



AGENDA REPORT

Meeting Date: December 18, 2012
Item Number: G-7
To: Honorable Mayor & City Council
From: Tristan Malabanan, Civil Engineer
Subject: AN ENCROACHMENT PERMIT AND COVENANT WITH LUXE LA CIENEGA, LLC, OWNER OF THE PROPERTY LOCATED AT 375 NORTH LA CIENEGA BOULEVARD, LOS ANGELES, TO ENCROACH INTO THE CITY OF BEVERLY HILLS UTILITY EASEMENT ON THEIR PROPERTY
Attachments:

1. City of Beverly Hills Encroachment Permit and Covenant
2. City of West Hollywood Resolution No. 97-1698
3. Project Location Map

RECOMMENDATION

Staff recommends that the City Council move to approve an encroachment permit and covenant with Luxe La Cienega, LLC to allow encroachment into a City of Beverly Hills utility easement at 375 North La Cienega Boulevard in the City of Los Angeles.

INTRODUCTION

The private development currently under construction at 375 N. La Cienega Boulevard is for a 110,465 square foot 5 story apartment building with 125 units, 166 parking spaces, and 31 trees. The City of Beverly Hills has an existing 10-foot wide utility easement through the northernmost portion of the private property adjacent to the Westmont Drive cul-de-sac as indicated in the attached City of West Hollywood Resolution No. 97-1698. The easement is currently being used for an 8-inch water mainline.

DISCUSSION

The encroachment permit and covenant with Luxe La Cienega, LLC, will allow them to install an 8' tall fence, a 3.5' wide sidewalk culvert, a 6' tall fence, removable bollards, and a privately-owned electrical conduit crossing as illustrated on Exhibit C of the encroachment permit and covenant. In the event that the City of Beverly Hills will need to perform any repairs or maintenance in the easement, the City may require any or all encroaching improvements be removed at no cost to the City.

FISCAL IMPACT

On May 3, 2012, the applicant paid the City of Beverly Hills a fee \$6,481.20 for the processing of the permanent encroachment application. There is no other payment associated with the encroachment permit and covenant. Therefore, there is no fiscal impact anticipated.



David D. Gustavson

Approved By

Attachment 1

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, California 90210

Space Above This Line Reserved For Recorder's Use

CITY OF BEVERLY HILLS
ENCROACHMENT PERMIT AND COVENANT

LUXE LA CIENEGA, LLC
375 North La Cienega Drive
Los Angeles, CA

1. Permit Granted. A non-revocable encroachment permit is hereby granted pursuant to the provisions of Section 8-3-01 of the Municipal Code to Luxe La Cienega, LLC, a Delaware limited liability and its successors and assigns (hereinafter "Permittee") to construct and maintain an encroachment of an 8' tall fence, 3.5' wide sidewalk culvert, 6' tall fence, removable bollards, and a private electrical conduit crossing within the ten-foot wide easement for water service lines reserved for the Beverly Hills Water District in that certain Resolution No. 97-1698 by the City Council of the City of West Hollywood recorded in the Official Records of the Los Angeles County Recorder's Office on April 4, 1997 as Instrument Number 97-516083 (hereinafter "Encroachment") located on the real property (the "Permittee's Property") commonly known as 375 N. La Cienega Drive, Los Angeles, California, and more particularly and legally described in Exhibit "A", attached hereto and incorporated herein by this reference, on or over the real property (hereinafter the "City's Easement Area") on which is located a portion of City's water line easement described in Exhibit "B", attached hereto and incorporated herein by this reference, the nature and extent of such Encroachment being described in said Exhibit "C". This Permit is issued subject to the conditions contained herein, and by its acceptance of this Permit, Permittee agrees to such conditions.

2. Conditions. This permit is granted subject to the following conditions.

(a) Permits required. Permittee shall obtain any building permits or variances required by the Beverly Hills Municipal Code and the Public Works Engineering Division for any construction on Permittee's Property or any improvements attached thereto that may encroach onto City's Easement Area.

(b) Removal. In the event repairs or maintenance to the City's waterline located within the City's Easement Area require removal of any improvements encroaching onto the City's Easement Area, City, at its sole discretion, may require removal of any and all such improvements encroaching onto the City's Easement Area at any time upon giving at least thirty (30) days prior written notice, which notice shall be delivered through the United States Mail, addressed to Permittee at the latest address provided to City by Permittee, and then Permittee (or any successors of Permittee) shall remove promptly any and all improvements or structures constructed by Permittee located in, under, on or over the City's Easement Area without cost to City. Permittee covenants that in the event of Permittee's (or its successors in interest) failure to remove such encroaching improvements within thirty days after delivery of such notice by City, that City may remove such 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 Easement Area, or otherwise in connection with reoccupation and repossession of City's Easement Area by City. Following completion of the repairs or maintenance which necessitated removal of the encroaching improvements, Permittee or its successors may, replace such improvements at no cost to City with City's prior written approval.

(c) Covenant to Maintain. Permittee covenants and agrees to keep and maintain in good condition and repair the improvements within the City's Easement Area. This will include the removal and replacement of the proposed improvements to avoid trip and fall liability caused by displaced or buckling improvements.

(d) 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 Encroachment onto the City's Easement Area and all public ways and other public property adjoining or in close proximity thereto, or City's consent to such Encroachment, or any injury related to the Encroachment, 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.

(e) Insurance. (i) 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 Encroachment (whichever is longer), Comprehensive General Liability insurance applying to the Encroachment onto City's Easement Area or any part thereof, or any areas adjacent thereto. Such insurance shall include Broad Form Contractual Liability insurance coverage insuring all of Permittee's indemnity obligations under this instrument. Such coverage shall have minimum limits of One Million Dollars (\$1,000,000), combined single limit of Two Million Dollars (\$2,000,000), in the aggregate. 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.

