

APPROVAL OF AN AMENDMENT TO THE EMPLOYMENT AGREEMENT WITH CITY ATTORNEY MICHELE BEAL BAGNERIS

Recommendation of Mayor: Approve the Amendment to Contract No. 17,080, the Employment Agreement between the City of Pasadena and City Attorney Michele Beal Bagneris, effective October 3, 2005. (Agreement Amendment No. 17,080-4)

MINUTES APPROVED

December 5, 2005

CLAIM RECEIVED AND FILED

Claim No. 9989 Interinsurance Exchange of \$9,794.48
the Automobile Club
subrogee for Nadine Bugarin

PUBLIC HEARINGS SET

February 27, 2006, 8:00 p.m. - Zoning Map Amendments

February 27, 2006, 8:00 p.m. - Zoning Code Amendment to Modify Density Bonus Provisions

It was moved by Councilmember Gordo, seconded by Councilmember Haderlein, to approve all items on the Consent Calendar. (Motion unanimously carried) (Absent: Vice Mayor Madison)

OLD BUSINESS

PROPOSED VACATION OF A PORTION OF MADIA STREET

Recommendation of City Manager: Adopt the revised resolution ordering the vacation of a portion of Madia Street from 380 feet east of Linda Vista Avenue to the east end of Madia Street. (Resolution No. 8550)

The Mayor provided an overview of previous discussion on this matter.

The City Manager introduced the agenda item; and responded to questions regarding the valuation of the property, the proposed vacation, and the area of the applicants' property vs. City property.

The City Attorney noted the revised resolution reflects Council's directions to staff regarding the additional language and conditions agreed to by the applicant, and that Exhibit D to the revised resolution contains the applicants' proposed conditions; and responded to questions.

Mr. Martin Pastucha, Director of Public Works Department, responded to questions regarding safety issues in the area and the valuation of the property.

Ms. Bonnie Hopkins, Principal Engineer, described the applicants' property lines.

The Mayor suggested staff provide Council with a summary of the facts for all vacations approved within the past 10 years in order to assist Council in formulating policy for future transactions.

Councilmember Tyler suggested staff also provide information on the guidelines used by staff to determine the value in vacating a street and the public benefit involved.

The following persons spoke in support of the vacation:

Mr. Scott Jenkins, Hahn & Hahn LLP, representing the applicants
Ms. Shannon Quinn, applicant

The following persons spoke in opposition to the vacation:

Ms. Ann Higginbotham, counsel representing eight Madia Street neighbors (families)
Mr. Craig Miller, Pasadena resident
Mr. Robert Bishop, Pasadena resident

Discussion followed on public benefit issues related to the vacation, the neighbors' initial and current positions regarding the vacation, the need to review the guidelines for vacating streets, possible impacts of this vacation on the neighbors, and issues involving access for the neighbors to the vacated property.

Councilmember Haderlein expressed opposition to the vacation as proposed by staff.

Councilmember Tyler expressed concerns regarding, in his opinion, an apparent lack of the establishment of an overriding public benefit in this transaction and the apparent discretionary nature of the proposed conditions on the part of the applicants; and suggested that access to the vacated property and preservation of the view be a right of the neighbors who are property owners on the street, rather than at the discretion of the applicants.

FAILED MOTION

It was moved by Councilmember Streator, seconded by Councilmember Gordo, to approve the City Manager's recommendation.

AYES: Councilmembers Gordo, Streator

NOES: Councilmembers Haderlein, Holden, Tyler, Mayor Bogaard

ABSENT: Vice Mayor Madison

ABSTAIN: Councilmember Little

(Motion failed)

The City Attorney responded to questions regarding the key provisions proposed by the applicants vs. the provisions

proposed by the neighbors, clarified that the holders of the covenants would indemnify the property owners against claims arising from the covenant holders' use of the vacated land, and offered alternative language for the resolution as cited below.

