



CITY COUNCIL STAFF REPORT

DATE: September 2, 2009 NEW BUSINESS

SUBJECT: APPROVE THE EXCHANGE OF BOND FOR A RECORDED DEED OF TRUST AS SECURITY FOR COMPLETION OF FUTURE IMPROVEMENTS FOR THE PALERMO AND MURANO PROJECTS.

FROM: David H. Ready, City Manager

BY: Department of Public Works and City Attorney

SUMMARY

The developer of the Palermo condominium project and the Murano project has requested that the City of Palm Springs ("City") release the bonds on deposit in exchange for recorded Deeds of Trust securing performance of the remaining Works of Improvement. Pursuant to the Subdivision Improvement Agreements for both projects, the City Attorney's Office has reviewed and approved the Deeds of Trust as appropriate forms of security.

RECOMMENDATION:

1. Approve the exchange of the posted security bonds for Deeds of Trust as security from P.S. VENTURE INDIAN CANYON/SAN RAFAEL, LLC, and PS AVENIDA CABALLEROS/SAN RAFAEL, LLC, for completion of future improvements for the Palermo, Tract Map 33561, and Murano, Tract Map 33933.
2. Direct the City Clerk to execute a Certificate of Acceptance for the Deeds of Trust.

STAFF ANALYSIS:

The developer of the Palermo condominium project and the Murano project has requested that the City of Palm Springs ("City") release the bonds on deposit in exchange for a recorded Deed of Trust securing performance of the remaining Works of Improvement. The condominium project has been constructed in phases although the map is for a single lot (typical for condominium developments). The initial "phase" of the project has been completed and is occupied. All Works of Improvement related to, and necessary for the habitation of, said "phase" have been installed, completed, inspected and approved by the City. The Subdivision Improvement Agreement allows for the Works of Improvement to be installed/completed in phases pursuant to Section 2.2 thereof. The single family project will have a Notice recorded against the remaining lots

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advising any potential purchaser of the incomplete improvements related to those unfinished lots.

Department of Public Works has confirmed that the remaining Works of Improvement are unnecessary for the existing residents should the developer default and walk away from the project entirely. Further, in the event of a default the property will either revert to acreage, in which case the Works of Improvement are unnecessary, or it will be purchased by a subsequent developer (before or after foreclosure, Section B(13) of DOT) that will be subject to the Subdivision Improvement Agreement and the recorded Deed of Trust.

Since the Deed of Trust is for all intents and purposes valueless based on the difference between the appraised value and the outstanding construction loan in first position, it is meant to be merely a placeholder until such time as the developer resumes construction. Section B(5) of the Deed of Trust requires the developer to re-post bonds at the time of commencement of construction. Based on the foregoing requirement, together with the Subdivision Improvement Agreement and the Conditions of Approval, the City could refuse to issue building permits until the replacement bonds have been posted.

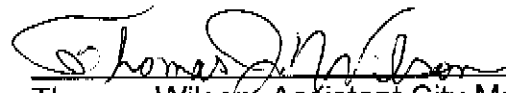
The rationale for approving the above-described bond substitution is that the City is protected by the requirement for replacement security set forth in the Deed of Trust once construction resumes; should construction fail to resume, no liability exists to the City since no further Works of Improvement are required to service existing residents. Additionally, the City aids and encourages development by relieving some of the financial pressure on the developer during these challenging economic times.

FISCAL IMPACT:

No fiscal impact.



David J. Barakian
Director of Public Works/City Engineer



Thomas Wilson, Assistant City Manager



David H. Ready, City Manager



Douglas C. Holland, City Attorney

Attachments:

1. Deeds of Trust
2. Notice to Purchasers

ATTACHMENTS WILL BE
MATERIALS TO FOLLOW