



## City Council Staff Report

Date: March 15, 2017 CONSENT AGENDA

Subject: APPROVAL OF AN ENCROACHMENT LICENSE FOR INSTALLATION AND MAINTENANCE OF A GREASE INTERCEPTOR LOCATED AT 1551 N. PALM CANYON DR., ENGINEERING FILE NO. EL 16-03

From: David H. Ready, City Manager

Initiated by: Engineering Services Department

---

### SUMMARY

Approval of this item will authorize the issuance of an Encroachment License to Palm Grove Group, LLC, a California limited liability company, for the installation and maintenance of a grease interceptor and sample box to serve the Arrive Hotel's bar/kitchen located at 1551 N. Palm Canyon Drive and installed within City right-of-way. Whereas the construction of the improvements within City right-of-way have been approved through the administrative encroachment permit process, approval of an Encroachment License by the City Council implements permanent obligations, running with the land, for maintenance of liability insurance and indemnification of the City by the adjacent property owner.

Palm Grove Group, LLC, is managed by Artist and Recreation, LLC, a California limited liability company. The principal officers and managers of Artist and Recreation, LLC, are: Matthew Steinberg, Ezra Callahan, and David Isen.

### RECOMMENDATION:

- 1) Approve Agreement No. \_\_\_\_\_, an Encroachment License for the Arrive Hotel and the Palm Grove Group, LLC, a California limited liability company, for the installation and maintenance of a grease interceptor and sample box located within City right-of-way located at 1551 N. Palm Canyon Drive; and
- 2) Authorize the City Manager to execute all necessary documents

### STAFF ANALYSIS:

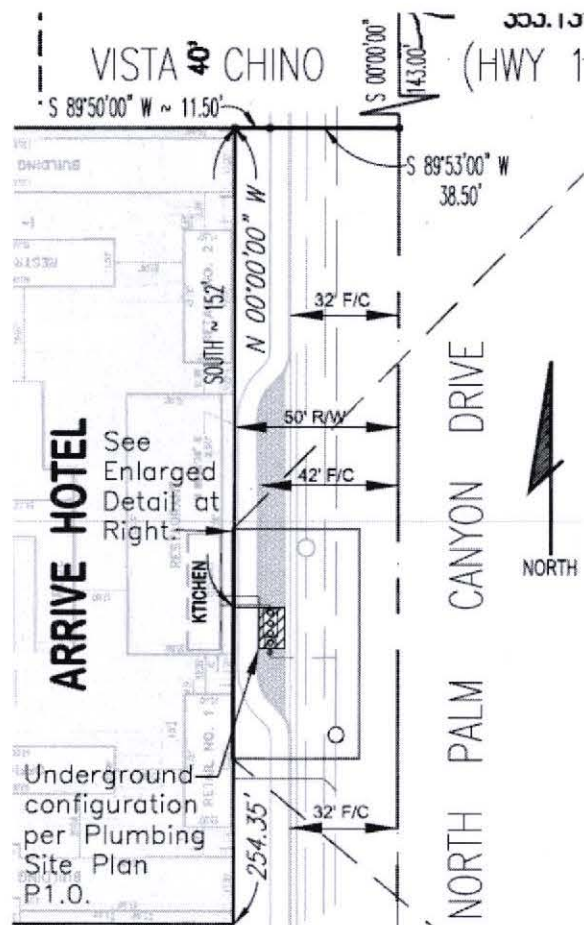
Chapter 14.16 of the Palm Springs Municipal Code requires an encroachment permit to be issued for any improvements constructed in the public right-of-way. Additionally,

