



AGENDA REPORT

Meeting Date: April 1, 2008
Item Number: F-10
To: Honorable Mayor & City Council
From: Laurence S. Wiener, City Attorney
Subject: ACCEPTANCE OF A DEDICATION OF A SUBWAY PORTAL
EASEMENT FROM BEVERLY WILSHIRE OWNER, LP, A LIMITED
PARTNERSHIP

Attachments: 1. Easement Agreement

RECOMMENDATION

Staff recommends that the City Council accept the dedication of a subway portal easement from Beverly Wilshire, LP, a limited partnership and authorize the Mayor to execute the certificate of acceptance attached to the easement agreement.

INTRODUCTION

Pursuant to the development agreement with Beverly Wilshire Owner, LP (BWO) for the William Morris Project, BWO was required to dedicate to the City a subway portal easement. BWO has now offered the dedication and, by approval of the easement, the City would accept the dedication.

DISCUSSION

Government Code Section 27281 provides that deeds or grants conveying any easement in real property to a City for public purposes cannot be accepted for recordation with the County Recorder without the acceptance or consent of the City through its City Council. The City Council's consent is evidenced by a certificate of acceptance, which is attached to the easement. Accordingly, the easement is presented to the City Council for its acceptance. Staff further requests that the City Council authorize the Mayor to execute the certificate of acceptance attached to the easement agreement.

FISCAL IMPACT

There is no fiscal impact to the City.


Approved by Laurence S. Wiener

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: City Clerk City of Beverly Hills 455 N. Rexford Beverly Hills, California 90210	
	THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

A.P.N.: _____

Exempt from recording fees pursuant to Government Code § 27383.

Exempt from documentary transfer taxes pursuant to Revenue Taxation Code § 11922.

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (the "Agreement") is entered into as of March 7, 2008 2007 (the "Effective Date"), by and between Beverly Wilshire Owner, LP, a limited partnership ("Grantor") and THE CITY OF BEVERLY HILLS, a municipal corporation ("Grantee").

RECITALS

A. Grantor is the owner of the land described on Exhibit "A" and the improvements thereon ("Grantor Parcel").

B. Grantor and Grantee have entered into a Development Agreement dated March 7, 2008 2007 in connection with a proposed development on a parcel adjacent to the Grantor Parcel (the "Development Agreement").

C. The Development Agreement requires that Grantor enter into this Agreement with Grantee to provide an entranceway or "portal" for a subway station under Wilshire Boulevard that is assignable to the Metropolitan Transportation Authority (or any other governmental entity responsible for constructing and maintaining a subway station) for the benefit of a future subway line.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee, a subway portal easement (“Easement”) in, over and under the Grantor Parcel provided, however, that the surface area at ground level of such portal shall not exceed three hundred (300) square feet and shall be in an area not within the existing building.

2. Purpose of Easement. The purpose of the Easement shall be for the construction, installation, operation, maintenance, improvement and repair/replacement (as necessary) of an entrance or “portal” (and related improvements) to a subway station to be constructed under Wilshire Boulevard in the City of Beverly Hills, California.

3. Special Restrictions on Use of Easement. The Easement may not be used in a manner that materially interferes with, limits access to or materially affects the structural integrity of, or causes the loss of any parking spaces from the Grantor Parcel.

4. Expiration. The Easement will expire in the event that: (i) the Grantee does not accept the Easement in writing on or before the twentieth (20th) anniversary of the date of this Easement; or (ii) neither the Metropolitan Transportation Authority (“MTA”) nor any other appropriate governmental entity involved with the subway obtains financing for the construction of the subway station on or before the twentieth (20th) anniversary of the date of this Easement.

