



AGENDA REPORT

Meeting Date: April 21, 2009
Item Number: E-1
To: Honorable Mayor & City Council
Honorable Parking Authority Chair and Directors
From: Ara Maloyan, P.E., Deputy City Engineer
David Lightner, Deputy City Manager
Subject: SECOND AMENDMENT TO RECIPROCAL EASEMENTS AND
OPERATIONS AGREEMENT
Attachments: 1. Amendment

RECOMMENDATION

It is recommended that the City Council and Parking Authority approve the second amendment to the Reciprocal Easements and Operations Agreement (REOA) between the City of Beverly Hills, the Beverly Hills Parking Authority and Beverly Hills Luxury Hotel (Montage) for utility encroachments into the alley beneath the hotel.

INTRODUCTION

The original REOA was approved by the City Council and Parking Authority in November of 2006 and amended in April of 2008. The document sets forth all of the shared access agreements, cross easements and responsibilities for the Montage Hotel Project, the City's Beverly Canon Gardens and Gardens Building and the garage that extends beneath the public and the private sites. This second amendment would include additional alley utility easements in the REOA.

DISCUSSION

The original approvals of the Montage Hotel project at 225 North Canon Drive included dedication of a new east-west leg of the public alley at the south end of the site. This new leg of the alley is at ground level, but runs beneath the upper levels of the hotel, such that it has walls and a ceiling. An automatic-actuating overhead gate at the alley exit on Canon Drive is also part of the original approvals. Certain utility lines and pipes

and related conduit, brackets and guards are attached to the walls of the alley; and warning and security lights are attached to the walls and ceiling. This amendment to the REOA adds these easements to the overall set of project easements.

All of these elements are the responsibility of Montage to maintain at their sole cost and expense. The encroachments are primarily of less than 12 inches of depth into the alley and in all cases do not impede the horizontal and vertical minimum clearance standards for the alley.

This amendment also corrects two typographical errors regarding reference numbers in the first amendment to the REOA.

FISCAL IMPACT

There is no fiscal impact associated with the approval of this amendment to the REOA.

David Lightner
Approved By



RECORDING REQUESTED BY:

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

Attention City Clerk

When Recorded Mail Document To:

Sonnenschein Nath & Rosenthal
2398 East Camelback Road #1100
Phoenix, Arizona 85016

Attention Richard F. Ross, Esq.

APN:

SPACE ABOVE THIS LINE FOR RECORDER'S USE

SECOND AMENDMENT TO RECIPROCAL
EASEMENTS
AND OPERATIONS AGREEMENT

Documentary Transfer Tax: \$ NONE

This document is exempt from any transfer tax because the value of and consideration for the property interests being conveyed is less than \$100.

SECOND AMENDMENT TO RECIPROCAL
EASEMENTS AND OPERATIONS AGREEMENT

THIS SECOND AMENDMENT TO RECIPROCAL EASEMENTS AND OPERATIONS AGREEMENT (this "**Second Amendment**") is made as of the ___ day of _____, 2009, by and among the City of Beverly Hills, a California municipal corporation, in and only in its proprietary capacity ("**City**"); The Parking Authority of the City of Beverly Hills, a parking authority established pursuant to the Parking Law of 1949 of the State of California, in and only in its proprietary capacity ("**Parking Authority**"); and Beverly Hills Luxury Hotel LLC, a Delaware limited liability company ("**Developer**"), and amends that certain Reciprocal Easements and Operations Agreement (the "**Original REOA**") by and among the City, the Parking Authority and the Developer made as of the 28th day of November, 2006 and recorded in the Official Records, Recorder's Office, Los Angeles County, California (the "**Official Records**") on November 28, 2006 as Document No. 06 2620916, as previously amended by that certain First Amendment to Reciprocal Easements and Operations Agreement (the "**First Amendment**") made as of the 15th day of April, 2008 and recorded in the Official Records on April 25, 2008 as Document No. 08 0728281.

RECITALS

A. The City is the fee owner of (i) that certain tract of land located in the City of Beverly Hills, California and legally described as Lot A of Tract No. 54376 of Montage Hotel Beverly Hills, City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in the Official Records in Book 1325, Pages 38 to 41 of Maps (“**Tract Map 54376**”); (ii) that portion of Canon Drive legally described in Exhibit 1 attached hereto (defined and referred to in the Original REOA as the “**Canon Drive Land**”); and (iii) that portion of Beverly Drive legally described in Exhibit 2 attached hereto (defined and referred to in the Original REOA as the “**Beverly Drive Land**”). The land described in clauses (i), (ii) and (iii) of this Recital A is collectively defined and referred to in the Original REOA as the “**City Parcel**”.