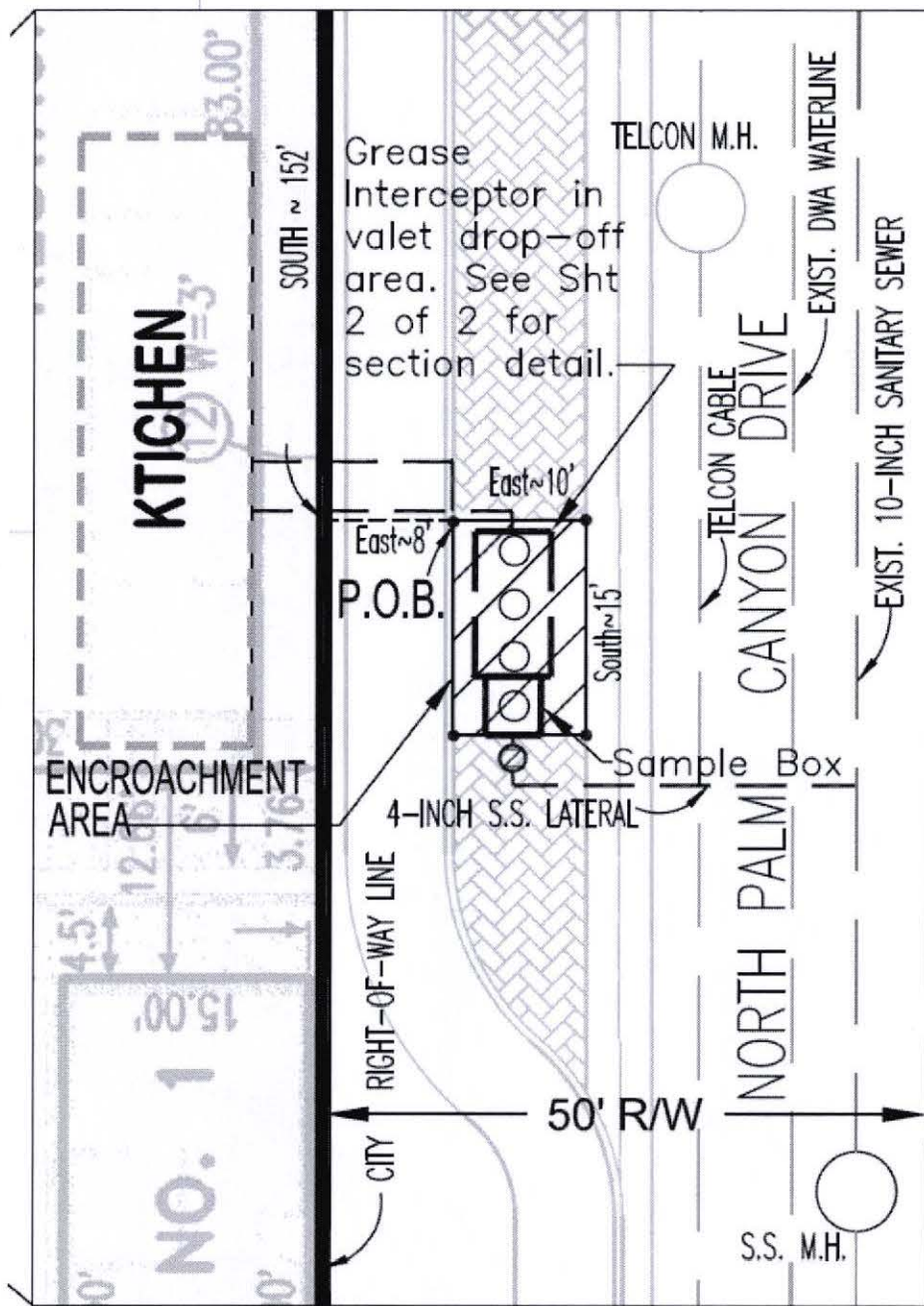
ITEM NO. 1.H.

whenever other improvements of a type of use determined by the Director of Engineering Services to require additional liability protection for the City, a formal agreement through an Encroachment License is required.

On October 10, 2012, the Planning Commission reviewed and unanimously approved a Planned Development District (Case 5.1284 – PDD 360) to develop 32-room hotel with an 80 seat restaurant on an approximately 1.27 acre site located at 1551 N. Palm Canyon Drive, also known as the Arrive Hotel. On November 7, 2012, the City Council reviewed and unanimously adopted Resolution 23252 approving development of the Arrive Hotel. Deliveries, loading, and unloading is accommodated within a new valet drop off lane located along North Palm Canyon Drive at the front of the Arrive Hotel. A vicinity map is provided as **Attachment 1**.