MOTION

Following brief discussion, it was moved by Councilmember Haderlein, seconded by Councilmember Tyler, to approve the City Manager's recommendation, with Exhibit D of the resolution (as presented by staff) to be titled "Quinn Garden Covenant Key Provisions"; with the incorporation of an additional provision into Exhibit D that landscaping shall be done in such a way as to preserve and enhance the view of the mountains and the Arroyo Seco from the remaining portion of Madia Street; with page 3, paragraph (e) of the resolution amended to read: "applicant shall enter into separate and binding covenants with every property owner with frontage on Madia Street to the east of Linda Vista Avenue with, essentially, all of the key provisions set forth on Exhibit "D", attached hereto and incorporated hereat by this reference as modified throughout to provide a covenant that is recorded and runs with the land and in a form approved by the City Attorney."; and with the understanding that the attorneys for the applicants and neighbors will work out the provisions of the covenant. (Motion unanimously carried) (Absent: Vice Mayor Madison)

The City Attorney confirmed that the street vacation would not occur if the applicants and the neighbors could not reach agreement on the covenants.

**REPORTS AND
COMMENTS FROM
COUNCIL COMMITTEES**

**ECONOMIC
DEVELOPMENT AND
TECHNOLOGY COMMITTEE**

GREEN BUILDING ORDINANCE AND PROGRAM

Recommendation of City Manager:

- (1) Acknowledge that the Green Building Ordinance is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines General Rule, Section 15061(b)(3);
- (2) Direct the City Clerk to file a Notice of Exemption with the Los Angeles County Recorder;
- (3) Direct the City Attorney to prepare an ordinance within 60 days amending Title 14 of the Pasadena Municipal Code to implement a Green Building Ordinance as described within the agenda report; and
- (4) Establish a construction tax rebate of \$1,000 for each affordable housing unit provided on-site for projects that meet the requirements of the Green Building Ordinance, effective with the adoption of the 2006-2007 Schedule of Taxes, Fees and Charges.

Councilmember Gordo, Chair of the Economic Development and Technology Committee, summarized the agenda report, noted the Committee had requested that the construction tax rebate program for on-site affordable housing units and ordinance be reviewed by the Committee in 18 months, and responded to questions.

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

John B. and M. Shannon Quinn
c/o Quinn Emanuel Urquhart Oliver &
Hedges, LLP
865 South Figueroa Street
Tenth Floor
Los Angeles, California 90017-2543

SPACE ABOVE THIS LINE FOR RECORDER'S USE

**DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS AND ESTABLISHMENT OF EASEMENT AFFECTING LAND**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ESTABLISHMENT OF EASEMENTS AFFECTING LAND (the "Agreement") is made as of April 14, 2006 by and between John and Shannon Quinn (jointly, "Grantor"), on the one hand, and Robert C. Bishop and Susan E. Bishop (jointly, "Grantee"), on the other hand.

RECITALS

This Agreement is entered into with reference to the following facts:

A. Grantor is the fee simple owner of that certain area of land located in the City of Pasadena, County of Los Angeles, State of California, as legally described in Exhibit A attached hereto and incorporated herein by reference (the "Vacated Property"). The Vacated Property is a private, gated garden at the cul-de-sac on the eastern end of Madia Street.

B. Grantee is the fee simple owner of that certain real property located at 1199 Madia Street in the City of Pasadena, County of Los Angeles, State of California, as legally described in Exhibit B attached hereto and incorporated herein by reference (the "Grantee Property").

C. Grantor and Grantee have established a non-exclusive easement for access to and use of the Vacated Property by Grantee in accordance with the terms and conditions set forth herein.

AGREEMENT

In consideration of the mutual covenants and conditions contained herein and intending to be legally bound hereby, Grantor and Grantee agree as follows:

1. **Landscaping.** The Vacated Property will be landscaped by Grantor at Grantor's expense and in accordance with Grantor's discretion, except that Grantor shall landscape the

Vacated Property (including the placement of any plants or objects) in such a way as to preserve and enhance the view of the mountains and Arroyo Seco from the remaining portion of Madia Street.

2. **Easement.** Subject to the terms, conditions and rules set forth below, Grantor hereby grants to Grantee a non-exclusive easement for pedestrian ingress and egress into the Vacated Property and use of the Vacated Property for scenic viewing (the "Easement").

3. **Locked Gate.** The Vacated Property will be gated and locked. Grantor shall provide Grantee a key to the gate. Grantee shall not duplicate the key, nor shall Grantee provide the key to any person who is not a member of Grantee's household. Grantee may request a replacement key from Grantor if the key is lost.

