



AGENDA REPORT

Meeting Date: September 20, 2011

Item Number: F-6

To: Honorable Mayor & City Council

From: Ara Maloyan, Deputy City Engineer
Tristan Malabanan, Civil Engineer

Subject: RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS APPROVING AN IRREVOCABLE OFFER OF DEDICATION AND COVENANTS, ACCEPTING THE OFFER OF DEDICATION AND APPROVING AN ENCROACHMENT AGREEMENT WITH 8767 WILSHIRE BOULEVARD, L.P.

Attachments:

1. Resolution
2. Irrevocable Offer of Dedication and Covenants
3. City of Beverly Hills Encroachment Permit and Covenants

RECOMMENDATION

Staff recommends that the City Council adopt the resolution approving: 1) an irrevocable offer of dedication and covenants concerning real property at 8767 Wilshire Boulevard, 2) accepting the offer of dedication along the western and southern sides of the property located at 8767 Wilshire Boulevard and 3) approving an encroachment agreement allowing encroachment into the public right-of-way on Robertson and Wilshire Boulevards.

INTRODUCTION

As required by the development approval of the building at 8767 Wilshire Boulevard, 8767 Wilshire Boulevard, L.P., the owner/developer of the new 4-story office building, has offered to dedicate a 10 foot wide easement along the western side of this property (on Robertson Boulevard), a 5 foot wide easement along the southern side of the property (on Wilshire Boulevards), and a small area at the SW corner of the property for public street purposes.

DISCUSSION

These easements are needed in connection with the addition of a westbound right turn pocket from Wilshire Boulevard to Robertson Boulevard, a 10 foot minimum wide

sidewalk on the east side of Robertson Boulevard adjacent to the office building, a corner access ramp, and the installation of City-owned infrastructure related to the new traffic signal system.

The encroachment agreement with 8767 Wilshire Boulevard, L.P., is for a) the subterranean garage structure that protrudes into the proposed public right-of-way (after dedication) by up to 10 feet on the east side of Robertson Boulevard and up to 7.5 feet on the north side of Wilshire Boulevard and b) the decorative sidewalk paving that was constructed on the east side of Robertson Boulevard (12.35 feet maximum wide) and on the north side of Wilshire Boulevard (9.5 feet maximum wide).

FISCAL IMPACT

There is no payment associated with either the dedication or the encroachment agreement. Therefore, there is no fiscal impact anticipated.

 David D. Gustavson
Approved By

Attachment 1

RESOLUTION NO. 11-R _____

RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS APPROVING AN IRREVOCABLE OFFER OF DEDICATION AND COVENANTS, ACCEPTING THE OFFER OF DEDICATION AND APPROVING AN ENCROACHMENT AGREEMENT WITH 8767 WILSHIRE BOULEVARD, L.P.

The City Council of the City of Beverly Hills hereby determines, resolves and orders as follows:

Section 1. 8767 Wilshire Boulevard, L.P. ("Owner") is the fee owner of certain real property (the "Property") located within the City of Beverly Hills (the "City") and commonly known as 8767 Wilshire Boulevard.

Section 2. Owner executed an Irrevocable Offer of Dedication and Covenants Concerning Real Property (the "Agreement") on August 1, 2011, by which Agreement Owner irrevocably offers to dedicate as public right of way to the City of Beverly Hills certain property along Robertson and Wilshire Boulevards.

Section 3. The City Council hereby approves the Agreement, accepts the dedication set forth in the Agreement and authorizes and directs the City Engineer to execute a document accepting the Agreement in substantially the form set forth in Exhibit B of the Agreement.

Section 4. The City Clerk is hereby authorized and directed to take appropriate action to record the Agreement and the acceptance of the Agreement with the County Recorder of the County of Los Angeles.

Section 5. The City Council hereby also approves that certain encroachment permit and covenants executed on August 1, 2011 by 8767 Wilshire L.P. and authorizes the Mayor to execute the encroachment permit and covenants and authorizes the City Manager to administer the encroachment permit and covenants.

Section 6. The City Clerk is hereby authorized and directed to take appropriate action to record the encroachment permit and covenants with the County Recorder of the County of Los Angeles.

Section 7. The City Clerk is directed to furnish a copy of this Resolution to the Owner at 250 N. Robertson Blvd., Suite 421, Beverly Hills, California 90211.

Section 8. The City Clerk shall certify to the adoption of this Resolution and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the Council of this City.

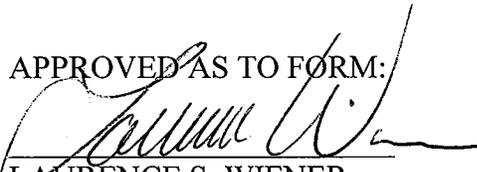
Adopted:

BARRY BRUCKER
Mayor of the City of
Beverly Hills, California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:



DAVID D. GUSTAVSON
Director of Public Works & Transportation



KARL KIRKMAN
Risk Manager

Attachment 2

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, CA 90210-4817

[Space Above Line For Recorder's Use]

Recording Fee: Exempt pursuant to California Government Code § 6103

IRREVOCABLE OFFER OF DEDICATION
AND COVENANTS CONCERNING REAL PROPERTY

THIS IRREVOCABLE OFFER OF DEDICATION AND COVENANTS CONCERNING REAL PROPERTY (this "Agreement") is made as of _____, 2011, by **8767 WILSHIRE BLVD., L.P.** ("Owner"), a California limited partnership, in favor of the **CITY OF BEVERLY HILLS**, a municipal corporation (the "City").

1. **Irrevocable Offer of Dedication.** Owner hereby makes an irrevocable offer (the "Offer") to dedicate to City for public right of way purposes that certain real property (the "Property") described on Exhibit "A", attached hereto and incorporated herein by reference.

a. **Term of Offer.** The term (the "Term") of the Offer shall commence on the date set forth above, and shall expire on the date (the "Expiration Date") that is one (1) year after the date of recordation hereof. The Offer is irrevocable by Owner until the Expiration Date.

b. **Mode of Acceptance of Offer.** The Offer may be accepted by City any time prior to the Expiration Date by adoption of a Resolution of the City Council of the City accepting the dedication (the "Resolution of Acceptance"). The Resolution of Acceptance will authorize the appropriate City official to execute an instrument (the "Acceptance") accepting the Offer in substantially the form attached hereto as Exhibit "B", which is incorporated herein by reference.

2. **Covenants.** Owner covenants, for itself, its successor and assigns, as follows:

a. **Removal of Encroachments.** Except for those improvements, including a portion of a garage and decorative sidewalk paving, authorized by an encroachment permit, Owner shall remove at Owner's sole cost and expense, all improvements and fixtures upon the Property which the City Engineer reasonably determines will constitute encroachments into the dedicated area upon City's acceptance of the dedication (the "Encroachments"). The removal shall be performed in accordance with the following:

(1) City shall give a written notice to Owner, which notice shall: (i) describe the Encroachments that must be removed; (ii) direct Owner to remove them; and (iii) specify the date by which the removal must be completed, which date shall be no less than sixty (60) days after the date the notice is given.

(2) The Owner shall remove the Encroachments by the date specified in the notice.