(ii) Permittee shall procure at Permittee's sole cost and expenses, workers compensation insurance as required by law.

(f) 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 as set forth in section 4, City's Lien Right.

(g) 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, or on an Accord form. City may also require Permittee to deliver certified copies of such policies of insurance upon written request by City. No such policy shall be cancellable 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.

(h) 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 Easement Area from any cause relating to the Encroachment onto the City's Easement Area, 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 Easement Area, or the portion of City's Easement Area upon which Permittee's improvements encroach, 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.

(i) Compliance with Laws. Permittee covenants that itself, its heirs, successors and assigns, shall comply with all laws, ordinances, regulations and rules of City.

(j) Special Conditions. Permittee, on behalf of itself and on behalf of its successors, heirs and assigns, hereby covenants and agrees as follows:

- i. As a material part of the consideration to the City, Permittee, on behalf of itself and on behalf of its successors, heirs and assigns agrees at its sole cost and expense to install and maintain in good repair and clean, safe condition, free of litter, accumulated grime or debris, the surface and substructure that is the subject of this permit.
- ii. Upon reasonable notice from the City, not to exceed thirty (30) days, Permittee shall, at its sole cost and expense, temporarily remove sufficient portions of the surface material and supporting base covering the areas which are the subject of this Encroachment so that any third person having legal right and requisite authorization from the City to do so, including the City, and franchised utility, any franchised community antenna television company, any contractor operating under a permit issued by the City, may enter into the subsurface of the area covered by said Encroachment for the purpose of installation, operation, maintenance or replacement of any substructure whatsoever. Permittee agrees to provide protection for the surface material and supporting base that is not removed so that normal construction operations may take place. Permittee shall not seek to impose or impose charges upon any third person, the City, or any other agency or person having the legal rights and requisite authorization to perform work in the described City's Easement Area by reason of damage to any of the surface to the extent the amount of any such charge exceeds what such charge would have been had said Encroachment or any part thereof not be located on the described property. Notwithstanding the foregoing, any franchised utility providing services in the City, and the City, may enter into said surface without prior notice if it is necessary to do so in the event of an emergency. An emergency, for the purposes hereof, shall be deemed to be a cessation of utility services for users thereof which would continue for a material period of time, in the event

immediate entry into said subsurface was not so made. In the event of such entry without prior notice, Permittee shall not be required to perform any of the work of opening the surface material and supporting base to permit construction operations to take place as is otherwise required of it by this subparagraph b.

- iii. Permittee agrees, on behalf of itself and on behalf of its successors, heirs 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 franchised utility owning and/or maintaining such underground utility facilities the reasonable amount of any damages sustained by such underground utility.
- iv. Permittee, at its sole cost and expense, shall at all times maintain the base and surface materials in a safe and aesthetic condition so that such materials will not cause damage to the City's water line or other equipment within the City's Easement Area, and shall replace and repair any damage to base or surface materials caused by any source whatsoever, including the natural growth of tree roots causing surface disruption. Upon Permittee's failure to repair and maintain 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 of the date of said notice at Permittee's sole cost and expense. Permittee shall complete such repairs and maintenance within One Hundred Twenty (120) days after notice from the City.
- v. In the event of any deterioration or undue wear of the surface materials, Permittee shall replace such surface with substantially similar materials as determined by City or other City approved material determined safe and customary, beginning not more than thirty (30) days after notice by the City at its sole cost and expense. Permittee shall complete such work within One Hundred Twenty (120) days after notice from the City.
- vi. Permittee understands and agrees, on behalf of itself and on behalf of its successors, heirs and assigns, that Permittee will not seek to impose or impose charges upon the City, utilities or any other third person having the legal right and authorization to perform work in the City's Easement Area by reason of excavation or work made necessary by lack of accurate information as to location of substructures. Permittee understands and hereby acknowledges 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.
- vii. Permittee acknowledges that the City's Easement Area is encumbered by a City easement, the use of which by those entitled thereto is not altered by said Encroachment, and agrees not to interfere with normal established procedures for issuance of construction permits or direct maintenance activities required for any structure in the City's Easement Area.

- viii. Permittee agrees to retain a registered professional Civil Engineer to thoroughly review all structures and proposed future structures in the City's Easement Area with all applicable departments of the City, utilities, or others whose activities or structures may affect the area prior to completing plans for installation thereof shall be submitted to the applicable department of the City for approval.
- ix. Permittee agrees to maintain an adequate stock of matching surface material for replacement as required.
- x. Permittee shall utilize a marking or identification system in the construction of said Encroachment and shall advise the applicable departments of the City of such system, so that Permittee and the City can identify on the ground the boundary line between the property under which said Encroachment is constructed and the property of Permittee which is not subject to said Encroachment.
- xi. Permittee shall increase the amount of insurance coverage specified in Subsection e under conditions herein at the request of City when City, in its sole and reasonable discretion, determines such amount is no longer adequate to protect City from liability.
- xii. Permittee shall maintain the layout of the proposed improvements in such a manner to provide sufficient clearance from adjacent street trees. This clearance shall avoid the need to cut tree roots for the installation of the encroaching improvements.

