



OFFICE OF THE CITY ATTORNEY

TO: Honorable Mayor and Members of the City Council

FROM: Michele Beal Bagneris, City Attorney *M. B. B.*

DATE: October 23, 2006

RE: Proposed Vacation of a Portion of Madia Street, Amendment of Resolution Number 8550 to Change a Condition of Vacation from a Covenant to an Easement for Ingress and Egress to Vacated Property for Adjoining Owners.

RECOMMENDATION:

This is a continuation of a City Council deliberation that took place at the meeting of August 14, 2006. The Memorandum of September 5, 2006 from Councilmember Paul Little, "Resolution of issues surrounding Madia Street Vacation," is attached hereto as Exhibit 1. An Amendment to Resolution Number 8550 and the referenced Easement for Ingress and Egress to Vacated Property ("proposed Easement") consistent with that Memorandum is hereby presented to City Council for consideration. If the City Council affirms the proposed Resolution of Issues to satisfy its intent in vacating the property, then it should adopt the attached Amendment to Resolution 8550.

BACKGROUND:

On December 19, 2005, the City Council approved Resolution Number 8550, Ordering the Vacation of a Portion of Madia Street From Approximately 380 Feet East of Linda Vista Avenue to the East End of Madia Street. A copy of that Resolution Number 8550 is attached hereto as Exhibit 2.

On July 24, 2006, the City Council was asked to clarify its intention with respect to a specific condition in Resolution Number 8550 relating to the use of the vacated property by adjoining property owners and, specifically whether the City Council intended that a covenant, in the form of a Declaration of Covenants, Conditions and Restrictions, be approved by each and every neighbor as a precondition to vacation. Applicants have indicated their position that an easement document could be recorded, providing

essentially the same benefits as a covenant, but not requiring acceptance by each and every neighbor prior to recording.

On August 14, 2006, the City Council further considered the matter and City Councilmembers Paul Little and Chris Holden agreed to meet with the parties in the attempt to negotiate an agreement and compromise of outstanding issues. The Memorandum from Councilmember Paul Little dated September 5, 2006 memorializes that proposed compromise and is attached hereto as Exhibit 1.

One of the terms in the Memorandum from Councilmember Little, Item No. 8, proposes that the cul-de-sac be centered on the street, or a few feet south as determined by staff, and that it shall be constructed 12 feet east of the configuration that was originally presented to the City Council. Drawings of both the original configuration and of the proposed configuration are attached hereto as Exhibit 3. With the new alignment, a public tree will need to be removed. This tree is an ash tree of 36 inches in diameter and is neither a protected specimen, native nor landmark tree. Permitting the removal of public trees is within the discretion of the City Manager under Pasadena Municipal Code Section 8.52.030(F).

Since the removal of the tree has been proposed by the City Council negotiators to reach a compromise for the alignment of the cul-de-sac, it could be considered a City Council initiative, and the Quinns would thereby not be responsible for the assessed value of the tree to be removed, which is also a point of the proposed compromise of outstanding issues. The Quinns would, however, be responsible for the costs of removing the tree. This would include a \$2500 deposit to cover the cost to remove the tree and the stump by city tree crews. There has not been consultation with the Urban Forestry Advisory Committee about this tree removal since, again, this could be considered, essentially, a City Council initiative.

Attached to the proposed Amendment to Resolution as Exhibit "E" is the proposed Deed of Easement for Ingress and Egress to Vacated Property proposed by the applicants. The City Attorney's Office has reviewed the proposed Easement and finds that it has substantially the same legal effect as the earlier proposed Declaration of Covenants, Conditions and Restrictions. The element it is lacking is the pre-approval by the specified property owners. The pre-approval represents a negotiated approach to the method and effect of the street vacation and is a public policy matter, not a legal requirement of the street vacation. The City Council may either approve the Amendment to Resolution or may decline to approve it. In addition, the City Attorney's office finds that the amended resolution and proposed easement meet the terms of the compromise reached with Councilmembers Little and Holden.

Notice of the October 23 City Council meeting was provided to the neighbors in the form of a letter mailed on October 16, 2006, a copy of which is attached as Exhibit 4. A subsequent letter from John B. Quinn dated October 17, 2006, was received and is attached hereto as Exhibit 5.

**RESOLUTION NO.
(AMENDMENT OF RESOLUTION NO. 8550)**

AMENDMENT OF RESOLUTION No. 8550 TO CHANGE A CONDITION OF VACATION OF A PORTION OF MADIA STREET FROM A COVENANT TO AN EASEMENT FOR INGRESS AND EGRESS TO VACATED PROPERTY FOR ADJOINING OWNERS.

Section 1. Resolution No. 8550 is amended by amending Section 1(e) to read as follows:

“1(e) Applicant shall grant a Deed of Easement for Ingress and Egress to Vacated Property to each and every property owner with frontage on Madia Street to the east of Linda Vista Avenue and to the property directly across from the entrance to Madia Street on Linda Vista currently belonging to the Millers, in essentially the form attached hereto as Exhibit ‘E’, incorporated hereat by this reference.” Applicant agrees that the Deed of Easement shall not be modified except by the mutual consent of the parties or by arbitration before the American Arbitration Association.

Section 2. All other terms and conditions of Resolution No. 8550 are unchanged and remain the same.