(3) In the event Owner shall fail to remove the Encroachments by that date, or if Owner delays in the removal of the Encroachments such that the removal cannot practicably be completed by that date, City may immediately enter the Property and remove or cause the removal of the Encroachments at Owner's cost. Owner shall, immediately upon demand, reimburse City for City's actual costs incurred in removing the Encroachments.

3. Covenants Run With the Land. The covenants made in this Agreement and the Offer shall run with the land and shall burden the Property for the benefit of City. The covenants and the Offer shall inure to the benefit of, or bind, as the case may require, the respective heirs, representatives, successors and assigns of City and Owner. Owner authorizes City to record this Agreement in Official Records of the Recorder's Office of the County of Los Angeles.

4. Limitation on City Liability and Indemnification.

a. Owner and City agree that City shall have no liability with respect to the Property, whether resulting from the maintenance or failure to maintain same or otherwise, and shall not assume any responsibility for the Property or any improvements or fixtures thereon or therein, unless and until both of the following occur:

(1) City adopts the Resolution of Acceptance; and

(2) the removal of all Encroachments has been completed to the satisfaction of the City Engineer.

b. Owner agrees to continue to maintain the Property and assume all liability for the condition of the Property until both of the conditions set forth in Section 4.a have occurred. Owner agrees to indemnify, hold harmless, protect and defend City, its Council, and each member thereof, directors, officers, agents, employees and attorneys, from all claims, causes of action, suits, damages or other liabilities occurring in, on or about the Easement and/or the Property until both of the conditions set forth in Section 4.a have occurred.

5. Address for Notices. Any notices, demands or communications under this Agreement shall be given as follows:

To Owner: 8767 Wilshire Blvd., L.P.
250 North Robertson Boulevard, Suite 421
Beverly Hills, California 90211

To City: City of Beverly Hills
455 North Rexford Drive,
Beverly Hills, California 90210
Attn: City Engineer

With a copy to: City Attorney
City of Beverly Hills

455 North Rexford Drive
Beverly Hills, California 90210

Written notices, demands and communications between City and Owner shall be given only by personal service or by first class mail, postage prepaid, return receipt requested, to the addresses set forth above. Such written notices, demands and communications may be sent in the same manner to such other addresses as either party may from time to time designate by mail as provided in this Section. Notwithstanding anything to the contrary contained herein, notice personally served shall be presumed to have been received as of the date of such service, and notices sent via mail as provided herein shall be presumed to have been received on the second business day after deposit of same in the mail.

6. **Entire Agreement.** This instrument contains the entire agreement between Owner and City relating to the irrevocable offer of dedication. Any oral representations or modifications concerning this instrument shall be of no force or effect. Any subsequent modification must be in writing signed by the party to be charged.

7. **Attorneys' Fees.** In the event of any controversy, claim, or dispute relating to this instrument or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable attorney's fees and costs.

IN WITNESS WHEREOF, Owner has executed this Agreement as of the date first written above.

"Owner":

*/



GEORGE KOBOR

[Signatures continued]

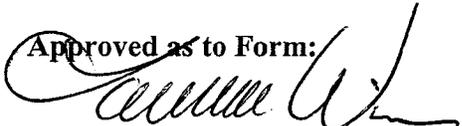
Acknowledged and agreed [must be signed by all parties having an interest in the Property, including beneficiaries and trustees in deeds of trust, as shown by a current abstract of title (NOT preliminary report) furnished by the Owner]:

*/ _____

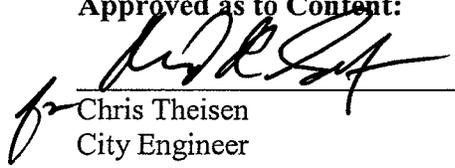
*/ If any Owner is a corporate entity, signatures from two corporate officers are required. One signature must be from any officer in Group A, and one signature must be from any officer in Group B as follows:

- Group A: the chairman of the board, the president, or any vice president
- Group B: the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer of the corporation

Also note: each binding signature must be notarized.

Approved as to Form:


Laurence S. Wiener
City Attorney

Approved as to Content:


Chris Theisen
City Engineer

LEGAL DESCRIPTION

DEDICATION FOR PUBLIC STREET PURPOSES

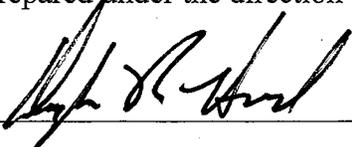
Those portions of Lots 15 through 20, inclusive, of Tract No. 4988, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 54, pages 98 and 99 of Maps, in the Office of the Recorder of said County, lying westerly and southerly of the following described line:

Beginning at a point on the northerly line of said Lot 15, said point being on a line parallel with and distant 10.00 feet easterly of the westerly line of said Lot 15; thence southerly along said parallel line, South 1°07'45" West 168.60 feet; thence South 37°16'26" East 7.66 feet to a line parallel with and distant 5.00 feet northerly of the southerly line of said Lots 16 through 20, inclusive; thence easterly along said parallel line, South 73°23'53" East 212.97 feet to the east line of said Lot 20.

The above described strip of land shall be lengthened or shortened so as to terminate in the northerly line of said Lot 15 and the easterly line of said Lot 20

This Legal Description is not intended for use in the division and/or conveyance of land in violation of the Subdivision Map Act of the State of California and is delineated on accompanying "Exhibit Map" made a part hereon for reference purposes.