B. The Developer is the owner of those certain tracts of land located in the City of Beverly Hills, California, legally described as Lots 3 and 4 of Tract Map 54376; Lots 1, 2, 5 and 6 of Tract No. 68857 in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in the Official Records in Book 1347, Pages 60 to 64 of Maps (“**Tract Map 68857**”); and Units 5151, 5152, 5153, 5154, 6151, 6152, 6153, 6154, 6155, 6156, 6157, 6158, 7151, 7152, 7153, 7154, 7155, 7156, 7157 and 7158, Condominium Plan for Lots 3 and 4 of Tract No. 68857, in the City of Beverly Hills, County of Los Angeles, State of California, as recorded in the Official Records on April 30, 2008 as Instrument No. 08-0759197 (all of which lots and units are the real estate that was collectively referred to in the Original REOA as the “**Developer Parcel**”).

C. The Parking Authority is the fee owner of (i) the six (6) lots located in the City of Beverly Hills, California and legally described on Exhibit 3 attached hereto (collectively defined and referred to in the Original REOA as the “**Parking Authority Lots**”); and (ii) those certain tracts of land located in the City of Beverly Hills, California and legally described as Lots B, C, D and E of Tract Map 54376. The lots and tracts described in clauses (i) and (ii) of this Recital C are collectively defined and referred to in the REOA as the “**Parking Authority Parcel**”.

D. The City, the Parking Authority and the Developer have developed a mixed-use project (the “**Project**”) on the Parking Authority Parcel, the City Parcel and the Developer Parcel.

E. As required by the approval of Tract Map 54376 by the City of Beverly Hills acting in its governmental capacity, the parties hereto entered into the Original REOA, thereby providing for various easements benefiting and burdening various portions of the Project, and for agreements, covenants and restrictions concerning the repair, maintenance, use and operation of certain portions of the Project.

F. As design and construction of the Project proceeded, the parties agreed to make certain minor changes to the Project, and those changes required that the Original REOA be amended in the manner set forth in the First Amendment.

G. As construction of the Project was completed following the recording of the First Amendment, the parties agreed to make certain additional minor changes to the Project, and those additional changes require (and the parties hereto therefore desire and have agreed) that the

Original REOA, as previously modified by the First Amendment, be further amended in the manner set forth in this Second Amendment. In addition, the parties hereto desire to correct certain errors in the First Amendment as set forth herein.

AMENDMENTS

NOW THEREFORE, in consideration of the covenants, agreements and obligations stated in this Second Amendment, the City, the Parking Authority and the Developer hereby enter into this Second Amendment and agree as follows:

1. Correction of Typographical Errors in Section 7 of First Amendment. The references to “Section 2.23” of the REOA in Section 7 of the First Amendment were intended, and are hereby amended, to refer to “Section 2.33” of the Original REOA. Accordingly, the new section that was added to the Original REOA by Section 7 of the First Amendment is and shall be Section 2.33 of the Original REOA (and shall remain in full force and effect without modification).
2. Section 2.28 (Encroachment Easements) Amended. The last two paragraphs of Section 2.28 of the Original REOA, as added by Section 9 of the First Amendment, shall be and hereby are further amended to state in their entirety as follows:

In addition to the general encroachment easements described in the foregoing paragraphs of this Section 2.28, the City, as the Owner of the New Alley, hereby grants to the Developer an easement for the portion of the Hotel (including (i) the exterior wall; (ii) an overhead door at the Canon Drive entrance to the New Alley that is located in the portion of the New Alley that is sixteen (16) feet or more above the surface of the New Alley (when such door is up) and in the framing for such overhead door that is located as shown on Exhibit 26 attached hereto (when such door is down), with such door and such framing being collectively the “**Overhead Door**”; (iii) two warning lights (that are powered from the Hotel) located in the easterly portion of the New Alley; and (iv) various utility lines and pipes and related conduit, brackets and guards) that encroach into the New Alley in the manner and to the extent described in Exhibit 25 and Exhibit 26 attached hereto. The easement granted in this paragraph shall be perpetual; provided, however, the if any portion of the Hotel/Residential Building or any utility line or pipe or any related conduit, bracket or guard that encroaches into the New Alley as shown on Exhibit 25 and/or Exhibit 26, such flashing lights and/or the Overhead Door is removed and not replaced within forty-eight months thereafter, then the easement granted in this paragraph shall terminate.

