



## AGENDA REPORT

**Meeting Date:** April 15, 2008  
**Item Number:** F-6  
**To:** Honorable Mayor & City Council  
**From:** Ara Maloyan, P.E., Deputy City Engineer  
**Subject:** AN ENCROACHMENT PERMIT AND COVENANT BETWEEN THE CITY OF BEVERLY HILLS AND BEVERLY WILSHIRE OWNER, LP FOR 231-265 NORTH BEVERLY DRIVE FOR TEMPORARY ENCROACHMENTS  
**Attachments:** 1. Agreement

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### **RECOMMENDATION**

Staff recommends that the City Council move to approve an Encroachment Permit and Covenant between the City of Beverly Hills and Beverly Wilshire Owner, LP for 231-265 North Beverly Drive for temporary encroachments.

### **INTRODUCTION**

This report is a request for approval of a Temporary Encroachment Permit and Covenant for three surface encroachments unto the public right of way to be constructed for the building at 231-265 North Beverly Drive.

### **DISCUSSION**

On December 5, 2007, the City Council approved the Planned Development and line lot adjustment for 231-265 North Beverly Drive to allow construction of a retail, commercial, and entertainment talent agency project. This Encroachment Permit and Covenant is necessary to reflect temporary construction encroachments. In summary, there are three encroachments for shoring in Beverly Drive, Dayton Way, and the alley west Beverly Drive between Dayton Way and Wilshire Boulevard.

### **FISCAL IMPACT**

There is no fiscal impact to the City associated with the approval of the Encroachment Permit and Covenant.

 David Gustavson  
Approved By

**Recording Requested 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 TEMPORARY  
ENCROACHMENT PERMIT AND COVENANT

Beverly Wilshire Owner  
231-265 North Beverly Drive  
Beverly Hills, CA 90210

1. Permit Conditionally Granted. Subject to the conditions and terms of this permit, a revocable temporary encroachment permit is hereby granted pursuant to the provisions of Section 8-3-5 of the Beverly Hills Municipal Code to Beverly Wilshire Owner (hereinafter 'Permittee') to utilize the following encroachments in connection with construction of a six-story Class A office building (the Project) at 231-265 North Beverly Drive, Beverly Hills, California 90210 (the 'Property') and legally described as follows:

The northerly fifteen feet of lot 10 and all of lots 11, 12, 13, 14, 15, and 16 in Block 10 of "Beverly" in the City of Beverly Hills, County of Los Angeles, State of California, as per Map recorded in Book 11 Page 94 of Maps, in the Office of the County Recorder of said County.

Permittee is the owner of the Property.

- a. A temporary encroachment for construction and shoring purposes. The encroachment shall be no more than 30 feet wide and 351 feet long running parallel to the easterly property line of the Project, as is more particularly described in Exhibit "A" attached hereto.
- b. A temporary encroachment for construction and shoring purposes. The encroachment shall be no more than 30 feet wide and 157.61 feet long running parallel to the northerly property line of the Project, as is more particularly described in Exhibit "B" attached hereto.
- c. A temporary encroachment for construction and shoring purposes. The encroachment shall be no more than 5 feet wide and 321 feet long running parallel to the westerly property line of the Project, as is more particularly described in Exhibit "C" attached hereto.

The area described in Exhibits A, B and C, collectively, shall be referred to as the “Encroachment Area”. Permittee’s encroachments into the Encroachment Area shall be referred to as the “Encroachments.”

2. Acceptance of Conditions. This permit is issued subject to the conditions contained herein, and by its acceptance of this permit, Permittee agrees to such conditions.
3. Conditions. This permit is granted subject to the following conditions.
  - a. Permit Required. Permittee shall obtain any building permits required by the City for construction on the Property or within the Encroachment Area.
  - b. Covenant to Maintain. Permittee covenants and agrees to keep and maintain in good condition and repair the improvements within the Encroachment Area.
  - c. 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, in connection with development of the Project wheresoever the same may occur, (ii) any breach or default in the performance of any of Permittee’s obligations under this permit, (iii) any construction work in and around the Encroachment Area, (iv) the City’s consent to the Encroachments, or (v) the City’s removal of the Encroachments pursuant to Section 12. The City reserves the right, in cases subject to this defense obligation, to approve the attorney selected to defend the City.
  - d. Insurance.
    - (i) Permittee shall procure at Permittee’s sole cost and expense and keep in effect from the date of this permit 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 minimum limits of two million dollars (\$2,000,000) combined single limit or four million dollars (\$4,000,000), 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 and shall provide that such coverage shall be primary and that the insurance maintained by City shall be excess insurance only. The terms of the policy shall be subject to City approval. 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 officers, employees, agents and contractors 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 expense, workers compensation insurance as required by law.
- e. Failure to Obtain Insurance. If Permittee fails 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.
- f. 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 "Bests 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 satisfactory to City. City may also require Permittee to deliver 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.
- g. 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 to the Encroachments. 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 associated with the Encroachments, 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 by this permit, give notice to the insurance carrier that the foregoing waiver of subrogation is contained in this instrument.
- h. Permittee on behalf of itself, its successors and assigns shall comply with all laws, ordinances, regulations and rules of the City.