The Arrive Hotel valet drop-off area was required to be constructed with decorative pavement, and is located within the City right-of-way. Approvals were granted to allow the Arrive Hotel to install a new grease interceptor and sample box within its new valet drop-off area, on the condition that the Arrive Hotel provide perpetual maintenance of the decorative pavement within the valet drop-off area, as well as full liability for operation and maintenance of the grease interceptor and sample box. Exhibits showing the location of the encroachments are shown below.





Approval of the Encroachment License ensures the property owners, and their successors, remain obligated to operate and maintain the improvements constructed within City right-of-way, including maintenance of liability insurance and indemnification of the City by the adjacent property owner. A copy of the Encroachment License is included as **Attachment 2**.

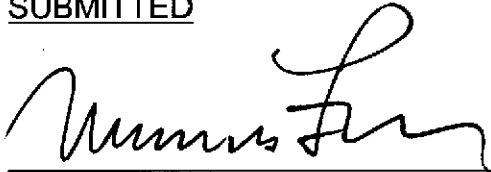
ENVIRONMENTAL IMPACT:

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 approve an Encroachment License, 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.

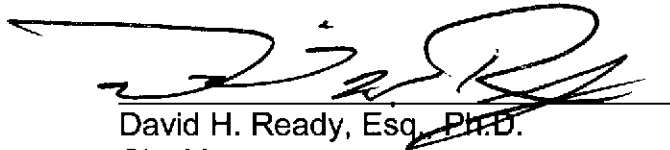
FISCAL IMPACT:

Approval of the Encroachment License ensures the property owners remain obligated for perpetual maintenance of the improvements, and for maintaining liability insurance and indemnity protection for the City. In this way, the City is protected against any claims or future damages for operation and maintenance of these improvements by the property owner, or their successors in interest.