4. **No Interference With Grantor's Use and Enjoyment.** Grantee shall not interfere with Grantor's use or enjoyment of the Vacated Property. Grantee shall adhere to the following rules (the "Vacated Property Rules"):

Vacated Property Rules

- **Access Hours.** The Vacated Property shall be available to Grantee for Grantee's use in accordance with the Easement between sunrise and sunset Monday through Saturday and when there are fireworks at the Rose Bowl. Outside of those hours and days, Grantee shall not have any access to the Vacated Property nor any right to use the Vacated Property.
- **Group Size and Number of Guests.** Except when there are fireworks at the Rose Bowl, no more than ten (10) persons in the aggregate (including all Grantees having access to the Vacated Property) shall be permitted to enter the Vacated Property at any time. Grantee may bring guests with Grantee on the Vacated Property, but only so long as Grantee or a member of Grantee's family is present at all times.
- **Grantor's Usage for Events.** In the event that Grantor has a party, gathering or other event on the Vacated Property, and that Grantee is given one week's prior written notice thereof, Grantee shall not have access to the Vacated Property during such event. In no event shall Grantee's access be prohibited when there are fireworks at the Rose Bowl. Grantor's usage of the Vacated Property for events to the exclusion of Grantee shall not occur more than once a month.
- **No Food, Drink or Smoking.** Grantee is prohibited from possessing or consuming alcoholic beverages, illegal drugs, tobacco and food within the Vacated Property.
- **No Pets.** Grantee is prohibited from bringing any dogs or other pets into the Vacated Property, except for service dogs for the disabled.

- **No Firearms, Hunting or Abusive Language or Conduct.** Grantor and Grantee are prohibited within the Vacated Property from (a) possessing any firearm or other weapon of any type, whether concealed or unconcealed, (b) hunting, (c) using loud or abusive language and (d) engaging in unruly, disturbing or abusive conduct.
- **Trash.** Trash receptacles are not provided for Grantee within the Vacated Property. Every time Grantee uses the Vacated Property, Grantee shall leave nothing behind and, upon departing, shall remove from the Vacated Property all trash and objects brought into the Vacated Property. No littering is allowed.
- **No Amplified Sound.** Grantee is not permitted to produce any amplified sound within the Vacated Property.
- **No Unsupervised Children.** Grantee may not have children under the age of fourteen (14) in the Vacated Property without adult supervision present in the Vacated Property with the children at all times.
- **No Solicitation or Sign-Posting.** Grantee shall not solicit, sell or advertise any good or service within the Vacated Property and shall not post any sign in the Vacated Property.
- **Rules Subject to Change.** Grantor and Grantee and their respective successors and assigns may, upon their mutual agreement, make reasonable changes to the Vacated Property Rules from time to time as necessary to maintain Grantor's right to use and enjoy the Vacated Property and/or to maintain Grantee's right to access the Vacated Property in accordance with the Easement. In the event the parties do not mutually agree on a rule change, the dispute shall be resolved by arbitration before the American Arbitration Association.

5. **Termination for Material Breach of Rules.** In the event of a material breach by Grantee of any of the Vacated Property Rules, Grantee's right of access to the Vacated Property shall be subject to termination by Grantor. The procedure for declaring a material breach and terminating Grantee's right of access shall be as follows:

- **Written Warning.** Upon the occurrence of a first violation by Grantee of any of the Vacated Property Rules, Grantor shall issue a written warning to Grantee. Such first violation is automatically cured in the event that no subsequent violations occur within six (6) months of the date of the written warning.
- **Second Violation Within Six (6) Months.** A material breach shall not occur unless and until Grantee commits a second violation of the same Vacated Property Rule that was the subject of the written warning within

six (6) months of the date of the written warning. Upon the occurrence of a second violation within a six (6) month period. Grantor may declare Grantee to be in material breach and terminate Grantee's right of access to the Vacated Property.

- **Arbitration.** In the event Grantee disputes Grantor's declaration that Grantee is in material breach, the dispute shall be resolved by arbitration before the American Arbitration Association.
- **Covenant Continues to Run With the Land.** Notwithstanding Grantor's declaration of a material breach and revocation of Grantee's right of access to the Vacated Property, the Easement shall continue to run with the land for the benefit of future owners of the Grantee Property.