Adopted at the _____ meeting of the City Council on the ____ day of _____, 2006, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

JANE L. RODRIGUEZ, CMC
City Clerk

Approved as to form:



10/19/06

Michele Beal Bagneris
City Attorney

JLV

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

John B. and M. Shannon Quinn
c/o Quinn Emanuel Urquhart Oliver &
Hedges, LLP
865 S. Figueroa Street
10th Floor
Los Angeles, CA 90017-2543

SPACE ABOVE THIS LINE FOR RECORDER'S USE

DEED OF EASEMENT FOR INGRESS AND EGRESS TO VACATED PROPERTY

This **DEED OF EASEMENT FOR INGRESS AND EGRESS TO VACATED PROPERTY** (the "Deed") is granted as of September __, 2006 by John and Shannon Quinn (jointly, "Grantor"), as owners of the servient tenement, to Robert and Susan Bishop ("Grantee"), as owners of the dominant tenement, with reference to the following facts and on the following terms and conditions:

RECITALS

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").

GRANT OF EASMENT FOR INGRESS AND EGRESS TO VACATED PROPERTY

For valuable consideration, receipt of which is hereby acknowledged, and subject to the terms, conditions and rules set forth below, Grantor does hereby grant 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"), which Easement shall be appurtenant to the Grantee Property, 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 and shall install a low fence or hedge in conformity with City of Pasadena front yard rules with a locking gate.

2. **Locked Gate.** The Vacated Property will be gated and locked with a "keypad" activated lock. Grantor shall provide Grantee the code to the keypad, provided that Grantee shall first enter into a Financial Responsibility and Indemnity Undertaking and Arbitration Agreement in the following form:

Financial Responsibility and Indemnity Undertaking and Arbitration Agreement

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.

Grantor and Grantee agree that in the event there is a dispute between them regarding (a) Grantor's declaration that Grantee is in material breach of the Vacated Property Rules, (b) a proposed change to the Vacated Property Rules, or (c) 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, any such dispute shall be resolved by non-binding arbitration before the American Arbitration Association. Grantor and Grantee reserve the right to challenge the outcome of any such arbitration in a court of competent jurisdiction in the County of Los Angeles.

Grantee shall not provide the keypad code to any person who is not a member of Grantee's household. Upon the termination of Grantee's ownership of the Grantee Property, this provision shall then apply to Grantee's successors and assigns who shall be provided the keypad code upon entering into a Financial Responsibility and Indemnity Undertaking and Arbitration Agreement in the form set forth above.

3. **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"), and it is understood that Grantee's use of the Vacated Property in accordance with the terms of said rules shall not constitute an interference with Grantor's use and enjoyment:

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 daily and after sunset on evenings when there are fireworks at the Rose Bowl. Outside of those times, 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.

4. **Termination for Material Breach of Rules.** In the event of a material breach by Grantee or a member (or members) of Grantee's household of any of the Vacated Property Rules, the right of access to the Vacated Property of the individual or individuals responsible for said breach shall be subject to suspension by Grantor. The procedure for declaring a material breach and suspending an individual's or individuals' right of access shall be as follows:

- **Written Warning.** Upon the occurrence of a first violation by Grantee or a member (or members) of Grantee's household 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 the individual or individuals responsible for the first violation commit(s) 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 the individual or individuals responsible to be in material breach and suspend the right of access to the Vacated Property for said individual(s) for a period of three (3) years from the date of said declaration of material breach.
- **Arbitration.** In the event Grantee disputes Grantor's declaration that such individual(s) is/are in material breach, the parties shall first discuss the problem and try to work out a reasonable solution among themselves. In the event the parties are unable to resolve the dispute, 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 suspension of Grantee's or a member (or members) of Grantee's household'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.

5. **No Interference With Grantee's Right of Access.** Except as provided in paragraph 4, 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 Grantee 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.

6. **Waivers.** No waiver by Grantor or Grantee of any of the terms, conditions or covenants of this Deed 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.

7. **Easement Runs With the Land.** The Easement granted by this Deed is intended to be and shall be an easement appurtenant running with the land pursuant to California Civil Code section 1104. 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 Deed and the Easement and all conditions, rules and restrictions set forth herein. The Easement, conditions, rules and restrictions set forth in this Deed:

- 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 Deed for the benefit of the other party

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

9. **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.

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

11. **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 Deed in a court of competent jurisdiction in the County of Los Angeles.

12. **Entire Agreement.** This Deed 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 Deed.

13. **No Third Party Beneficiaries.** Notwithstanding anything to the contrary in this Deed, no person other than Grantor, Grantee and their respective successors and assigns shall be beneficiaries of any term or provision of this Deed, except that the Financial Responsibility and Indemnity Undertaking and Arbitration Agreement required by paragraph 2, above, shall be for the benefit of Grantor and Grantor's agents and employees.

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

[SIGNATURE PAGE FOLLOWS]

GRANTOR:

John B. Quinn and M. Shannon Quinn

By _____
John B. Quinn

By _____
M. Shannon Quinn

ACKNOWLEDGEMENT

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On July ____, 2006, before me _____, Notary Public,
personally appeared John B. Quinn, personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person whose name is subscribed to the within instrument and
acknowledged to me that he executed the same in his authorized capacity, and that by his
signature on the instrument he executed the instrument.

Witness my hand and official seal.

Signature of the Notary

[SEAL]

On July ____, 2006, before me _____, Notary Public,
personally appeared M. Shannon Quinn, personally known to me (or proved to me on the basis
of satisfactory evidence) to be the person whose name is subscribed to the within instrument and
acknowledged to me that she executed the same in her authorized capacity, and that by her
signature on the instrument she executed the instrument.

Witness my hand and official seal.

Signature of the Notary

[SEAL]