3. City's Right of Entry. In the event Permittee shall fail to maintain the improvements constituting the Encroachment onto City's Easement Area in good condition or repair, or if City revokes this Permit as a result of Permittee's failure to furnish City with the insurance required herein, and Permittee fails to remove the portion of Permittee's improvements which encroach upon City's Easement Area as set forth in Section 2(b) herein, then City shall be entitled to enter onto Permittee's Property and to perform such maintenance or remove such portion of Permittee's Improvements, as the case may be, and Permittee, its successors in interest, heirs, and assigns, shall pay City, upon demand, the reasonable cost of performing such maintenance or removing the improvements. Such indebtedness shall be secured as set forth in section 4, City's Lien Right.

4. 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 or the legal rate of interest, whichever is less, and City may, at its option, bring an action at law against Permittee to pay the same, force the removal of the Encroachment, foreclose City's lien against Permittee's Property, or remove the Encroachment 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 Permittee's 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 amount due; provided that no such Notice of Lien shall be so recorded until City shall have first mailed to Permittee at the street address of Permittee's Property, and to any party holding a security interest in Permittee's Property at the street address indicated in any recorded document evidencing such security interest, a Notice of Default in the form prescribed by Section 2924 of the California Civil Code, together with a demand upon such 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 mailing 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 Permittee's 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 Permittee's 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 Permittee's 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 Permittee's Property upon written request therefor.

5. Covenants Run with Land. The covenants contained herein shall run with the land and shall be a burden or benefit upon Permittee's Property or City's Easement Area, as the case may be; provided, however, City shall have the right to terminate its consent to the Encroachment described herein at any time as provided in Section 2 hereof. These covenants shall inure to the benefit of and bind, as the case may require, the respective heirs, representatives, successors and assigns of Permittee and City.

6. Entire Agreement. This instrument contains the entire agreement of Permittee and City relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect except for a subsequent modification 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.

8. Acceptance. (a) The Permittee hereby represents that in consideration of granting of a permit and permission by City to use and occupy the City's Easement Area, or any portion thereof, the undersigned covenants, promises, and agrees with City, for the benefit of City, its public property, to comply with all the terms and conditions set forth in the Permit and any attachments appended thereto.

(b) Whenever the context of this Permit requires the neuter shall include the masculine or feminine, or both, and the singular shall include the plural. It is the intention hereof that this shall constitute a covenant running with the land, jointly and severally binding upon the undersigned and each of its heirs, representatives, successors and assigns.

9. Estoppel Certificate. Upon written request of a mortgagee or any party hereto, the other parties hereto shall each deliver to the requesting party an estoppel certificate stating that (1) to its knowledge, this Agreement is in full force and effect, (2) this Agreement has not been amended or modified, either orally or in writing, or if so amended, identifying the amendments, and (3) to the knowledge of such party, there is no default by any party under this Agreement or, if any party is in default, then specifying the nature and amount (if applicable) of any and all defaults. Any such statement or certificate may be conclusively relied upon by the party requesting the statement or certificate. Such party(ies) shall execute and return such certificate within fifteen (15) days following its receipt of any such request.

The undersigned hereby execute the Encroachment Permit and Covenant to be effective this _____ day of _____ 2012 in the City of Beverly Hills, California

CITY OF BEVERLY HILLS
A Municipal Corporation

WILLIAM W. BRIEN, MD
Mayor of the City of
Beverly Hills, California

ATTEST:

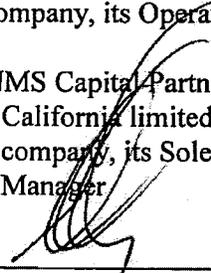
_____ (SEAL)
BYRON POPE
City Clerk

LUXE LA CIENEGA, LLC,
a Delaware limited liability company

By: P6 LA MF Holdings I LLC, a
Delaware limited liability company, its
Sole Member

By NMS Capital Partners I, LLC, a
California limited liability
company, its Operating Member

By: NMS Capital Partners, LLC, a
California limited liability
company, its Sole Member and
Manager

By: 

NEIL SHEKHTER
Manager

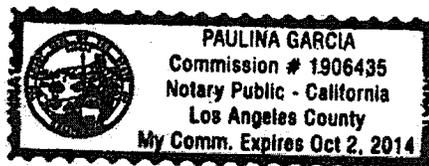
STATE OF CALIFORNIA)
) ss.
COUNTY OF Los Angeles)

On October 17th, 2012 before me, Paulina Garcia, Notary Public, a notary public, personally appeared Neil Shekhter, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she/they executed the same in his her/their authorized capacity(ies), and that by his her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature] (Seal)
Signature of Notary



STATE OF CALIFORNIA)
) ss.
COUNTY OF)

On _____ before me, _____, a 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.

Signature of Notary (Seal)

Approved as to form:


LAURENCE S. WIENER
City Attorney

Approved as to content:

JEFFREY KOLIN
City Manager


DAVID D. GUSTAVSON
Director of Public Works & Transportation

KARL KIRKMAN
Risk Manager

EXHIBIT 'A'
LEGAL DESCRIPTION OF
PERMITTEE'S PROPERTY

THOSE PORTIONS OF BLOCK H OF TRACT NO. 5105, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 61, PAGES 68 AND 69 OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

PARCEI 1:

LOT 39 IN SAID BLOCK H OF TRACT NO. 5105, TOGETHER WITH THAT PORTION OF WAUKON WAY (FORMERLY WALK) AS VACATED BY THAT CERTAIN ORDER RECORDED MAY 13, 1954 AS INSTRUMENT NO. 3264, OF OFFICIAL RECORDS BOUNDED NORTHEASTERLY BY THE SOUTHEASTERLY PROLONGATION OF THE NORTHEASTERLY LINE OF SAID LOT 39 AND BOUNDED SOUTHWESTERLY BY THE SOUTHEASTERLY PROLONGATION OF THE NORTHWESTERLY LINE OF SAID LOT 39.