The Hotel Property Owner shall, at its sole cost and expense, coordinate and/or conduct any and all repair and maintenance of all portions of the Hotel/Residential Building and all utility lines and pipes and any related conduit, brackets and guards that encroach into the New Alley as shown on Exhibit 25 and Exhibit 26, such warning lights and the Overhead Door in a reasonable manner so as to keep such portion of the Hotel/Residential Building and such utility lines, pipes, conduit, bracket and guards, warning lights and Overhead Door in safe, good, neat and clean condition and repair.

The City, as the Owner of the New Alley, also grants to the Developer an easement for encroachment of light fixtures and utility pipes, lines and related facilities into the portion of the New Alley that is sixteen (16) feet or more above the surface of the New Alley. The easement granted in this paragraph shall be perpetual; provided, however, the if the Hotel/Residential Building is removed and not replaced within forty-eight months thereafter, then the easement granted in this paragraph shall terminate.

The Hotel Property Owner shall, at its sole cost and expense, coordinate and/or conduct any and all repair and maintenance of such light fixtures and utility pipes, lines and related facilities in a reasonable manner so as to keep such light fixtures and utility pipes, lines and related facilities in safe, good, neat and clean condition and repair.

3. Correction of Typographical Error in Section 17 of First Amendment. The phrase “Section 8 of this Amendment” in Section 17 of the First Amendment is and shall be amended to state “Section 9 of this Amendment”.

4. Exhibit 26 (Hotel Encroachment into New Alley) Added. Exhibit 26 as attached to this Second Amendment shall be the Exhibit 26 to which the revised last two paragraphs of Section 2.28 of the Original REOA, as added by the First Amendment, and as amended by Section 2 of this Second Amendment, refer.

5. Miscellaneous. Except as amended and revised by this Second Amendment, the Original REOA as previously amended by the First Amendment shall and hereby is agreed to remain in full force and effect without modification. This Second Amendment shall be governed in all respects by the laws of the State of California. The parties hereto acknowledge and agree that any dispute between or among the parties hereto in connection with or relating to this Second Amendment shall be governed by the provisions of Article 9 of the Original REOA.

[The remainder of this page is intentionally left
blank so that signatures appear on the following pages]

IN WITNESS WHEREOF, the parties hereto have entered into this Amendment as of the date first set forth above.

“City”

CITY OF BEVERLY HILLS,
a municipal corporation

Mayor of the City of Beverly Hills,
California

ATTEST:

_____(SEAL)

City Clerk

“Parking Authority”

PARKING AUTHORITY OF THE
CITY OF BEVERLY HILLS

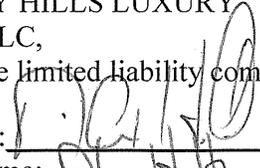
Chairman of the Parking Authority
of the City of Beverly Hills

ATTEST:

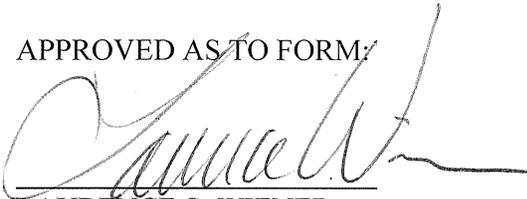
_____(SEAL)

Clerk of the Parking Authority
of the City of Beverly Hills

“Developer”
BEVERLY HILLS LUXURY
HOTEL LLC,
a Delaware limited liability company

By: 
Name: David Lightner
Title: Owner

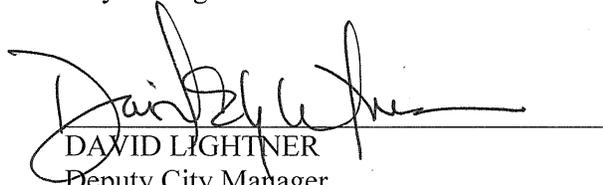
APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager



DAVID LIGHTNER
Deputy City Manager

[The remainder of this page is left blank]

STATE OF CALIFORNIA)
)
COUNTY OF)

On _____, 2009, before me, _____,
Notary Public, personally appeared _____, 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.

Notary Public in and for the State of California

(SEAL)

STATE OF CALIFORNIA)
)
COUNTY OF)

On _____, 2009, before me, _____,
Notary Public, personally appeared _____, 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.