SUBMITTED



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



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

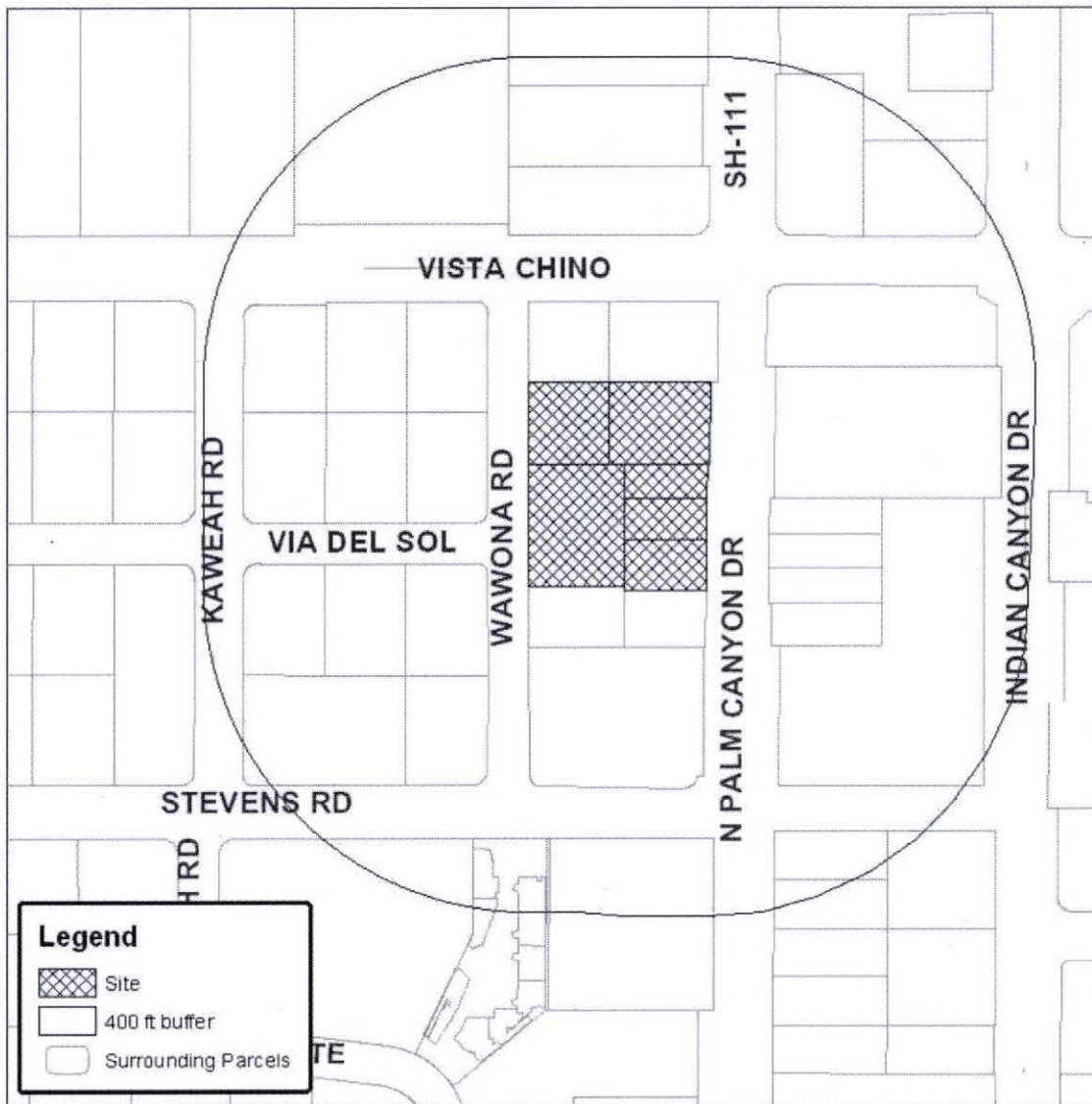
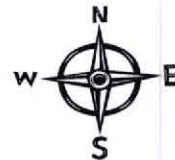
Attachment:

1. Vicinity Map
2. Encroachment License

# **Attachment 1**



**Department of Planning Services  
Vicinity Map**



**CITY OF PALM SPRINGS**

**CASE NO:** 5.1284 PDD 360

**APPLICANT:** Palm Grove Group, LLC

**DESCRIPTION:** An application for a Planned Development District (PDD) proposing a hotel, a restaurant, other retail, and parking on approximately 1.27 acres at 1551 North Palm Canyon Drive, Zone C-1/R-3 Resort Combining Zone. APN 505-165-002, -003, -007, -009, -011 and -012.

# **Attachment 2**

PLEASE COMPLETE THIS INFORMATION  
RECORDING REQUESTED BY:

**City of Palm Springs**

AND WHEN RECORDED MAIL TO:

**City of Palm Springs  
Attn: City Clerk  
Box 2743  
Palm Springs, CA 92263**

					<b>R</b>	<b>A</b>	Exam:		
Page	DA	PCOR	Misc	Long	RFD	1st Pg	Adtl Pg	Cert	CC
SIZE	NCOR	SMF	NCHG	T:					

(FOR RECORDERS USE ONLY)

Filing Fee Exempt Per Government Code 6103  
**EL 16-03**  
**APN: 505-165-014**

### **ENCROACHMENT LICENSE**

THIS ENCROACHMENT AGREEMENT ("Agreement") is entered into this \_\_\_\_ day of \_\_\_\_\_, 2017, by and **Palm Grove Group LLC, a California Limited Liability Corporation ("Applicant")**, whose mailing address is **P.O. Box 93217, Pasadena, CA 91109-3217** 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 **owner** of that certain real property located in the City of Palm Springs, County of Riverside, State of California commonly known as **The Arrive Hotel, 1551 North Palm Canyon Drive, Palm Springs, CA 92262-4409 (APN 505-165-014)** 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 as more particularly described in **Exhibit "B"** hereto ("City Property").