ALSO TOGETHER WITH THAT PORTION OF WESTMOUNT DRIVE AS SHOWN AND DEDICATED ON THE MAP OF TRACT NO. 5105, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 61 PAGES 68 AND 69 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST NORTHERLY CORNER OF LOT 40 IN BLOCK H OF SAID TRACT NO. 5105, SAID CORNER BEING AN ANGLE POINT IN THE NORTHWESTERLY BOUNDARY LINE OF THE CITY OF LOS ANGELES, AS ESTABLISHED ON SEPTEMBER 8, 1924 BY ORD. 49302; THENCE ALONG THE SOUTHWESTERLY SIDELINE OF WESTMOUNT DRIVE, 50 FEET WIDE, NORTH 26° 50' 50" WEST 50.00 FEET TO THE MOST NORTHERLY CORNER OF LOT 39 IN SAID BLOCK H; THENCE LEAVING SAID SIDELINE NORTH 63° 09' 10" EAST 50.00 FEET TO THE NORTHEAST SIDELINE OF SAID WESTMOUNT DRIVE; THENCE ALONG SAID SIDELINE SOUTH 26° 50' 50" EAST 18.09 FEET TO THE MOST SOUTHERLY CORNER OF LOT 2 IN BLOCK 1 OF SAID TRACT 5105, SAID CORNER ALSO BEING AN ANGLE POINT IN THE NORTHWESTERLY BOUNDARY LINE OF THE CITY OF LOS ANGELES AS ESTABLISHED ON SEPTEMBER 8, 1924 BY ORD. 49302; THENCE ALONG SAID BOUNDARY LINE SOUTH 30° 36' 24" WEST 59.31 FEET TO THE **POINT OF BEGINNING**, AS VACATED BY RESOLUTION NO. 97-1698 RECORDED APRIL 4, 1997 AS INSTRUMENT NO. 97-516083, OF OFFICIAL RECORDS.

PARCEL 2:

LOTS 40, 41, 42, 43, 44, AND 45 IN SAID BLOCK H OF TRACT 5105.

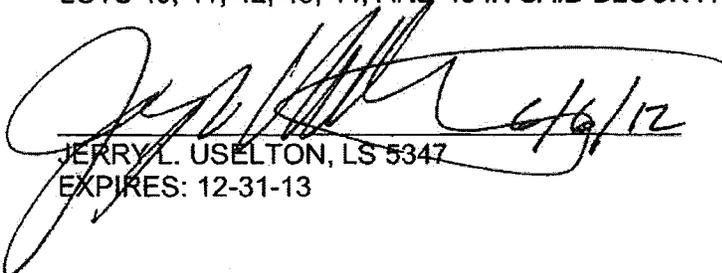

JERRY L. USELTON, LS 5347
EXPIRES: 12-31-13



EXHIBIT 'B'
LEGAL DESCRIPTION OF CITY'S
EASEMENT AREA

A STRIP OF LAND 10.00 FEET IN WIDTH, BEING A PORTION OF WESTMOUNT DRIVE, AS SHOWN ON MAP OF TRACT NO. 5105, IN THE CITY OF LOS ANGELES, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 61, PAGES 68 AND 69 OF MAPS, SAID PORTION OF WESTMOUNT DRIVE HAVING BEEN VACATED PER CITY OF WEST HOLLYWOOD RESOLUTION NO. 97-1698, RECORDED APRIL 4, 1997 AS INSTRUMENT NO. 97-516083, BOTH IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING 5.00 FEET ON EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

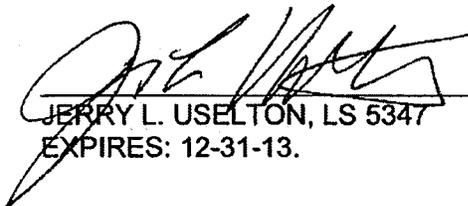
COMMENCING AT THE WEST CORNER OF THE LAND DESCRIBED IN SAID RESOLUTION NO. 97-1698, SAID CORNER ALSO BEING THE NORTHEAST CORNER OF LOT 39 IN BLOCK H OF SAID TRACT NO. 5105;

THENCE ALONG THE NORTHWEST LINE OF SAID LAND NORTH 63°09'10" EAST 31.51 TO THE **TRUE POINT OF BEGINNING**;