Notary Public in and for the State of California

(SEAL)

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On APRIL 14, 2009, before me, JOAN WOJNAR,
Notary Public, personally appeared ALEX HILL, 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.

Joan Wojnar
Notary Public in and for the State of California

(SEAL)



STATE OF CALIFORNIA)
)
COUNTY OF)

On _____, 2009, before me, _____,
Notary Public, personally appeared _____, 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.

Notary Public in and for the State of California

(SEAL)

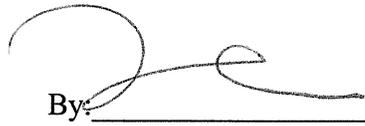
CONSENT OF MORTGAGEE

HSH NORDBANK AG, NEW YORK BRANCH, as agent for and on behalf of itself and other lender, the beneficiary under a certain deed of trust (the "Deed of Trust") on the Property dated November 28, 2006 and recorded November 28, 2006 as Instrument Number 06-2620918 hereby consents to the execution, delivery and recording of the Second Amendment to Reciprocal Easements and Operations Agreement (the "Amendment") and agrees that the lien of the Deed of Trust is subordinate to the Amendment.

HSH NORDBANK AG, NEW YORK BRANCH

By:  _____

Name: **Matthew O'Hara**
Senior Vice President
HSH Nordbank AG, New York Branch
Title: _____

By:  _____

Name: **Michael Carter**
Senior Vice President
HSH Nordbank AG, New York Branch
Title: _____

STATE OF New York)
)
COUNTY OF New York)

On April 13th, 2009, before me, Monica I. Yuknek,
Notary Public, personally appeared Matthew O'Hara, personally
known to me (or 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 New York
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Monica I. Yuknek
Notary Public in and for the State of New York
MONICA I. YUKNEK
Notary Public, State of New York
No. 41-4934668
Qualified in Nassau County
Certificate filed in New York County
Commission Expires June 20, 20 10

(SEAL)

STATE OF New York)
)
COUNTY OF New York)

On April 13th, 2009, before me, Monica I. Yuknek,
Notary Public, personally appeared Michael Carter, personally
known to me (or 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 New York
that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Monica I. Yuknek
Notary Public in and for the State of New York
MONICA I. YUKNEK
Notary Public, State of New York
No. 41-4934668
Qualified in Nassau County
Certificate filed in New York County
Commission Expires June 20, 20 10

EXHIBIT 1 TO SECOND AMENDMENT TO
RECIPROCAL EASEMENTS AND OPERATIONS AGREEMENT

Legal Description of Canon Drive Land

RBF Consulting
14725 Alton Parkway
Irvine, California 92618

October 16, 2006
JN 10-102547

LEGAL DESCRIPTION

CANON DRIVE LAND

That certain parcel of land situated in the City of Beverly Hills, County of Los Angeles, State of California, being that portion of Canon Drive as shown on a map of Beverly filed in Book 11, Page 94 of Maps in the Office of the County Recorder of Los Angeles County, included within a strip of land 49.00 feet wide, the southwesterly line of which is described as follows:

BEGINNING at the northerly corner of Lot 24 of said map of Beverly; thence along the northeasterly line of said lot and the northeasterly lines of Lots 23 and 22 of said map of Beverly South 39°31'30" East 150.00 feet to the northerly corner of Lot 1 of Tract No. 54376 as shown on the map thereof filed in Book 105 Pages 33 through 41 of said maps; thence along the northeasterly line of said Lot 1 South 39°18'03" East 200.13 feet to the most easterly corner of said Lot 1.

Said strip of land shall be lengthened or shortened so as to originate in the northeasterly prolongation of the northwesterly line of said Lot 24 and terminate in the northeasterly prolongation of the southeasterly line of said Lot 1.

CONTAINING: 15,859 Square Feet

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

EXHIBIT 1.A attached and by this reference made a part hereof.