Prepared under the direction of



Douglas R. Howard PLS 6169

8-4-2011

Date

Psomas

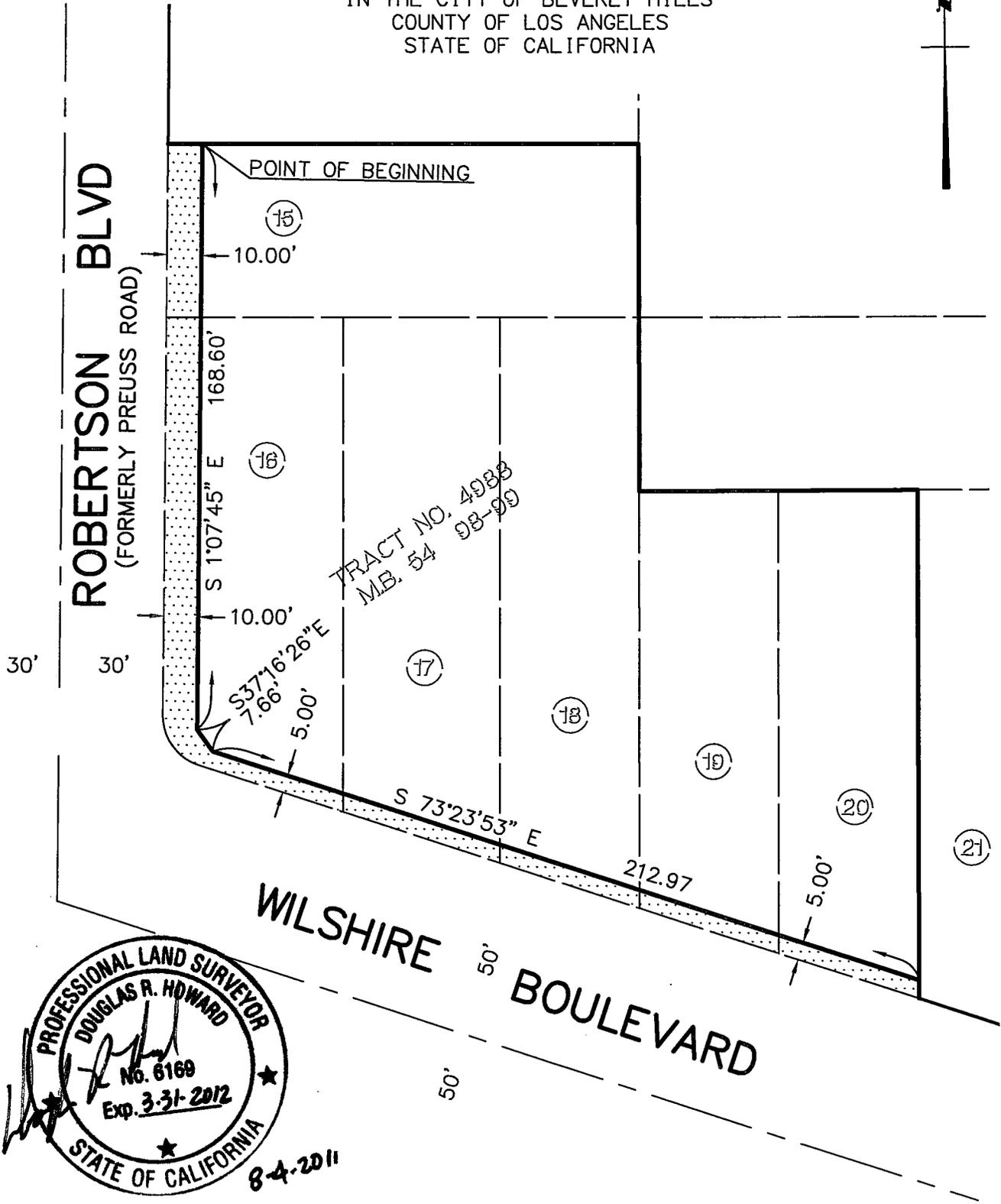


SCALE: 1"=40'

SHEET 1 OF 1

EXHIBIT MAP

DEDICATION FOR PUBLIC STREET PURPOSES
WILSHIRE AND ROBERTSON BOULEVARD
IN THE CITY OF BEVERLY HILLS
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA



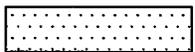
ROBERTSON BLVD
(FORMERLY PREUSS ROAD)

WILSHIRE BOULEVARD

TRACT NO. 4988
M.B. 54 98-99



INDICATES THE EASEMENT AREA COVERED BY EXHIBIT



DWG Name: W:\1CEK010100\SURVEY\LEGALS\PL\PL-LGL_DEDICATION.dwg Updated By: dhoward
Aug. 01, 2011 - 17:08:00

LEGAL DESCRIPTION

DEDICATION FOR PUBLIC STREET PURPOSES

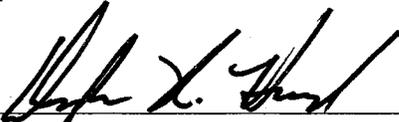
WILSHIRE BOULEVARD

Those portions of Lots 16 through 20, inclusive, of Tract No. 4988, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 54, pages 98 and 99 of Maps, in the Office of the Recorder of said County lying southerly of the following described line:

Beginning at the northwest corner of said Lot 15; thence southerly along the west line of said Lot 15 and 16 to the beginning of a curve, concave northeasterly and having a radius of 15.00 feet; thence southerly along said curve 0.62 feet through a central angle of 2°22'45" to the True Point of Beginning; thence leaving said curved line, South 79°42'03" East 8.88 feet; thence South 37°16'26" East 2.19 feet to the east line of the west 10.00 feet of said Lot 16; thence South 37°16'26" East 7.66 feet to the northerly line of the southerly 5.00 feet of said Lots 16 through 20; thence southeasterly along said northerly line South 73°23'53" East 212.97 feet to the easterly line of said Lot 20.

This Legal Description is not intended for use in the division and/or conveyance of land in violation of the Subdivision Map Act of the State of California and is delineated on accompanying "Exhibit Map" made a part hereon for reference purposes.

Prepared under the direction of



Douglas R. Howard PLS 6169

8-4-2011

Date

Psomas



SCALE: 1"=40'

SHEET 1 OF 1

EXHIBIT MAP

EASEMENT FOR PUBLIC STREET PURPOSES
IN THE CITY OF BEVERLY HILLS
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA



POINT OF BEGINNING

ROBERTSON BLVD
(FORMERLY PREUSS ROAD)

S 1°07'45" E 164.39'

10.00'

(15)

(16)

10.00'

(17)

(18)

(19)

(20)

(21)

TRACT NO. 4988
M.B. 54 98-99

S 37°16'26" E
7.66'

5.00'

S 73°23'53" E
212.97'

5.00'

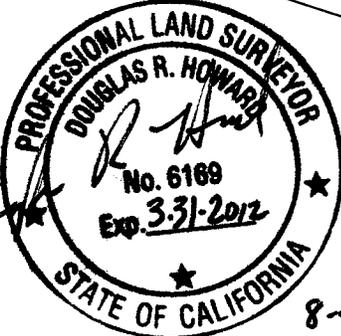
WILSHIRE BOULEVARD

50'

50'

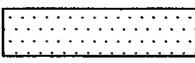
30'
30'
R=15.00'
L= 0.62'
Δ=2°22'45"

I.P.O.B.
S 79°42'03" E 8.88'
S 37°16'26" E 2.19'



8-4-2011

INDICATES THE EASEMENT AREA COVERED BY EXHIBIT



LEGAL DESCRIPTION

DEDICATION FOR PUBLIC STREET PURPOSES

ROBERTSON BOULEVARD

The west 10 feet of Lots 15 and 16 of Tract No. 4988, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 54, pages 98 and 99 of Maps, in the Office of the Recorder of said County.

Except that portion of said west 10 feet of Lot 16 lying southerly of the following described line:

Beginning at the northwest corner of said Lot 15; thence southerly along said the west line of said Lot 15 and 16 to the beginning of a curve, concave northeasterly and having a radius of 15.00 feet; thence southerly along said curve 0.62 feet through a central angle of 2°22'45" to the True Point of Beginning; thence leaving said curved line, South 79°42'03" East 8.88 feet; thence South 37°16'26" East 2.19 feet to the east line of the west 10.00 feet of said Lot 16.

This Legal Description is not intended for use in the division and/or conveyance of land in violation of the Subdivision Map Act of the State of California and is delineated on accompanying "Exhibit Map" made a part hereon for reference purposes.