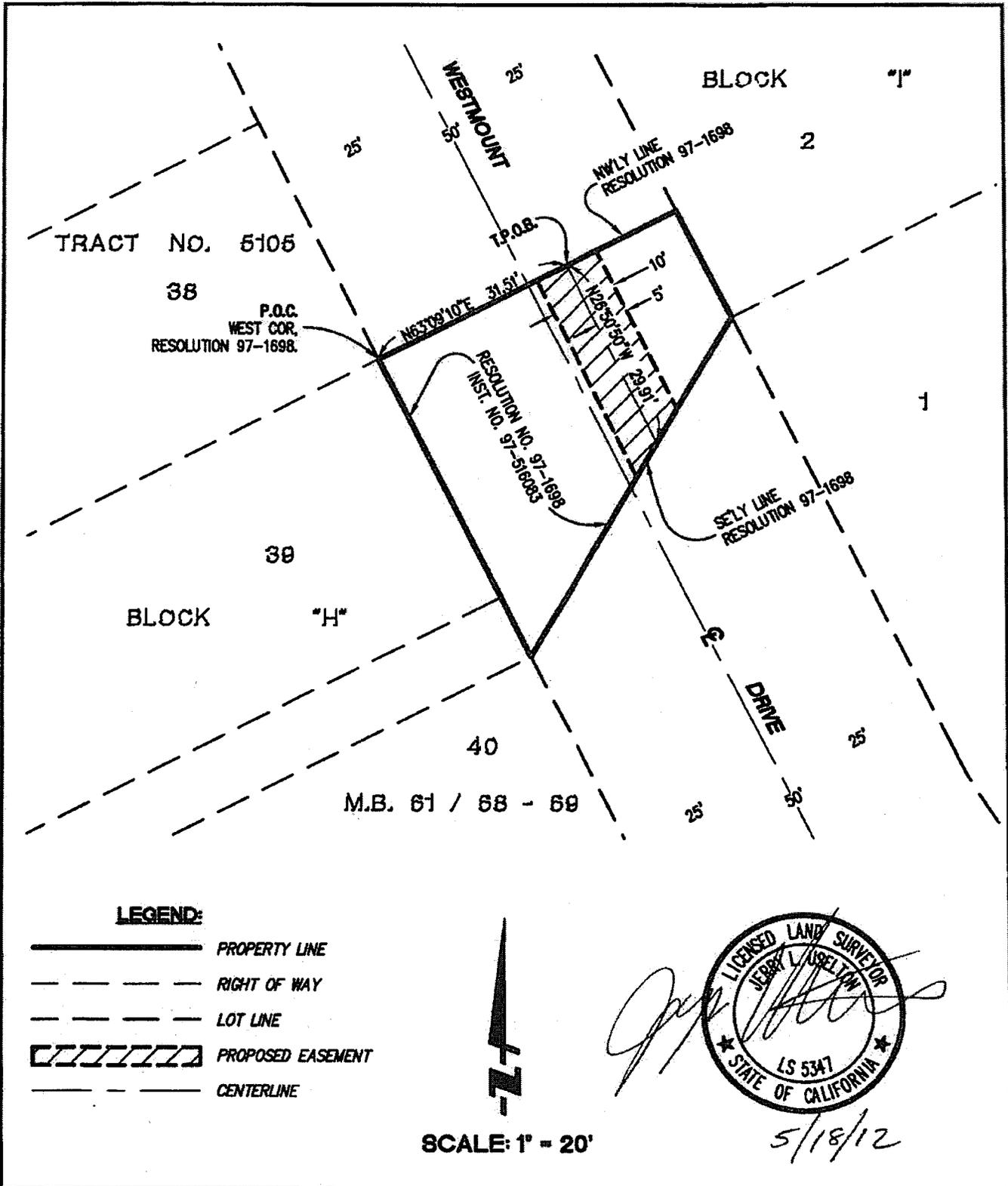
THENCE SOUTH 26°50'50" 29.91 FEET TO THE SOUTHEASTERLY LINE OF SAID LAND.

THE SIDELINE OF SAID STRIP TO TERMINATE NORTHERLY ON THE NORTHWESTERLY LINE OF SAID LAND DESCRIBED IN RESOLUTION NO. 97-1698 AND SOUTHERLY ON THE SOUTHEASTERLY LINE OF SAID LAND.

CONTAINING 299 SQUARE FEET MORE OR LESS.

 5/18/12
JERRY L. USELTON, LS 5347
EXPIRES: 12-31-13.





FUSCOE
 ENGINEERING
 16795 Von Karman, Suite 100, Irvine, California 92606
 tel 949.474.1960 • fax 949.474.5315 • www.fuscoe.com

EXHIBIT 'B' (cont.)
 SKETCH TO ACCOMPANY LEGAL DESCRIPTION
 CITY'S EASEMENT AREA
 975 N. LA CIENEGA BOULEVARD
 LOS ANGELES, CA 90069

DATE: MAY 14, 2012
 SCALE: 1" = 20'
 JN: 1039.0201
 SHEET 1 OF 1

EXHIBIT "C"

DESCRIPTION OF THE TYPE AND EXTENT OF THE ENCROACHMENT

An 8' tall fence, 3.5' wide sidewalk culvert, 6' tall fence, removable bollards, and a private electrical conduit crossing as also shown on the exhibit attached hereto.

EXHIBIT "C" (cont.)