4. Special Conditions.
  - a. Permittee, at its sole cost and expense, shall maintain in good repair and clean, safe condition, free of litter, accumulated grime or debris, the surface and substructure within the Encroachment Area.
  - b. 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 franchised utility owning and/or maintaining such underground utility facilities the amount of any damages sustained by such underground utility.
  - c. Permittee, at its sole cost and expense, shall at all times during the time period this Encroachment Permit and Covenant is in existence, maintain the base and surface materials of the right of way in a safe and aesthetic condition, and shall replace and repair any damage to the base or surface materials caused by any source whatsoever. Upon Permittee's failure to repair and maintain the base and surface materials to the satisfaction of City, the City shall give written notice of necessary repairs and maintenance to Permittee, and Permittee shall complete such repairs and maintenance within thirty days thereafter at Permittee's sole cost and expense.
  - d. Permittee shall not impose charges upon the City, utilities or any other person 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.
  - e. Permittee acknowledges that the Encroachment Area is a public right of way, and agrees not to interfere with established procedures for maintenance activities required for any improvement in the Encroachment Area.
  - f. Prior to completing plans for installation of improvements in the Encroachment Area, Permittee agrees to retain a registered professional civil engineer to thoroughly review all structures and proposed future structures in the Encroachment Area with all applicable departments of the City, utilities, or others whose activities or structures may affect the area. Building plans shall be submitted to the applicable department of the City for approval.
5. City's Right of Entry. In the event Permittee fails to maintain the Encroachments in good condition or repair, or in the event that Permittee fails to alter, repair or remove the Encroachments upon demand by the City pursuant to Section 12, then City shall be entitled to enter onto the Property and the Encroachment Area and to perform such maintenance, alteration, repair or removal, and Permittee, its successors in interest and

assigns, shall pay the City, upon demand, the reasonable cost of performing such maintenance or removal.

6. City's Lien Right.

- a. If any demand for reimbursement or other money payable to City pursuant to this permit 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, or foreclose City's lien against Permittee's 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 permit, 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 mailed to Permittee at the street address of Permittee's Property, 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 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.

7. 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 property, as the case may be. 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.
8. 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. If any condition of this permit shall for any reason be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, and Permittee refuses to abide by the condition despite such holding, this permit shall be null and void.
9. 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.
10. Term. It is the intention of the parties that this Encroachment Permit and Covenant shall be for a term as is needed to construct the Project. However, in no event shall the term of this Encroachment Permit and Covenant exceed 48 months from its execution, unless extended by the City Council. Additionally, the City may terminate this Encroachment Permit and Covenant in the event Permittee ceases work on the Project for any one continuous period of 120 days or work on the Project ceases for any reason beyond the control of Permittee for a continuous period of 270 days.
11. Default. Failure by Permittee to perform any obligation under this permit for a period of thirty (30) days from the receipt of written notice of such failure shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify in detail the nature of the alleged failure and the manner in which said failure may be satisfactorily cured. If the nature of the failure is such that it cannot reasonably be cured within such thirty (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

Subject to the foregoing, after notice and expiration of the thirty (30) day period, City may revoke this permit and require removal of the Encroachments pursuant to Section 12, below.

12. Removal.
  - a. Upon expiration of the term, or revocation of this permit after a default on the obligations of this permit, the City may require removal of the Encroachments from the Encroachment Area 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 promptly remove any and all improvements or structures constructed or placed by Permittee in, under, on or over the Encroachment Area and shall surrender and release to City all

possession, use, right, interest and occupation of the Encroachment Area without cost to City.

b. Upon a determination by the Director of Public Works that the Encroachments create a threat to the public health or safety, the City may require that the Encroachments be immediately repaired, altered or removed from the Encroachment Area as necessary to eliminate the threat to the public health or safety. The City shall give notice of the need to repair, alter or remove the Encroachments through personal delivery or overnight mail service addressed to Permittee at the Property or any other address provided to City by Permittee for the purpose of delivering notices pursuant to this permit. Permittee (or any successors of Permittee) shall repair, alter or remove promptly any and all improvements or structures constructed or placed by Permittee in, under, on or over the Encroachment Area and, in the event of removal of the Encroachments, shall surrender and release to City all possession, use, right, interest and occupation of the Encroachment Area without cost to City.