Gregory A. Helmer, L.S. 5134



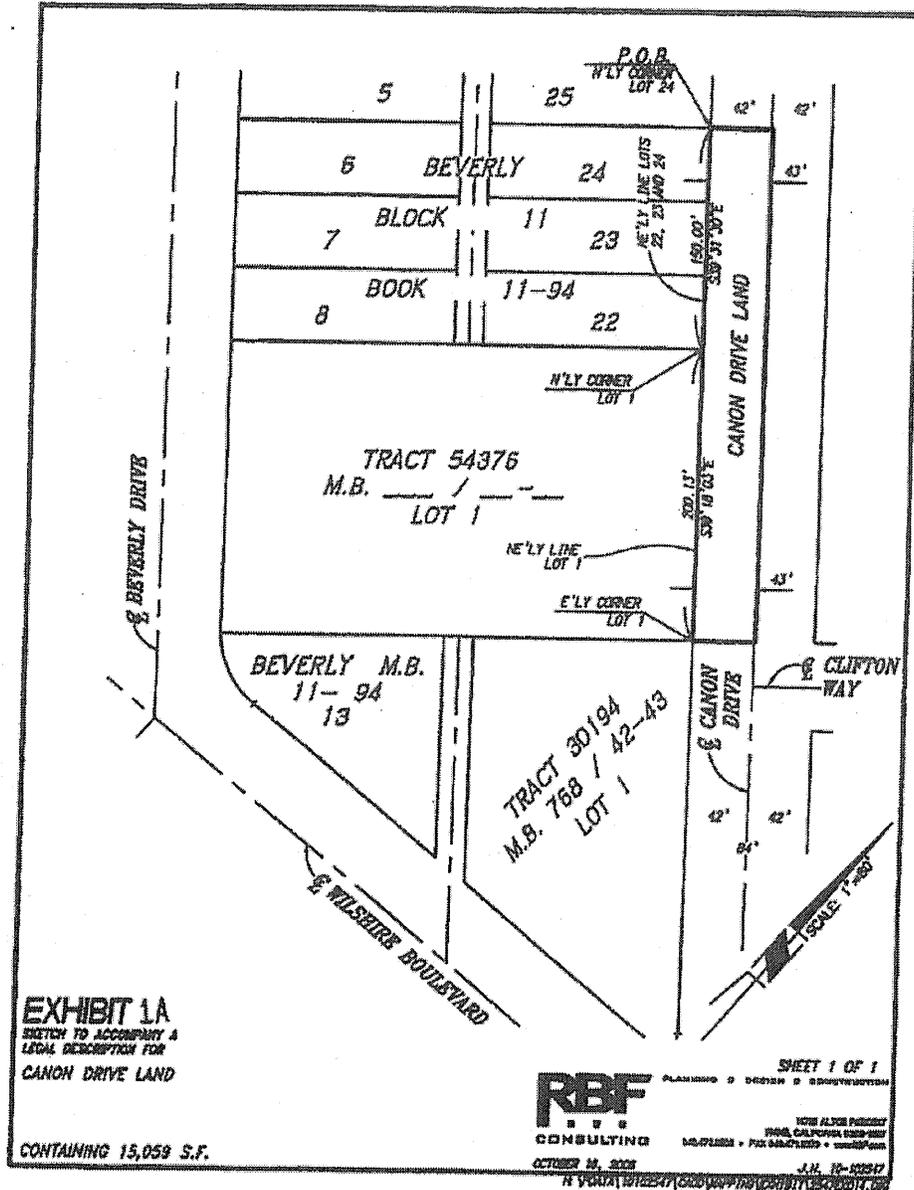


EXHIBIT 2 TO SECOND AMENDMENT TO
RECIPROCAL EASEMENTS AND OPERATIONS AGREEMENT

Legal Description of Beverly Drive Land

RBP Consulting
14725 Alton Parkway
Irvine, California 92618

October 16, 2006
JN 10-102547

LEGAL DESCRIPTION
BEVERLY DRIVE LAND

That certain parcel of land situated in the City of Beverly Hills, County of Los Angeles, State of California, being that portion of Beverly Drive as shown on a map of Beverly filed in Book 11, Page 94 of Maps in the Office of the County Recorder of Los Angeles County, included within a strip of land 17.00 feet wide, the northeasterly line of which is described as follows:

BEGINNING at the westerly corner of Lot 6 of said map of Beverly; thence along the southwesterly line of said lot and the southwesterly lines of Lots 7 and 8 of said map of Beverly South $39^{\circ}31'30''$ East 150.00 feet to the westerly corner of Lot 1 of Tract No. 54376 as shown on the map thereof filed in Book 1325 Pages 33 through 41 of said maps; thence along the southwesterly line of said Lot 1 South $39^{\circ}19'08''$ East 198.35 feet to the beginning of a tangent curve concave northeasterly and having a radius of 65.00 feet; thence along said curve southeasterly 1.78 feet through a central angle of $01^{\circ}34'19''$ to the southerly corner of said Lot 1.