B. Applicant desires to construct and maintain a **grease interceptor box with attached sample box and appertances** 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" and "C-2"** ("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 Manager or his designee 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 Manager. 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.

Palm Grove Group, LLC, a California Limited Liability Company

By \_\_\_\_\_

\_\_\_\_\_  
Print Signature Name

Its \_\_\_\_\_  
Title

"Applicant"

ATTEST:

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

\_\_\_\_\_  
Kathie Hart, Interim 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 \_\_\_\_\_

\_\_\_\_\_  
Douglas Holland, City Attorney  
City of Palm Springs, CA

Agreement No. \_\_\_\_\_

(NOTARY STATEMENTS ON FOLLOWING PAGE)

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**



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 \_\_\_\_\_ before me, \_\_\_\_\_  
Date Here Insert Name and Title of the Officer

personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

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 \_\_\_\_\_  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_ Document Date: \_\_\_\_\_

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_



# **EXHIBIT "A"**

## **LEGAL DESCRIPTION OF APPLICANT PROPERTY**

A portion of the Northeast quarter or the Northeast quarter of Section 10, Township 4 South, Range 4 East, San Bernardino Base and Meridian, more particularly described as follows:

Parcel A of Parcel Merger 13-03 (PM 13-03) for the City of Palm Springs, California, shown in Document No. 2013-0398595, recorded August 15, 2013, Official Records Riverside County Recorder.

Said Parcel A contains 1.27 Acres, more or less.

## **EXHIBIT "B"**

### **LEGAL DESCRIPTION OF CITY PROPERTY AND ENCROACHMENT**

A portion North Palm Canyon Drive contained within the Northeast quarter of the Northeast quarter of Section 10, Township 4 South, Range 4 East, San Bernardino Base and Meridian, more particularly described as follows:

Commencing at the said Northeast Corner of Section 10; Thence South 89°53'00" West along the north line of said Section 10, a distance of 3535.13 feet to the centerline of North Palm Canyon Drive shown as County Highway Route No. 18 by Map on File in Book 5, Page 32, of Records of Survey, Official Records of Riverside County, California; Thence South 143.00 feet; thence leaving said centerline, South 89°53'00" West, 38.50 feet, to the Northwest corner of that certain parcel Granted to the City of Palm Springs, California by Deed Recorded April 27, 1961, in Book 2895, Page 445, Official Records of said Riverside County, thence South 89°50'00" West, 11.50 feet to the Northwest corner of a Granted to the City of Palm Springs, California for public right-of-way recorded in Document No. 2014-0232625 on June 25, 2014, Riverside County Recorder Official Records, thence South approximately 152 feet to a point on the Western right-of-way line for North Palm Canyon Drive; thence East approximately 8 feet to the POINT OF BEGINNING;

THENCE continuing East, approximately 10 feet;

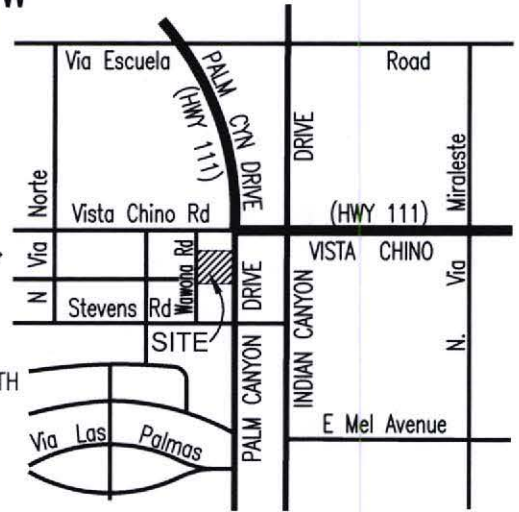
THENCE South, approximately 15 feet;

THENCE West, approximately 10 feet;

