as **Attachment 1**.

Therefore, to ensure the Developer can close escrow on its construction loan to complete the retail buildings on Blocks B and C, staff recommends that the City Council retain Block A-1 as security under the Performance Trust Deed, and in exchange, release Block B-1 as requested by the Developer.

The security maintained by the City is preserved, in that the size of Block A-1 is 0.87 acres and the size of Block B-1 is 0.84 acres. Rescinding the release of Performance Deed of Trust for Block A-1 in exchange for a release of the Performance Deed of Trust for Block B-1 results in maintaining the same amount of security to ensure the Developer's performance under the PFA.

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

A copy of the Substitution of Trustee and Deed of Partial Reconveyance for Block B-1 is included as **Attachment 2**.

Staff is requiring that as a condition of the City's execution of the release of the Performance Deed of Trust, that the reconveyance documents be submitted to the Developer's escrow, and as a condition of escrow, recorded only at such time and immediately preceding recordation of the Developer's construction loan. To the extent that the escrow does not close and the construction loan is not funded, the City's reconveyance documents are required to be returned to the City and not recorded, and to remain of public record and an encumbrance on the property.

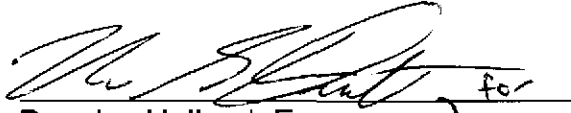
ENVIRONMENTAL IMPACT:

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.

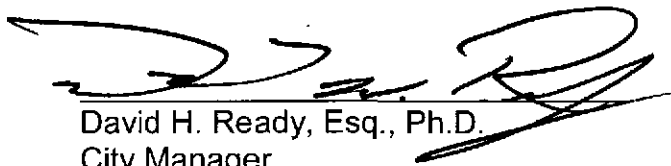
FISCAL IMPACT:

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:

1. Developer request letter
2. Substitution of Trustee and Deed of Partial Reconveyance (1)

ATTACHMENT 1

PALM SPRINGS PROMENADE, LLC

555 S. SUNRISE WAY SUITE 200

PALM SPRINGS, CA 92264

T: 760-325-3050 F: 760-325-5848

December 20, 2016

Mr. Marcus Fuller
City of Palm Springs
3200 E. Tahquitz Canyon Way
Palm Springs, CA 92262

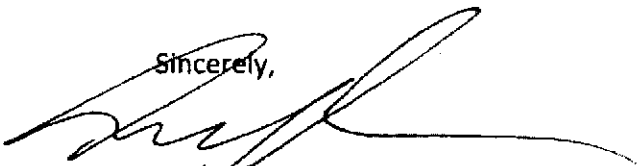
Re: Downtown Project Performance Deed of Trust for Block B-1

Dear Marcus,

In order to move forward with the newly started construction of the Block B-0 & Block C-0 buildings we are hereby requesting that the City releases the Performance Deed of Trust for Block B-1 as it is a requirement of our lender. The bank requires that all of the Block B underground garage be used as collateral for the loan. The Performance Deed of Trust has been released for Block A-1 and we are asking that the City releases Block B-1 and no longer require the release of Block A-1.

I appreciate your consideration on this matter and please contact me if you would like to discuss further.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael Braun', with a long horizontal flourish extending to the right.

Michael Braun

ATTACHMENT 2

RECORDING REQUESTED BY

AND WHEN RECORDED RETURN TO:

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

APN 513-560-044

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:

Kathleen D. Hart, MMC
Interim City Clerk

Douglas C. Holland, City Attorney

EXHIBIT "A"

Parcel 3 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.