Prepared under the direction of



Douglas R. Howard PLS 6169

8-4-2011

Date

Psomas



SCALE: 1"=40'

SHEET 1 OF 1

EXHIBIT MAP

EASEMENT FOR PUBLIC STREET PURPOSES
IN THE CITY OF BEVERLY HILLS
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA



ROBERTSON BLVD
(FORMERLY PREUSS ROAD)

POINT OF BEGINNING

S 1'07'45" E 164.39'

10.00'

(15)

10.00'

(16)

(17)

(18)

(19)

(20)

(21)

TRACT NO. 4988
M.B. 54 98-99

30'

30'

R=15.00'
L= 0.62'
Δ=2°22'45"

I.P. O.B.
S79°42'03"E 8.88'
S37°16'26"E 2.19'

WILSHIRE BOULEVARD

50'

50'



INDICATES THE EASEMENT AREA
COVERED BY EXHIBIT

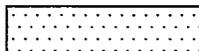


EXHIBIT "B"

Form of Acceptance of Offer

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

City Clerk
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, CA 90210-4817

[Space Above Line For Recorder's Use]

Recording Fee: Exempt pursuant to California Government Code § 6103
Exempt from Documentary Transfer Taxes pursuant to R & T Code §11922

ACCEPTANCE OF DEDICATION

The CITY OF BEVERLY HILLS, a municipal corporation ("Grantee"), hereby accepts the offer (the "Offer") of dedication made by 8767 WILSHIRE BLVD., L.P., a limited partnership ("Grantor"), in that certain Irrevocable Offer of Dedication and Covenants Concerning Real Property (the "Agreement") executed by Grantor dated as of _____, 2011 and recorded in Official Records of the Recorder's Office for the County of Los Angeles on _____ as Instrument No. _____.

The Dedication is for public right of way purposes over that certain real property located in the City of Beverly Hills, County of Los Angeles, State of California, described on Exhibit A, attached hereto and incorporated herein by reference.

The Offer and this Acceptance of Dedication arise from and is made pursuant to the Agreement.

The undersigned was authorized to execute and record this Acceptance of Dedication on behalf of Grantee pursuant to resolution of the City Council of Grantee adopted on _____.

IN WITNESS WHEREOF, the undersigned has executed this instrument as of the date set forth below.

"Grantee":

CITY OF BEVERLY HILLS, a municipal corporation

By: **[EXHIBIT ONLY]** _____
City Engineer

Dated: _____

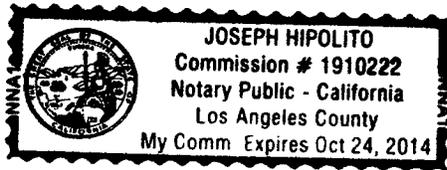
STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On AUGUST 1, 2011, before me,
JOSEPH HIPOLITO, a NOTARY PUBLIC, personally appeared
GEORGE KOBAR, personally known to me (or 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.

WITNESS my hand and official seal.

Signature JOSEPH HIPOLITO

(seal)



Attachment 3

Recording Request By:

City Clerk
City of Beverly Hills

When Recorded Mail To:

City Clerk
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, CA 90210

Space Above This Line Reserved For Recorder's Use

**CITY OF BEVERLY HILLS
ENCROACHMENT PERMIT AND COVENANTS**

8767 Wilshire Blvd., L.P.
8767 Wilshire Boulevard
Beverly Hills, CA 90211

1. Permit Granted. An encroachment permit is hereby granted pursuant to the provisions of Section 8-3-5 of the Beverly Hills Municipal Code to 8767 WILSHIRE BLVD., L.P. (hereinafter "Permittee") to construct and maintain the following encroachments in conjunction with the construction of a four story office building (the "Project") located at 8767 Wilshire Boulevard, Beverly Hills, California 90211 (the "Property"). The Property is legally described in Exhibit "A" attached hereto. Permittee is the owner of the Property.

The encroachments are as follows:

- a) An encroachment for decorative sidewalk paving (the "Decorative Sidewalk Paving Encroachment") in the sidewalk adjacent to the Property at the corner of Wilshire and Robertson Boulevards, as is more particularly described in Exhibit "B" attached hereto (the "Decorative Sidewalk Paving Encroachment Area").
- b) An encroachment for a subsurface parking garage (the "Garage Encroachment") approximately 7.5 feet wide and approximately 215 feet long running parallel to the southerly property line of the Property along Wilshire Boulevard and approximately 10 feet wide and 175 feet long running parallel to the westerly property line of the Property along Robertson, as is more particularly described in Exhibit "C" attached hereto (the "Garage Encroachment Area").

The Decorative Sidewalk Paving Encroachment and the Garage Encroachment may be referred to collectively as the "Encroachments." The Decorative Sidewalk Paving

Encroachment Area and the Garage Encroachment Area may be referred to collectively as the "Encroachment Areas."

2. Term. It is the intention of the parties that this Encroachment Permit and Covenants shall continue in effect for as long as the Project remains in existence. Upon removal, demolition or destruction of the Project for any reason, this Encroachment Permit and Covenants shall terminate, provided however, that if the Project is involuntarily demolished or destroyed and rebuilding of the Project commences within forty-eight months after demolition or destruction, then this Encroachment Permit and Covenant shall remain in effect.
3. Conditions. This permit is granted subject to the following conditions.
 - A. Permits required. Permittee shall obtain any building or other permits required by the Beverly Hills Municipal Code for any construction on the Property or any improvements attached thereto that may encroach onto City's property.
 - B. Removal of Decorative Sidewalk Paving Encroachment. City, at its sole discretion, may require removal of the Decorative Sidewalk Paving at any time upon giving at least thirty (30) days written notice, which notice shall be delivered as provided in Section 10. Upon receipt of such notice, Permittee shall remove promptly the Decorative Sidewalk Paving Encroachment and shall surrender and release to City all possession, use, right, interest and occupation of the Decorative Sidewalk Paving Encroachment Area without cost to City. Permittee covenants that in the event of Permittee's failure to remove the Decorative Sidewalk Paving Encroachment within thirty days after delivery of such notice by City, that City may remove such Decorative Sidewalk Paving Encroachment, and all costs incurred by City in connection with such removal shall be paid by Permittee. Any amounts for which Permittee is obligated to reimburse City hereunder shall be secured by a lien encumbering Permittee's property. Permittee covenants and agrees to indemnify, protect, defend, and hold harmless City, and each of its officers, agents, and employees, from and against any and all liabilities, demands, claims, damages, losses, costs and expenses of whatsoever kind or nature, including, but not limited to, any and all direct and indirect costs of defense, made against, or incurred or suffered by any such indemnitee resulting directly or indirectly from the City's removal of improvements or structures located in, under, on or over the City's property, or otherwise in connection with reoccupation and repossession of the City's property by City.
 - C. Removal of Garage Encroachment. Upon expiration of the term as provided in Section 2, the City may require removal of the Garage Encroachment from the Garage Encroachment Area upon giving at least ninety (90) days prior written notice, which notice shall be delivered pursuant to Section 9. Permittee shall promptly, and no later than the date specified in the notice, remove the Garage Encroachment and any and all improvements or structures constructed or placed by Permittee in, under, on or over the Garage Encroachment Area and shall surrender and release to City all possession, use, right, interest and occupation of the Garage