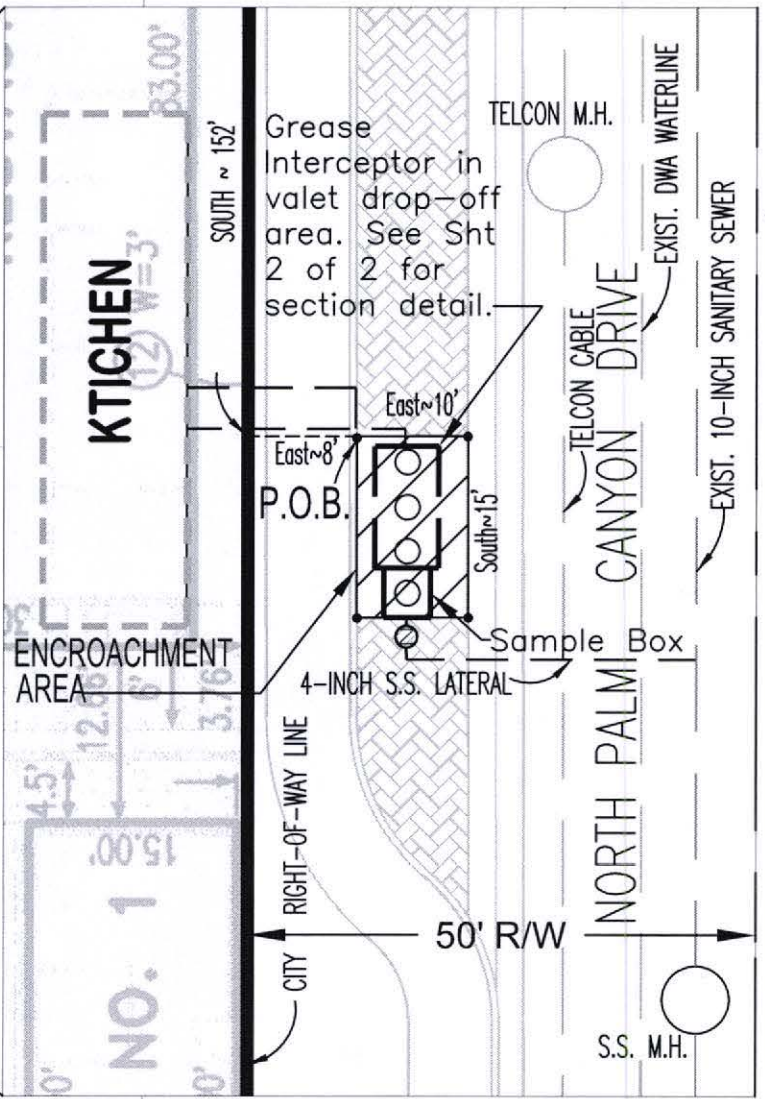
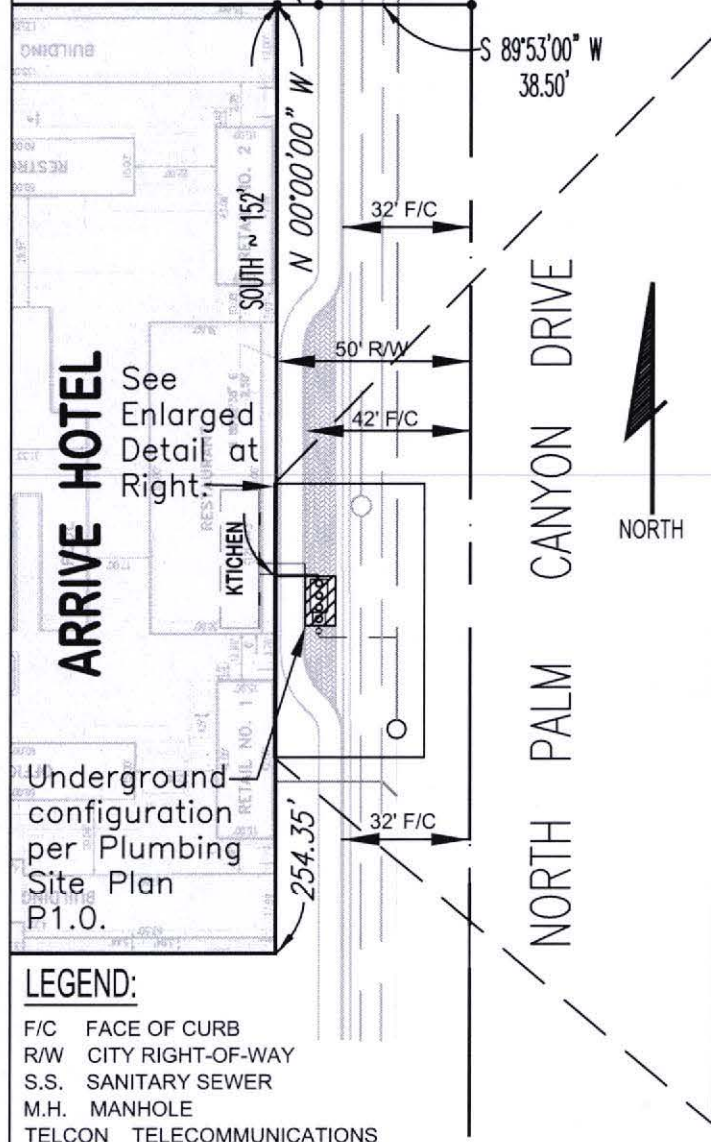
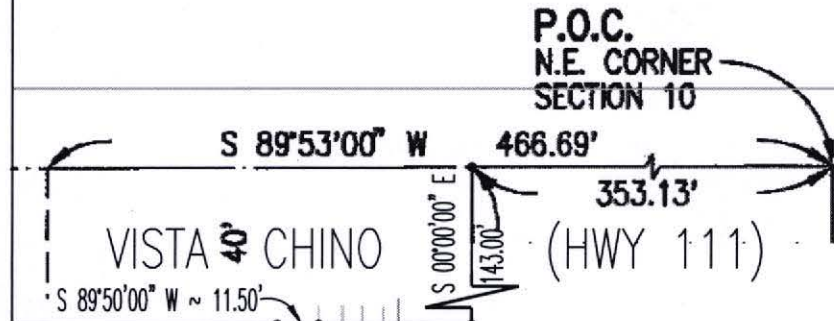
THENCE North, approximately 15 feet, to the POINT OF BEGINNING.