Said strip of land shall be lengthened or shortened so as to originate in the southwesterly prolongation of the northwesterly line of said Lot 6 and terminate in the southwesterly prolongation of the southeasterly line of said Lot 1.

CONTAINING: 5,954 Square Feet

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

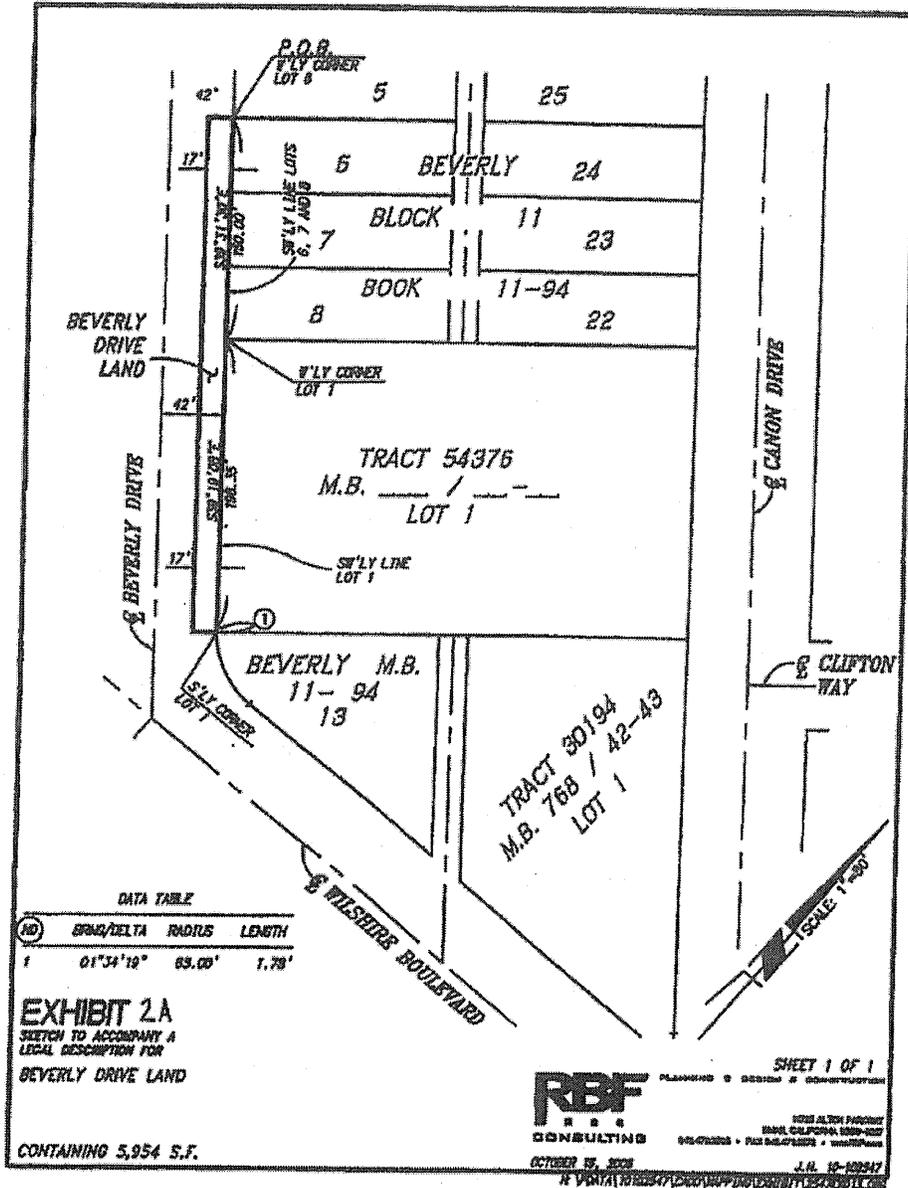
EXHIBIT ZA attached and by this reference made a part hereof.



Gregory A. Helmer, L.S. 5134



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**EXHIBIT 3 TO SECOND AMENDMENT TO
RECIPROCAL EASEMENTS AND OPERATIONS AGREEMENT**

Legal Description of Parking Authority Lots

Lots 6, 7, 8, 22, 23 and 24, in Block 11 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per the map recorded in Book 11, Page 94 of Maps, in the Official Records of said County.

**EXHIBIT 26 TO FIRST AMENDMENT TO
RECIPROCAL EASEMENTS AND OPERATIONS AGREEMENT**

Overhead Door and Utility Line Encroachments into New Alley