Encroachment Area without cost to City. Additionally, upon a determination by the Director of Public Works that the Garage Encroachment creates a threat to the public health or safety, the City may require that the Garage Encroachment or related improvements be immediately repaired, altered or, if necessary, removed from the Garage Encroachment Area to eliminate the threat to the public health or safety. The City shall give notice of the need to repair, alter or, if necessary, remove the Garage Encroachment as provided in Section 10. Upon receipt of such notice, Permittee shall promptly repair, alter or, if necessary, remove the Garage Encroachment and any and all related improvements or structures constructed or placed by Permittee in, under, on or over the Garage Encroachment Area and, in the event of removal of any or all of the Garage Encroachment, shall surrender and release to City all possession, use, right, interest and occupation of the Garage Encroachment Area without cost to City. Permittee covenants that in the event of Permittee's failure to remove the Garage Encroachment within ninety days after delivery of such notice by City, that City may remove such Garage Encroachment, and all costs incurred by City in connection with such removal shall be paid by Permittee. Any amounts for which Permittee is obligated to reimburse City hereunder shall be secured by a lien encumbering Permittee's property. Permittee covenants and agrees to indemnify, protect, defend, and hold harmless City, and each of its officers, agents, and employees, from and against any and all liabilities, demands, claims, damages, losses, costs and expenses of whatsoever kind or nature, including, but not limited to, any and all direct and indirect costs of defense, made against, or incurred or suffered by any such indemnitee resulting directly or indirectly from the City's removal of improvements or structures located in, under, on or over the City's property, or otherwise in connection with reoccupation and repossession of the City's property by City.

- D. Covenant to Maintain. Permittee covenants and agrees to keep and maintain in good condition and repair the Encroachments. Permittee shall, in the event of any deterioration or undue wear of the Decorative Sidewalk Paving Encroachment replace such Encroachment with City-approved material determined by the Director of Public Works to be safe and customary for pedestrians. Such replacement shall be commenced within thirty (30) days after written notice by City and such work shall be completed within forty-five (45) days after written notice from City. Such replacement shall be at Permittee's sole cost and expense.
- E. Indemnification of City. Permittee shall indemnify, defend, protect, and hold harmless City, and its officers, agents, City Council members, and employees, from and against any and all claims, losses, proceedings, damages, causes of action, liability, costs and expenses (including, without limitation, attorneys' fees), arising from or in connection with, or caused, by (i) any act, omission or negligence of Permittee or Permittee's contractors, licensees, invitees, agents, servants or employees, wheresoever the same may occur, or (ii) as a result of or arising from the Encroachments or City's consent to the Encroachments, or any injury related to the Encroachments, and shall further indemnify and hold harmless City from and against any and all claims arising from any breach or default in the performance of any obligations on Permittee's part to be performed under the terms of this

instrument, or arising from any negligence of Permittee, or arising from any such claim or any action or proceeding brought thereon, and any claim arising out of the issuance of this Permit; and in case any action or proceeding be brought against City by reason of any such claim, Permittee, upon notice from City, shall defend the same at Permittee's expense by counsel satisfactory to City. Any amounts for which Permittee is obligated to reimburse City hereunder shall be secured by a lien encumbering Permittee's property.

- F. Insurance. Permittee shall procure at Permittee's sole cost and expense and keep in effect from the date of this Permit and at all times until the termination of same by City or during the life of the Encroachments (whichever is longer), Comprehensive General Liability insurance applying to the Encroachments. Such insurance shall include Broad Form Contractual Liability insurance coverage insuring all of Permittee's indemnity obligations under this instrument. Such coverage shall have a minimum limit of Two Million Dollars (\$2,000,000) combined single limit. All such policies shall be written so as to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned, occurring during the policy term, shall be endorsed to add City as an additional insured, and shall provide that such coverage shall be primary and that any insurance maintained by City shall be excess insurance only. Such coverage shall also contain endorsements: (i) deleting any employee exclusion on personal injury coverage; and (ii) including all City Council members and City's and Permittee's employees, agents and contractors, if any, as additional insureds. All such insurance shall provide for severability of interests or a cross-liability endorsement; shall provide that an act or omission of one of the named insureds shall not reduce or avoid coverage to the other named insureds; and shall afford coverage for all claims based on acts, omissions, injury and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Such coverage shall be endorsed to waive the insurer's rights of subrogation against City. If at any time the amount or coverage of insurance which Permittee is required to carry under this Section is, in City's reasonable judgment, less than the amount or type of insurance coverage reasonably required to adequately protect City, City shall have the right to require Permittee to increase the amount or change the type of insurance coverage required under this Section. Permittee shall also procure at Permittee's sole cost and expenses, workers compensation insurance as required by law.
- G. Failure to Obtain Insurance. If Permittee shall fail to obtain any insurance required hereunder, City may, at its election, obtain such insurance and Permittee shall upon demand reimburse City for the cost thereof plus a ten percent (10%) handling charge, within five (5) days following demand therefor. Such indebtedness shall be secured by a lien upon Permittee's property.
- H. Quality of Insurance. Insurance required hereunder shall be issued by companies holding a "General Policyholders Rating" of at least B+VII or better, as set forth in the most current issue of "Best's Insurance Guide" and authorized to do business in California. Permittee shall deliver to City proof of the insurance coverage required

by this Permit on a certificate or certificates of insurance on the form set forth in Exhibit "D", attached hereto and incorporated herein by this reference. City may also require Permittee to deliver certified copies of such policies of insurance upon written request by City. No such policy shall be cancelable or subject to reduction of coverage or other modification except after thirty (30) days prior written notice to City. Permittee shall, at least thirty (30) days prior to the expiration of such policies, furnish City with renewals or "binders" thereof. Permittee shall not do or permit to be done anything which shall invalidate the insurance policies referred to in this Section.

- I. Waiver. Permittee, as a material part of the consideration to City, hereby assumes all risk of damage to property or injury to persons in, upon or about the City's property from any cause relating directly or indirectly to the Encroachments, including City's gross negligence. Permittee hereby releases and relieves City, and waives Permittee's entire right of recovery against City, for loss or damage arising out of or incident to the perils insured against under this Section, which perils occur in, on, or about the City's property, or the Encroachment Areas, whether due to the negligence of City or Permittee or their agents, employees, contractors and/or invitees. Permittee shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier that the foregoing waiver of subrogation is contained in this instrument.
- J. Compliance with Laws. Permittee covenants that itself, its heirs, successors and assigns, shall comply with all laws, ordinances, regulations and rules of City. Neither City's granting of this Encroachment Permit nor any consent or approval given by City hereunder in its capacity as City shall waive, abridge, impair or otherwise affect City's powers and duties as a governmental body. Any requirements under this Agreement that Permittee obtain consents or approvals of City are in addition to and not in lieu of any requirements of law that Permittee obtain approvals or permits.
- K. Clean Condition. Permittee shall, at its sole cost and expense, maintain in good repair and clean, safe condition, free of litter, accumulated grime or debris, the Encroachments. Upon Permittee's failure to repair and maintain the Encroachments to the satisfaction of City, City shall give written notice of necessary repairs and maintenance to Permittee, and Permittee shall complete such repairs and maintenance within thirty (30) days thereafter at Permittee's sole cost and expense.
- L. No Interference. Permittee agrees for itself and its successors and assigns that it shall exercise all rights granted and obligations imposed by this Permit in such a manner as not to interfere with or damage any underground utility facilities. Should Permittee, or any contractor or subcontractor hired or retained by Permittee or its contractor, interfere with or damage any such underground utility facilities, Permittee agrees to reimburse the utility owning and/or maintaining such underground utility facilities the amount of any damages sustained by such underground utility.