6. **Financial Responsibility and Indemnity.** Grantee shall be financially responsible for any damage caused by Grantee or Grantee's guest to the Vacated Property or any fixtures or appurtenances. Grantee hereby agrees to and shall indemnify, defend and hold harmless Grantor and Grantor's agents, employees, successors or assigns from and against any and all claims, losses, costs, liabilities, actions, causes of action, damages, injuries and expenses (including, without limitation, reasonable attorneys' fees and other expenses) of every kind, nature or description whatsoever incurred or sustained by Grantee or Grantee's guests, which arise out of, relate to, or result from Grantee's or Grantee's guests' use of the Vacated Property.

7. **No Interference With Grantee's Right of Access.** Except as provided in paragraph 5 above, Grantor shall not interfere with Grantee's rights of access to the Vacated Property and to enjoy the view of the mountains and Arroyo Seco, as provided by the Easement. In the event that Grantor does interfere with Grantee's right of access, such right of access shall be restored immediately and Grantor shall recover any damages incurred as a result of such interference. In the event the parties dispute whether Grantor has interfered with Grantee's right of access or whether or to what extent Grantee has incurred damages as a result of any such interference, the dispute shall be resolved by arbitration before the American Arbitration Association.

8. **Waivers.** No waiver by either party of any of the terms, conditions or covenants of this Agreement shall be deemed or taken as a waiver at any time thereafter nor of any other term, condition or covenant, nor of the strict performance thereof and adherence thereto by the other party. Any waiver by either party must be in writing.

9. **Covenants Run With the Land.** This Agreement is intended to be and shall be a covenant running with the land pursuant to California Civil Code section 1648. Any conveyance, transfer, sale, assignment or lease, made by Grantor of the Vacated Property or any portion thereof or interest therein, or by Grantee of the Grantee Property or any portion thereof or interest therein, will, and is hereby deemed to, incorporate by reference the provisions of this Agreement and the Easement and all covenants, conditions and restrictions set forth herein. The Easement, covenants, conditions and restrictions set forth in this Agreement:

- a) burden and run with both (i) the Vacated Property and any portion thereof or interest therein, and (ii) the Grantee Property and any portion thereof or interest therein;
- b) bind (i) all parties having or acquiring any right, title or interest in the Vacated Property or any portion thereof or interest therein, and (ii) all parties having or acquiring any right, title or interest in the Grantee Property or any portion thereof or interest therein;
- c) shall be expressly and exclusively for the benefit of (i) Grantor and Grantor's successors and assigns, and (ii) Grantee and Grantee's successors and assigns; and
- d) shall inure to the benefit of the successors and assigns of both (i) Grantor, and (ii) Grantee, and all such successors and assigns are expressly bound by this Agreement for the benefit of the other party

10. **Non-Exclusive.** The Easement is not exclusive.

11. **No Public Declaration.** The Easement is not a public easement, but is a private easement for the use and benefit of Grantee and its successors and assigns only. The Easement is not intended to create, and shall not be construed as creating, any dedication to or benefits for the general public.

12. **Amendment of Agreement.** This Agreement may be amended only by an instrument in writing mutually executed by Grantor or Grantor's successors or assigns and Grantee or Grantee's successors or assigns and recorded in the Official Records of Los Angeles County.

13. **Governing Law.** This Agreement shall be construed in accordance with the laws of the State of California.

14. **Non-Binding Arbitration.** Grantor and Grantee reserve the right to challenge the outcome of any arbitration before the American Arbitration Association which occurs pursuant to the provisions of this Agreement in a court of competent jurisdiction in the County of Los Angeles.

15. **Entire Agreement.** This Agreement contains the entire agreement and understanding between the parties regarding the Easement and supersedes any prior oral or written agreement between the parties regarding the Easement. There are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the Easement other than those set forth in this Agreement.

16. **No Third Party Beneficiaries.** Notwithstanding anything to the contrary in this Agreement, no person other than Grantor, Grantee and their respective successors and assigns

shall be beneficiaries of any term or provision of this Agreement, except that the Indemnity provision shall be for the benefit of Grantor's agents and employees.

17. **Interpretation.** If any provision of this Agreement is, or is adjudged to be, unenforceable or invalid, the remainder shall continue in full force and effect. This Agreement shall be construed in accordance with its fair meaning and not strictly for or against any party. The headings contained in this Agreement are for the purpose of reference only, and are not an aid in the construction or interpretation of any provision hereof.

18. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same instrument.

[SIGNATURE PAGES FOLLOW]