DESCRIPTION OF THE TYPE AND EXTENT OF THE ENCROACHMENT

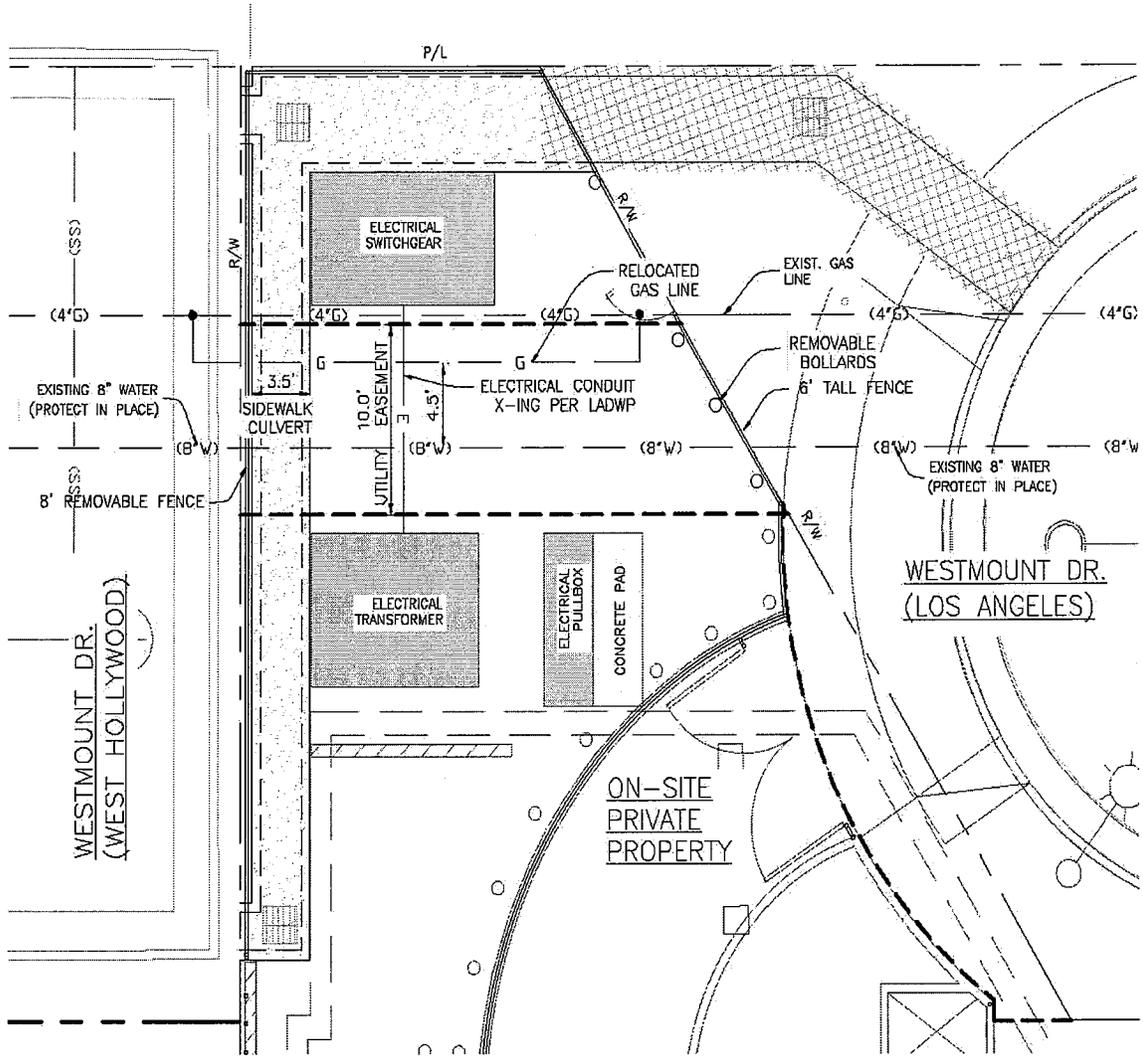


EXHIBIT "D"

FORM OF CERTIFICATES OF INSURANCE

(attached hereto)



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
11/30/2012

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER TWIW Insurance Services LLC - #0E52073 196 S. Fir Street PO Box 1388 Ventura CA 93002-1388		CONTACT NAME: Christina Klug PHONE (A/C No. Ext): (805) 585-6100 FAX (A/C No.): (805) 585-6200 E-MAIL ADDRESS: cklug@twiw.com															
INSURED Frymer Development, Inc. 2461 Santa Monica Blvd #134 Santa Monica CA 90404		INSURER(S) AFFORDING COVERAGE <table border="1"> <tr> <th>INSURER</th> <th>NAIC #</th> </tr> <tr> <td>A Mt. Hawley Insurance Co</td> <td>37974</td> </tr> <tr> <td>B Travelers Cas & Sur Co of Amer</td> <td>31194</td> </tr> <tr> <td>C Everest National Insurance Co</td> <td>10120</td> </tr> <tr> <td>D Navigators Insurance Co</td> <td>42307</td> </tr> <tr> <td>E</td> <td></td> </tr> <tr> <td>F</td> <td></td> </tr> </table>		INSURER	NAIC #	A Mt. Hawley Insurance Co	37974	B Travelers Cas & Sur Co of Amer	31194	C Everest National Insurance Co	10120	D Navigators Insurance Co	42307	E		F	
INSURER	NAIC #																
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B Travelers Cas & Sur Co of Amer	31194																
C Everest National Insurance Co	10120																
D Navigators Insurance Co	42307																
E																	
F																	

Handwritten: JVC 12/3/12

COVERAGES **CERTIFICATE NUMBER:** 12/13 GL/AJ/EX/WC/EX **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> \$2,500 DEDUCT PER OCCUR GENL. AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC		MGL0177704	12/2/2012	12/2/2013	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS		BA7A151549	10/29/2012	10/29/2013	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$		MGL0370785	12/2/2012	12/2/2013	EACH OCCURRENCE \$ 10,000,000 AGGREGATE \$ 10,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) if yes, describe under DESCRIPTION OF OPERATIONS below	Y/N <input type="checkbox"/>	N/A 7600001368121	10/27/2012	10/27/2013	<input checked="" type="checkbox"/> WC STATUTORY LIMITS OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	EXCESS LIABILITY OCCURRENCE		LA12EXC770104IV	12/2/2012	12/2/2013	EACH OCCURRENCE - \$14,000,000 AGGREGATE - \$14,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)
 Re - Encroachment Permit 375 La Cienega Blvd., Beverly Hills
 GL - City of Beverly Hills, all City Council members and City's and Permittee's employees, agents and contractors are additional insureds with respects to the operations of the Named Insured, per the attached CG 2012 05/09. This insurance is primary and non-contributory to any other insurance held by the additional insureds, per the attached CG 216 04/98. A waiver of subrogation has been added in favor of the additional insureds, per the attached CG 2404 1093. Severability of interest included, per policy form. Endorsements apply only when required by a written contract.