- M. No Charges. Permittee shall not seek to impose charges upon the City, utilities or any other third person having the legal right and authorization to perform work in the Encroachment Areas by reason of excavation or work made necessary by lack of accurate information as to location of substructures. Permittee understands that many substructures are not of accurate record and exploratory excavation is frequently required incident to the work of operation, maintenance, installation, replacement or repair of any substructure.
 - N. Acknowledgment. Permittee acknowledges that the Encroachment Areas are within public right of way, the use of which by those entitled thereto may not be permanently interfered with by the Encroachments, and agrees not to interfere with issuance of construction permits or maintenance activities in the Encroachment Areas.
 - O. Replacement Material. Permittee shall maintain an adequate stock of matching surface material for replacement of the Decorative Sidewalk Paving Encroachment, as required.
4. City's Right of Entry. In the event Permittee shall fail to maintain the Encroachments in good and clean condition or repair after City has provided notice pursuant to Section 10 and an opportunity to cure the failure or remove the Encroachments, then City shall be entitled to enter onto Permittee's property and to perform such maintenance or repair or remove such portion of the Encroachments, as determined appropriate by City, and Permittee, its successors in interest and assigns, shall pay City, upon demand, the reasonable cost of performing such maintenance or removing the Encroachments. Such indebtedness shall be secured by a lien upon the Property.
5. City's Lien Right.
- A. If any demand for reimbursement payable to City arising hereunder is not paid within thirty (30) days after the due date, the indebtedness shall bear interest from the due date at the rate of eighteen percent (18%) per annum, and City may, at its option, bring an action at law against Permittee to pay the same, or foreclose City's lien against the Property, and there shall be added to the amount of such indebtedness the costs of preparing and filing the complaint in such action. In the event a judgment is obtained, such judgment shall include said interest and reasonable attorneys' fees, together with the costs of action.
 - B. The amount of any indebtedness which is due in accordance with this instrument, together with any interest and/or costs (including attorneys' fees) attributable thereto or incurred in the collection thereof, shall be and the same is hereby declared and agreed to be a lien upon the Property when City causes to be recorded in the Office of the County Recorder of Los Angeles County, State of California, a Notice of Lien executed by the City Manager of City, setting forth the matters required by Section 1367 of the California Civil Code; provided that no such Notice of Lien shall be so recorded until City shall have first provided to Permittee, pursuant to Section 10, a Notice of Default in the form prescribed by Section 2924 of the California Civil Code, together with a demand upon Permittee to pay any

such indebtedness and any interest charges attributable thereto. If City has not received full payment of all such indebtedness and interest charges attributable thereto within fifteen (15) days from the receipt of said Notice of Default, City shall promptly cause said Notice of Lien to be recorded as provided above. Within thirty (30) days after the recordation of said Notice of Lien, City shall cause the above-mentioned Notice of Default to be recorded in the Office of the County Recorder of Los Angeles County, State of California and thereafter cause the Property to be sold in the manner provided in Section 2924, et seq., of the California Civil Code as said Sections may from time to time be amended, or in any other manner permitted by law. Any such sale shall be held as promptly as possible. City, or its assignee, shall have the power to bid on the Property at such foreclosure sale and thereafter to hold, lease, mortgage and convey the same.

- C. Upon payment (prior to such a foreclosure) of any indebtedness of Permittee to City, together with interest, costs and charges attributable thereto, or other satisfaction thereof, with respect to which a Notice of Lien has been recorded, City shall promptly cause to be recorded a further notice stating the satisfaction and the release of the lien thereof. The lien created as provided herein shall be prior to all other liens recorded subsequent to the recordation of said Notice of Lien.
- D. A certificate executed and acknowledged by the City Manager of City stating the indebtedness secured by any lien created hereunder upon the Property shall be conclusive upon Permittee as to the amount of such indebtedness as of the date of such certificate, in favor of all persons who rely thereon in good faith, and such a certificate shall be furnished by the City to any mortgagee or beneficiary under a mortgage or deed of trust encumbering the Property upon written request therefor.
- E. If City shall have received written notice from Permittee (or a successor to Permittee's interest in the Property, as shown by a copy of a title policy concurrently delivered to City), of the name and address of the holder of a deed of trust on the Property ("Holder") together with a copy of the recorded deed of trust, then City shall not enforce any remedies arising from Permittee's default hereunder unless City has given a notice of such default to the Holder (at the address provided to City) and the Holder shall have had ten (10) business days after such notice to cure a default based on the failure by Permittee to pay money (such as reimbursement of City cure costs), and thirty (30) days after such notice to cure any other default; provided, however, that if possession of the Property is necessary for the Holder to cure the non-monetary default, the Holder shall have such additional time consistent with the use of reasonable diligence to obtain appointment of a receiver of the Property and then cause the default to be cured, or if obtaining a receiver is not possible, then the Holder shall have such additional time necessary to diligently commence and complete a nonjudicial foreclosure sale, and the purchaser at such foreclosure sale (or entity which acquires title to the Property by deed-in-lieu of foreclosure) shall have a commercially reasonable period of time after obtaining title to the Property to cure the default. City shall accept a cure from the Holder, receiver or purchaser at a foreclosure sale or an entity which acquires the Property by deed-in-lieu of foreclosure, as applicable. Nothing herein shall

notices sent via mail as provided herein shall be presumed to have been received on the second business day after deposit of same in the mail.

Executed this 1ST day of AUGUST 2011 in the City of Beverly Hills, California.

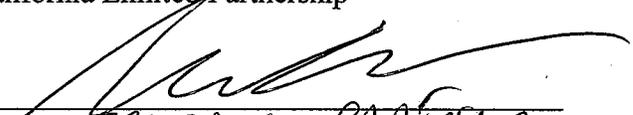
CITY OF BEVERLY HILLS,
A Municipal Corporation

BARRY BRUCKER
Mayor of the City of Beverly Hills, California

ATTEST:

BYRON POPE
City Clerk

8767 WILSHIRE BLVD., L.P.,
A California Limited Partnership

By: 
Title: GENERAL PARTNER
Print Name: GEORGE KOBOR

By: _____
Title: _____
Print Name: _____

ATTACH APPROPRIATE JURATS

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 1st
day of August, 2011, by George Kobor

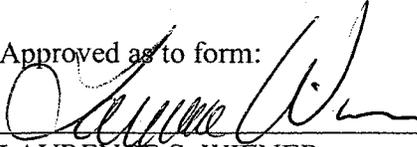
proved to me on the basis of satisfactory evidence to be the
person(s) who appeared before me.



(Seal)

Signature JOSEPH HIPOLITO

Approved as to form:



LAURENCE S. WIENER
City Attorney

Approved as to content:

JEFF KOLIN
City Manager



CHRIS THEISEN
City Engineer



KARL KIRKMAN
Risk Manager

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

Lots 15, 16, 17, 18, 19 and 20 of Tract No. 4988, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 54, Page(s) 98 and 99 of Maps, in the office of the County Recorder of said County.