Executed this \_\_\_\_\_ day of \_\_\_\_\_ 2008 in the City of Beverly Hills, California.

CITY OF BEVERLY HILLS  
A Municipal Corporation

\_\_\_\_\_  
BARRY BRUCKER  
Mayor of the City of Beverly Hills

ATTEST:

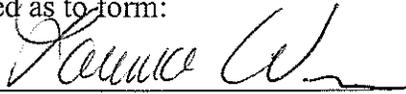
\_\_\_\_\_(SEAL)  
BYRON POPE, City Clerk

Beverly Wilshire Owner, LP  
A Delaware limited Partnership

By: GCS Wilshire LLC,  
A Delaware limited liability company,  
Its General Partner

By:   
MIKE MAY, Vice President

Approved as to form:



LAURENCE S. WIENER,  
City Attorney

Approved as to content:

RODERICK J. WOOD  
City Manager



CHRIS THEISEN  
Deputy Director Public Works/City Engineer



KARL KIRKMAN  
Risk Manager

EXHIBIT "A"

LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION  
AND SHORING EASEMENT FOR BEVERLY DRIVE

LEGAL DESCRIPTION  
TEMPORARY CONSTRUCTION SHORING EASEMENT  
FOR BEVERLY DRIVE

A strip of land, 30 feet wide, being a portion of Beverly Drive, 84 feet wide, as shown on of Beverly Tract, in the City of Beverly Hills, County of Los Angeles, State of California, as shown on map recorded in Book 11, page 94 of Maps in the office of the Recorder of said County, the southwesterly line of said strip being described as follows:

Beginning at a point on the southwesterly line of said Beverly Drive, said point distant South  $39^{\circ}33'02''$  East 321.00 feet from the most northerly corner of Lot .16 in Block .10 of said Beverly Tract; thence North  $39^{\circ}33'02''$  West 351.00 feet along said southwesterly line and its northwesterly produced line to the centerline of Dayton Way, 60 feet wide, as shown on said Beverly Tract.

The sidelines of said strip shall be extended or shortened so as to terminate in the centerline of said Dayton Way.

This legal description is delineated on accompanying "Legal Description Sketch" and is made a part hereof for reference purposes.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

EXHIBIT "B"

LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION  
AND SHORING EASEMENT FOR DAYTON WAY

LEGAL DESCRIPTION  
TEMPORARY CONSTRUCTION SHORING EASEMENT  
FOR DAYTON WAY

A strip of land, 30 feet wide, being a portion of Dayton Way, 60 feet wide, as shown on of Beverly Tract, in the City of Beverly Hills, County of Los Angeles, State of California, as shown on map recorded in Book 11, page 94 of Maps in the office of the Recorder of said County, the southeasterly line of said strip being described as follows:

Beginning at the most northerly corner of Lot .16 in Block 10 of said Beverly Tract; thence South  $50^{\circ}27'52''$  West 157.61 feet southwesterly along the southeasterly line and its southwesterly produced line of said Dayton Way.

The side lines of said strip shall be extended or shortened so as to terminate in the northwesterly produced line of the southwesterly line of Beverly Drive, 84 feet wide, and to terminate in a line parallel with and distant 5.00 feet southwesterly of the northwesterly produced line of the northeasterly line of the 20 foot wide Alley in said Block 10.

This legal description is delineated on accompanying "Legal Description Sketch" and is made a part hereof for reference purposes.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.

EXHIBIT "C"  
LEGAL DESCRIPTION OF TEMPORARY CONSTRUCTION  
AND SHORING EASEMENT FOR ALLEY

LEGAL DESCRIPTION  
TEMPORARY CONSTRUCTION SHORING EASEMENT  
FOR ALLEY SOUTHWEST (W BEVERLY DRIVE

A snip of land, 5 feet wide, being a portion of the alley, 20 feet wide, lying within Block 10 of Beverly Tract in the City of Beverly Hills, County of Los Angeles, State of California, as shown on map recorded in Book 11, page 94 of Maps in the office of the Recorder of said County, the northeasterly line of said strip being described as follows:

Beginning at a point on the northeasterly line of said Alley, said point also being the most westerly corner of Lot 1 in Block 10 of said Beverly Tract; thence South 39°32'05" East 321.00 feet along said northeasterly line.

The sideline of said snip shall be shortened or extended so as to terminate in the southwesterly prolongation of the southeasterly line of Dayton Way, 60 feet wide, as shown on said Beverly Tract,

This legal description is delineated on accompanying "Legal Description Sketch" and is made a part hereof for reference purposes.

This legal description is not intended to be used in the conveyance of land in violation of the Subdivision Map Act of the State of California.