CERTIFICATE HOLDER City of Beverly Hills City Clerk - Encroachment Permit 455 North Rexford Drive Beverly Hills, CA 90210	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE Kip Keller/CHRISK

COMMENTS/REMARKS

216 04/98. A waiver of subrogation has been added in favor of the additional insureds, per the attached CG 2404 1093. Severability of interest included, per policy form. Endorsements apply only when required by a written contract.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – STATE OR POLITICAL
SUBDIVISIONS – PERMITS RELATING TO PREMISES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

State or Political Subdivision:

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

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured any state or political subdivision shown in the Schedule, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or political subdivision has issued a permit in connection with premises you own, rent, or control and to which this insurance applies:

1. The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners, or decorations and similar exposures; or
2. The construction, erection, or removal of elevators; or
3. The ownership, maintenance, or use of any elevators covered by this insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS
(FORM C)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

(If no entry appears below, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

To the extent required under contract, this policy will apply as primary insurance to additional insureds scheduled below and other insurance which may be available to such additional insureds will be non-contributory.

Section IV., Condition 4., of this policy is amended accordingly.

SCHEDULE

Name of Person or Organization:

All persons or organizations where required by written contract.

ALL OTHER TERMS AND CONDITIONS OF THIS POLICY REMAIN UNCHANGED.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:

All persons or organizations where required by written contract.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

The Transfer Of Rights Of Recovery Against Others To Us Condition (SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS) is amended by the addition of the following:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard." This waiver applies only to the person or organization shown in the Schedule above.

97- 516083

RECORDING REQUEST BY

WHEN RECORDED MAIL TO

NAME *City West Hollywood*
MAILING ADDRESS *8300 Stn Monica Blvd*
CITY, STATE ZIP CODE *W. Hollywood CA 90069*

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
11:01 AM APR 04 1997

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

TITLE(S)

FREE P

Resolution

1428 8/94

ATTACHMENT 2

Attachment 2

RESOLUTION NO. 97-1698

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD ORDERING THE VACATION OF A PORTION OF WESTMOUNT DRIVE AT 417 WESTMOUNT DRIVE, IN THE CITY OF WEST HOLLYWOOD.

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY RESOLVES AS FOLLOWS:

Section 1. The City Council of the City of West Hollywood on February 3, 1997, adopted Resolution No. 97-1691, entitled "A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DECLARING ITS INTENTION TO VACATE WESTMOUNT DRIVE AT 417 WESTMOUNT DRIVE IN THE CITY OF WEST HOLLYWOOD AND SETTING A TIME AND PLACE FOR A PUBLIC HEARING THEREON."

Section 2. Notices of the proposed street vacation were duly published and posted in the manner and form and at the time required by Streets and Highways Code Sections 8322 and 8323.

Section 3. The City Council of the City of West Hollywood held a public hearing thereon on February 18, 1997, at 7:00 p.m. in the main auditorium at West Hollywood Park, 647 N. San Vicente Boulevard, West Hollywood, California, at which time said Council heard all evidence offered by persons interested in said vacation.

Section 4. Pursuant to Section 2381 of the Streets and Highways Code of the State of California, the City Council finds and determines that the right-of-way proposed for abandonment is not useful as a motorized or non-motorized transportation facility.

Section 5. The City Council heretofore submitted the vacation of the portion of Westmount Drive in the City of West Hollywood described in Section 7 to the Planning Commission of the City of West Hollywood, and the Planning Commission reported that such vacation is in conformance with the General Plan of the City.

Section 6. The City Council of the City of West Hollywood hereby finds that the portion of Westmount Drive to be herein vacated is unnecessary for present or prospective public use.

Section 7. The City Council of the City of West Hollywood hereby orders that the portion of Westmount Drive in the City of West Hollywood, County of Los Angeles, State of California as shown on the map attached hereto as Exhibit A, a copy of which is on file in the office of the City Clerk, and described as follows:

97 516083

THIS IS CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THE OFFICE OF THE CITY CLERK OF THE CITY OF WEST HOLLYWOOD. ATTEST: [Signature] ASSISTANT CITY CLERK

3

That portion of Westmount Drive as shown on Map of Tract No. 5105 in the City of West Hollywood, County of Los Angeles, State of California, as per map recorded in Book 61, Pages 68 and 69 of Maps, in the office of the County Recorder of said County described as follows:

Beginning at the most northerly corner of Lot 40 in Block "H" of said Tract No. 5105 said corner being an angle point in the northwesterly boundary line of the City of Los Angeles as established on September 8, 1924, by Ord. 49302; thence along the southwesterly sideline of Westmount Drive, 50 feet wide North 26 Degrees 50 Minutes 50 Seconds West 50.00 feet to the most northerly corner of Lot 39 in said Block "H"; thence leaving said sideline North 63 Degrees 09 Minutes 10 Seconds East 50.0 feet to the northeast sideline of said Westmount Drive; thence along said sideline South 26 Degrees 50 Minutes 50 Seconds East 18.09 feet to the most southerly corner of Lot 2 in Block "I" of said Tract 5105, said corner also being an angle point in the northwesterly boundary line of the City of Los Angeles as established on September 8, 1924, by Ord. 49302; thence along said boundary line South 30 Degrees 36 Minutes 24 Seconds West 59.31 feet to the point of beginning.

Reserving to the City of West Hollywood a ten-foot wide easement for sanitary sewers and appurtenant structures in, across, and above described roadway herein being vacated.

Reserving to The Gas Company a ten-foot wide easement for gas service lines and appurtenant structures in, across, and above described roadway herein being vacated.

Reserving to the Beverly Hills Water District a ten-foot wide easement for water service lines and appurtenant structures in, across, and above described roadway herein being vacated.