EXHIBIT "B"

SIDEWALK ENCROACHMENT

Being a portion of Lot 16, Wilshire Boulevard, 100 feet wide, and Robertson Boulevard, 60 feet wide, as shown on Map of Tract No. 4988, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 54, pages 98 and 99 of Maps, in the Office of the Recorder of said County described as follows:

Beginning at a point on the westerly line of Lot 16 of said Tract 4988, said point distant North 1°07'45" West 17.00 feet from the southerly terminus of said westerly line; thence easterly leaving said westerly line at right angles North 88°52'15" East 10.00 feet to the easterly line of the west 10 feet of said Lot 16; thence southerly along said easterly line, South 1°07'45" East 21.15 feet; thence South 37°12'03" East 7.67 feet to the north line of the southerly 5 feet of said Lot 16; thence southeasterly along said line, South 73°23'53" East 18.31 feet; thence leaving said line at right angle, South 16°36'07" West 5.00 feet to the southerly line of said Lot 16; thence leaving said southerly line, South 46°37'33" West 5.20 feet to a line parallel with and distant 4.50 feet southerly of the southerly line of said Lot 16; thence along said parallel line, North 73°23'53" West 12.50 feet to the beginning of a curve concave northeasterly, having a radius of 24.50 feet and being tangent at its northerly terminus to a line parallel with and distant 2.35 feet west of the westerly line of said Lot 16; thence northwesterly along said curve 30.90 feet through a central angle of 72°16'08" to said parallel line; thence northerly along said parallel line, North 1°07'45" West 12.50 feet to a line which bears North 55°57'36" East and runs through the Point of Beginning; thence northeasterly along said line, North 55°57'36" East 2.81 feet to the Point of Beginning.

This Legal Description is not intended for use in the division and/or conveyance of land in violation of the Subdivision Map Act of the State of California and is delineated on accompanying "Exhibit Map" made a part hereon for reference purposes.

Prepared under the direction of

Douglas R. Howard

Douglas R. Howard PLS 6169

Psomas

8-4-2011

Date

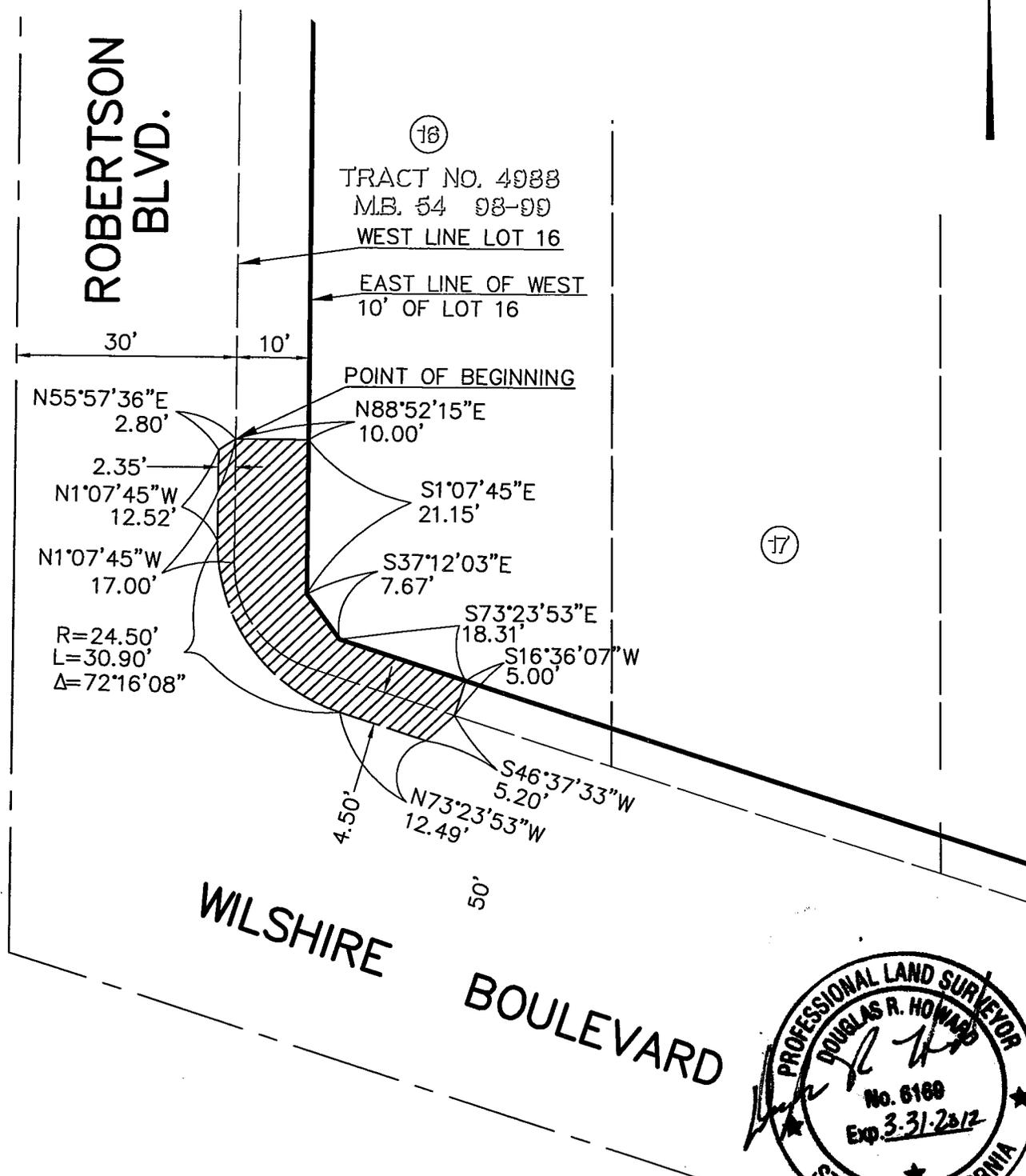


SCALE: 1"=20'

SHEET 1 OF 1

EXHIBIT MAP

EASEMENT FOR SIDEWALK ENCROACHMENT PURPOSES
IN THE CITY OF BEVERLY HILLS
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA



ROBERTSON
BLVD.

①⑥
TRACT NO. 4988
M.B. 54 98-99
WEST LINE LOT 16

EAST LINE OF WEST
10' OF LOT 16

POINT OF BEGINNING

N55°57'36"E
2.80'
2.35'
N1°07'45"W
12.52'
N1°07'45"W
17.00'
R=24.50'
L=30.90°
Δ=72°16'08"

N88°52'15"E
10.00'
S1°07'45"E
21.15'
S37°12'03"E
7.67'
S73°23'53"E
18.31'
S16°36'07"W
5.00'
S46°37'33"W
5.20'
N73°23'53"W
12.49'
4.50'

①⑦

WILSHIRE
BOULEVARD

INDICATES THE EASEMENT AREA
COVERED BY EXHIBIT



8-4-2011

DWG Name: W:\1CEK010100\SURVEY\LEGALS\PL\PL-LGL-SIDEWALK.dwg Updated By: dhoward
Aug. 04, 2011 - 07:07:51

EXHIBIT "C"

DESCRIPTION OF GARAGE EASEMENT AREA

LEGAL DESCRIPTION

BUILDING ENCROACHMENT EASEMENT

STRIP NO. 1

Those portions of Lots 15 through 20, inclusive, of Tract No. 4988, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 54, pages 98 and 99 of Maps, in the Office of the Recorder of said County, lying westerly and southerly of the following described line:

Beginning at a point on the northerly line of said Lot 15, said point being on a line parallel with and distant 10.00 feet easterly of the westerly line of said Lot 15; thence southerly along said parallel line, South 1°07'45" West 168.60 feet; thence South 37°16'26" East 7.66 feet to a line parallel with and distant 5.00 feet northerly of the southerly line of said Lots 16 through 20, inclusive; thence easterly along said parallel line, South 73°23'53" East 212.97 feet to the east line of said Lot 20.