Said encroachment area contains approximately 150 square feet, more or less, as shown on Exhibit "C-1" attached hereto and by reference made a part hereof.

# EXHIBIT "C-1"



VICINITY MAP



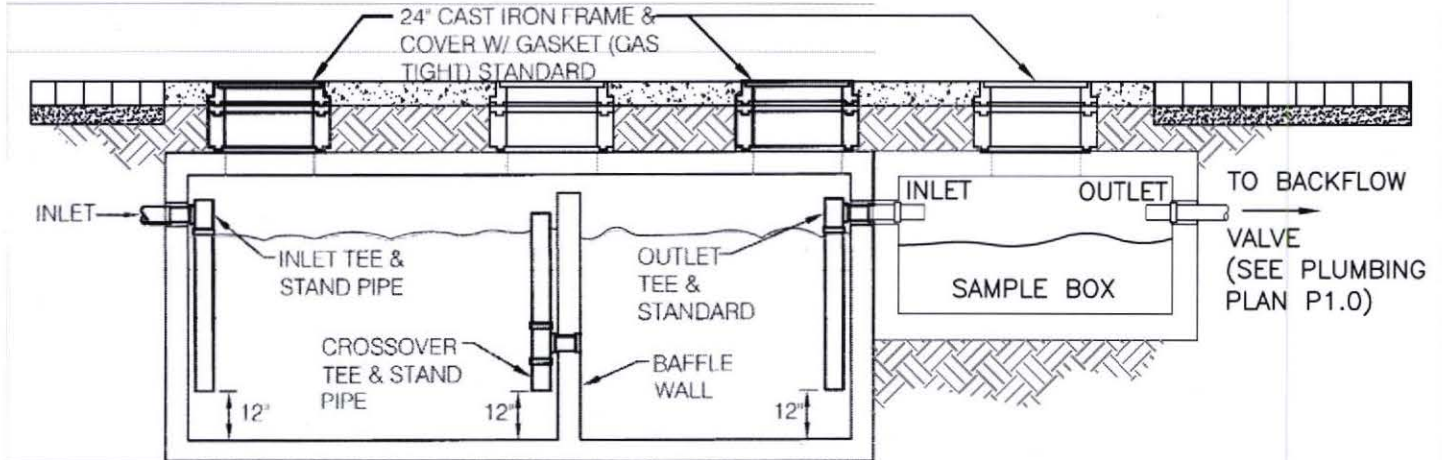
- LEGEND:**
- F/C FACE OF CURB
  - R/W CITY RIGHT-OF-WAY
  - S.S. SANITARY SEWER
  - M.H. MANHOLE
  - TELCON TELECOMMUNICATIONS