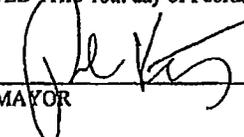
The reservations herein being made are done in accordance with the provisions of Sections 8340 and 8341 of the Streets and Highways Code of the State of California.

Section 8. The City Clerk shall cause a certified copy of this Resolution, attested by the City Clerk under seal, to be recorded in the Office of the Recorder of the County of Los Angeles.

97 516083

THIS IS CERTIFIED TO BE A TRUE
AND CORRECT COPY OF THE
ORIGINAL ON FILE IN THE
OFFICE OF THE CITY CLERK OF
THE CITY OF WEST HOLLYWOOD
ATTEST: *[Signature]*
ASSISTANT CITY CLERK

PASSED, APPROVED AND ADOPTED THIS 18th day of February, 1997.



MAYOR

ATTEST:

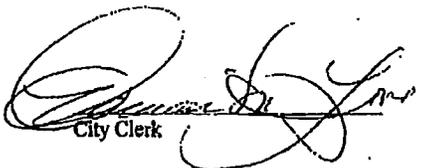


City Clerk

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)
CITY OF WEST HOLLYWOOD)

I, VIVIAN M. LOVE, CMC, City Clerk of the City of West Hollywood, do hereby certify that Resolution No. 97-1698, was duly passed, approved and adopted by the City Council of the City of West Hollywood at a regular meeting held the 18th day of February, 1997, by the following vote:

- AYES: Councilmember - Heilman, Land, Martin, Guarriello, Mayor Koretz.
- NOES: Councilmember - None.
- ABSENT: Councilmember - None.



City Clerk

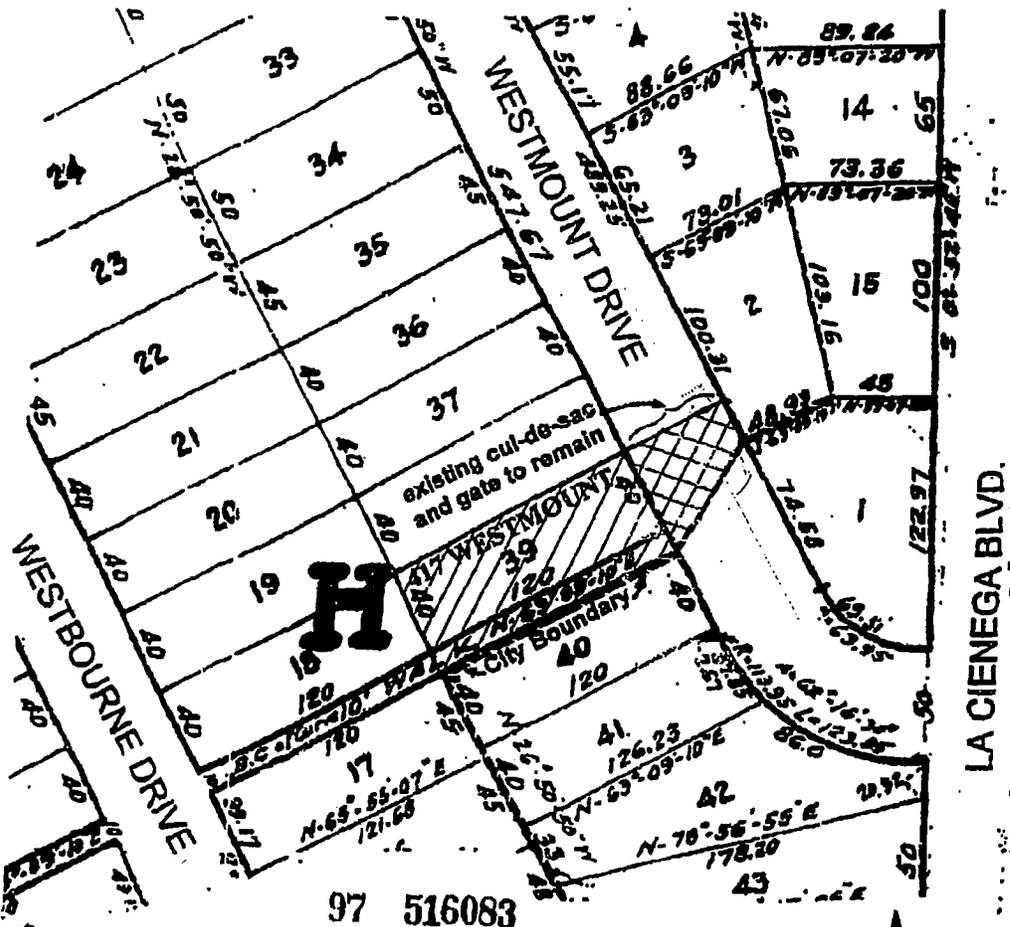
97 516083

THIS IS CERTIFIED TO BE A TRUE
AND CORRECT COPY OF THE
ORIGINAL ON FILE IN THE
OFFICE OF THE CITY CLERK OF
THE CITY OF WEST HOLLYWOOD
ATTEST: 
ASSISTANT CITY CLERK

EXHIBIT A

5

PROPOSED VACATAION AND DETACHMENT ON
WESTMOUNT DRIVE
CITY OF WEST HOLLYWOOD



97 516083

THIS IS CERTIFIED TO BE A TRUE
AND CORRECT COPY OF THE
ORIGINAL ON FILE IN THE
OFFICE OF THE CITY CLERK OF
THE CITY OF WEST HOLLYWOOD
ATTEST: *[Signature]*
ASSISTANT CITY CLERK

-  Area to be vacated
-  Area to be detached



Attachment 3

PROJECT LOCATION MAP