5. Miscellaneous.

(a) Notices. Any notice to be given under or in connection with this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (iii) two (2) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to Grantor:

Beverly Wilshire Owner, LP
Attn: Peter Duncan
c/o George Comfort & Sons of California, Inc.
9465 Wilshire Blvd., Suite 200
Beverly Hills, CA 90212

With a copy to:

Mark Egerman, Esq.
Egerman & Brown, LLP
9401 Wilshire Blvd., Suite 500
Beverly Hills, CA 90210

If to Grantee:

City of Beverly Hills
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, California 90210
Attn: City Manager

With a copy to:

City of Beverly Hills
455 North Rexford Drive, Suite 220
Beverly Hills, California 90210
Attn: City Attorney

(b) Assignment; Successors and Assigns. The Grantee may assign its rights and obligations hereunder to the MTA or to any other governmental entity responsible for constructing or maintaining the subway station and, upon a written assumption by such assignee of the obligations hereunder, Grantee shall be released from all obligations and liabilities arising after the date of the assumption. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, each party, its successors, assigns and successors-in-interest.

(c) Running With Land. The covenants and agreements contained herein and the rights, privileges and easements herein granted shall run with, burden and shall be appurtenant to the properties described herein.

(d) Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

(e) Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the validity of the other provisions of this Agreement shall in no way be affected thereby.

(f) Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

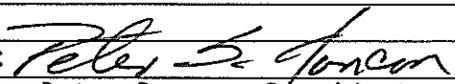
(g) Further Acts. Each of the parties shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Agreement (including, without limitation, obtaining and delivering to Grantee prior to the recordation of this Agreement reasonable subordination agreements from the holders of any liens encumbering the Easement area that are or might be senior to this Agreement as of the date of the recordation of this Agreement).

(h) Attorneys' Fees. If any action shall be commenced to enforce the terms of this Agreement or to declare the rights of the parties hereunder, the prevailing party shall be entitled to recover all of its costs and expenses (including, but not limited to, its actual attorneys

fees) from the nonprevailing party. In addition to the foregoing award of attorneys' fees and other litigation costs to the prevailing party, the prevailing party in any lawsuit on this Agreement shall be entitled to its attorneys' fees and other litigation costs incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement. This provision shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

GRANTOR: BEVERLY WILSHIRE OWNER, LP
By: GCS WILSHIRE LLC, Its General Partner

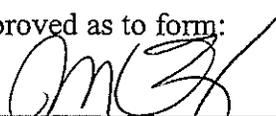
By: 
Peter Duncan, President

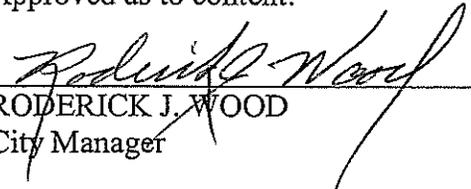
GRANTEE:
THE CITY OF BEVERLY HILLS

By: _____
Print Name: _____
Title: MAYOR

ATTEST:

(SEAL)
BYRON POPE
City Clerk

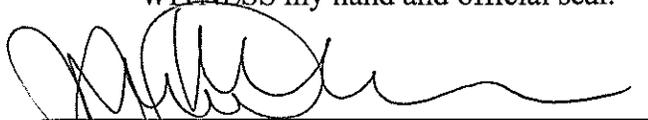
Approved as to form:

LAURENCE WIENER
City Attorney

Approved as to content:

RODERICK J. WOOD
City Manager

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

On March 7, 2008, before me, Michael K. Federman, a Notary Public, personally appeared Peter S. Duncan, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacities, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



Notary's Signature

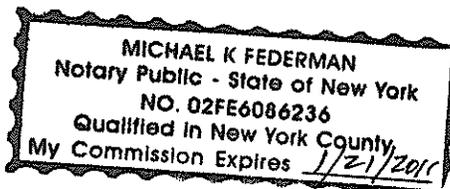


EXHIBIT "A"

LEGAL DESCRIPTION OF THE GRANTOR PROPERTY

LOT 8 IN BLOCK 10 OF "BEVERLY" IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11 PAGE 94 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.