The above described strip of land shall be lengthened or shortened so as to terminate in the northerly line of said Lot 15 and the easterly line of said Lot 20

STRIP NO. 2

A strip of land 2.50 feet wide being a portion of Wilshire Boulevard, 100 feet wide, as shown on Tract No. 4988, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 54, pages 98 and 99 of Maps, in the Office of the Recorder of said County, the northerly line of said strip being the northerly right of way of said Wilshire Boulevard and described as follows:

PSOMAS

1 Beginning at a point on the northerly right of way of said Wilshire Boulevard, said point being
2 the westerly terminus of the southerly line of Lot 16 of said Tract No. 4988; thence along said
3 line, South 73°23'53" East 217.30 feet to the southeast corner of Lot 20 of said Tract No. 4988.

4
5 The above described strip shall be lengthened or shortened so as to terminate in the southerly
6 prolongation of the easterly line of said Lot 20

7
8 This Legal Description is not intended for use in the division and/or conveyance of land in
9 violation of the Subdivision Map Act of the State of California and is delineated on
10 accompanying "Exhibit Map" made a part hereon for reference purposes.

11
12
13 Prepared under the direction of

14 

15 8-10-2011

16 Douglas R. Howard PLS 6169

Date

17 Psomas

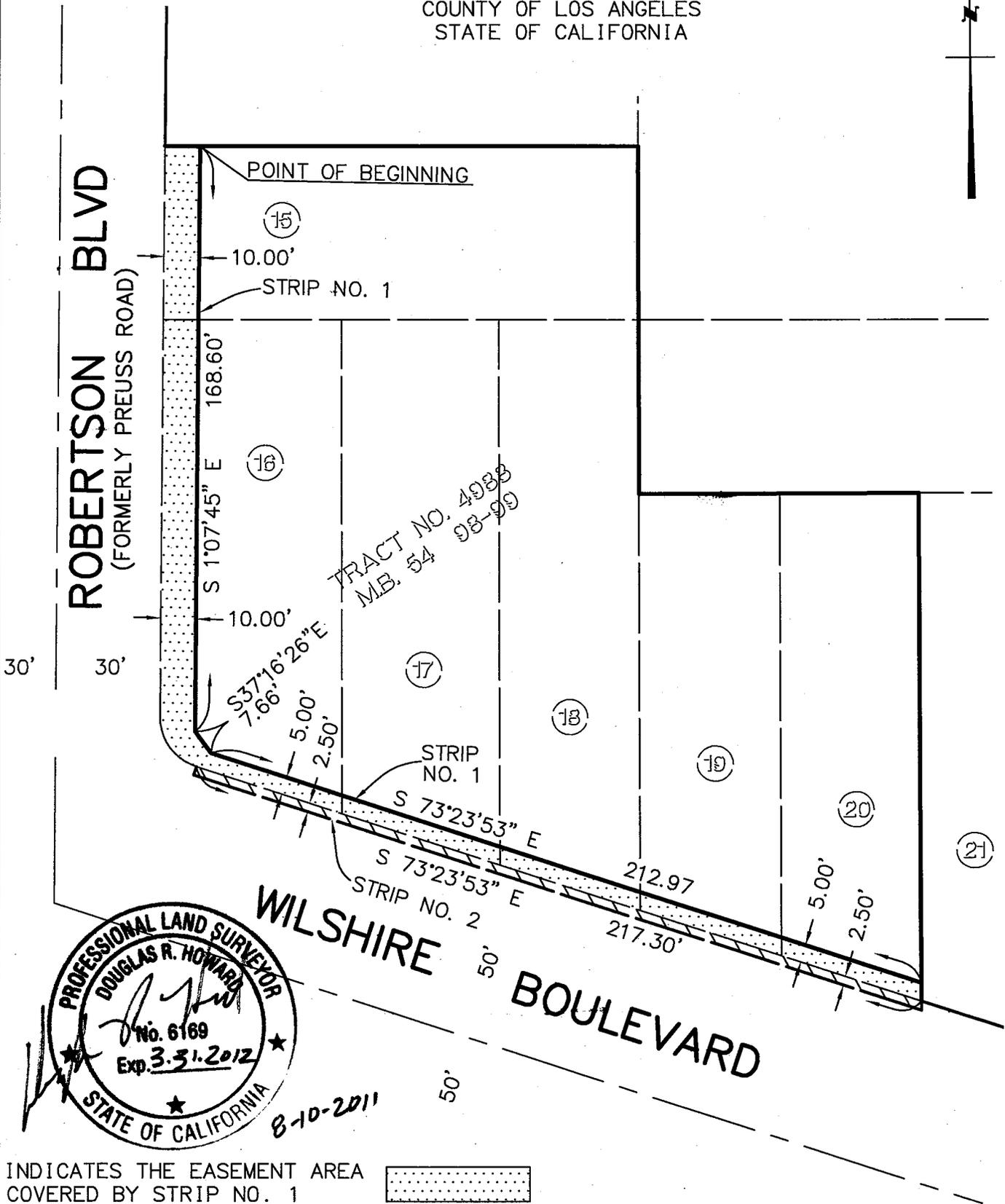


SCALE: 1"=40'

SHEET 1 OF 1

EXHIBIT MAP

EASEMENT FOR BUILDING ENCROACHMENT PURPOSES
IN THE CITY OF BEVERLY HILLS
COUNTY OF LOS ANGELES
STATE OF CALIFORNIA



ROBERTSON BLVD
(FORMERLY PREUSS ROAD)

POINT OF BEGINNING

(15)

10.00'

STRIP NO. 1

(16)

168.60'

S 1°07'45" E

TRACT NO. 4988
M.B. 54 98-99

S 37°16'26" E
7.66'

5.00'
2.50'

(17)

STRIP NO. 1

S 73°23'53" E

S 73°23'53" E

STRIP NO. 2

(18)

(19)

(20)

(21)

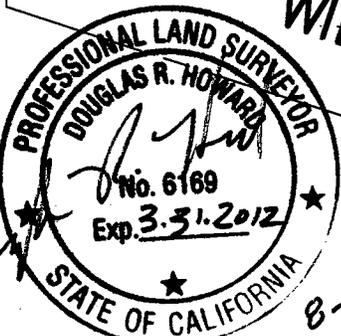
212.97

217.30'

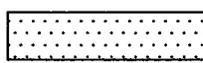
5.00'

2.50'

WILSHIRE BOULEVARD



INDICATES THE EASEMENT AREA COVERED BY STRIP NO. 1



INDICATES THE EASEMENT AREA COVERED BY STRIP NO. 2



EXHIBIT "D"
CERTIFICATE OF INSURANCE