**CITY OF PALM SPRINGS ENGINEERING SERVICES**  
3200 TAHQUITZ CANYON WAY  
PALM SPRINGS, CA 92262

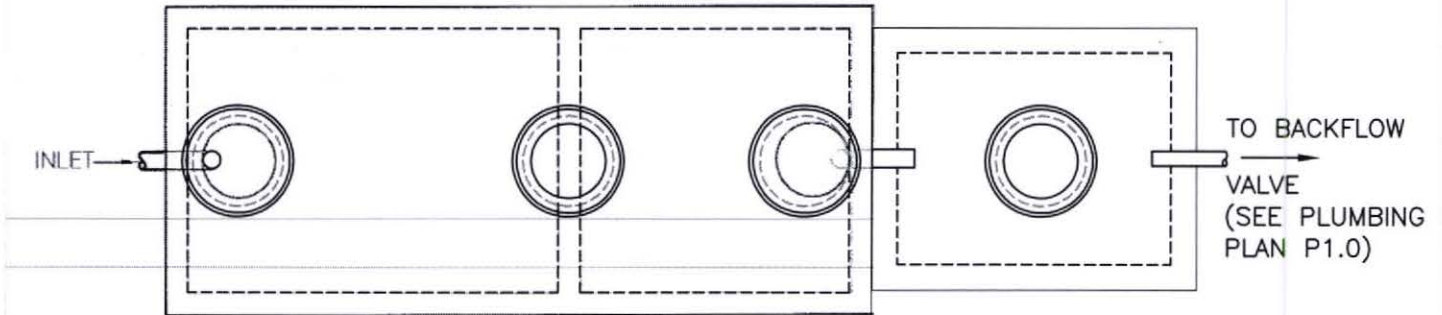
**ARRIVE HOTEL - ENCROACHMENT LICENSE GREASE INTERCEPTORS**

DRAWN BY: FUP	FILE NO. ENCROACHMENT LICENSE 16-03 (EL 16-03) Sht. 1 of 2
CHECKED BY: MLF	DWG. NO. EL 16-03_Arrive Hotel_Grease Interceptors_2016.07.16.dwg

# EXHIBIT "C-2"



SIDE VIEW CUTAWY



TOP VIEW (LIDS REMOVED)

**NOTES:**

1. MANHOLES REQUIRED AT INLET AND OUTLET

## GREASE INTERCEPTOR DETAIL

SCALE: NONE



**CITY OF PALM SPRINGS  
ENGINEERING SERVICES**  
3200 TAHQUITZ CANYON WAY  
PALM SPRINGS, CA 92262

**ARRIVE HOTEL - ENCROACHMENT LICENSE  
GREASE INTERCEPTORS**

DRAWN BY: FUP	FILE NO. ENCROACHMENT LICENSE 16-03 (EL 16-03) Sht. 2 of 2
CHECKED BY: MLF	DWG. NO. EL 16-03_Arrive Hotel_Grease Interceptors_2016.07.16.dwg