

Agenda Report

TO: CITY COUNCIL

Date: October 3, 2005

FROM: CITY MANAGER

SUBJECT: APPROVE THE SALE OF AN EASEMENT AND ADOPTION OF A RESOLUTION OF A GRANT OF EASEMENT FOR THE PROJECTION OF GLASS-ENCLOSED PORCHES INTO THE PUBLIC RIGHT-OF-WAY LOCATED AT 355 EAST COLORADO BOULEVARD

RECOMMENDATION

It is recommended that the City Council take the following actions to approve the sale of an easement and the adoption of a resolution to grant an easement for glass-enclosed porches into the public right-of-way located at 355 East Colorado Boulevard.

DESIGN COMMISSION REVIEW

On January 10, 2005, the Design Commission approved with conditions the concept design of the project. One of these conditions was that the Commission will conduct an advisory 50% review to analyze the configuration of the Solaria prior to final design review. This review was conducted on June 27, 2005. Final design review is expected to occur in late October or November.

In its review of the project, the Design Commission supported the glazed Solaria because they add transparency to the walls of the building, extrude the massing, and lighten the volume. A rendering of the building is attached hereto.

BACKGROUND

MS Property Company, property owners of the proposed project located at 355 E. Colorado Boulevard, have requested that the City grant a three-foot wide easement to allow glass-enclosed, habitable porches or rooms known as solaria ("Solaria") to project into the public right-of-way along Colorado Boulevard as part of the development of their project.

The proposed project consists of 7 floors which include one level of subterranean parking, a ground floor consisting of parking and commercial space, and 5 floors of consisting of approximately 28 condominium units. There are two sets of Solaria proposed on the Colorado Boulevard frontage of the project. Each Solaria will project over City Property by three feet beginning approximately 15 feet above grade. Each Solaria is also proposed to be approximately 27 feet in width and approximately 50 feet in height.

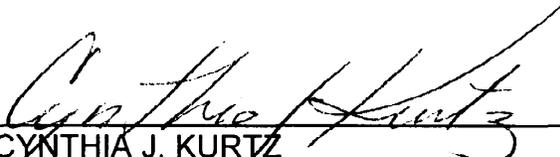
The proposed easement area is located within the public right-of-way along Colorado Boulevard. The City of Pasadena owns the fee title to this portion of Colorado Boulevard; however, the easement area is not subject to the surplus property rules as described in Charter Section 4.02 of the Pasadena Municipal Code since all of the uses in the public right-of-way remain the same.

The only construction permit that has been issued for the project is a Foundation Only permit. This work is currently under construction and is 25% complete.

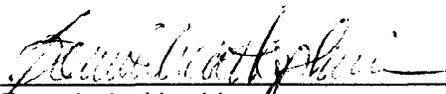
FISCAL IMPACT

The estimated Fair Market Value of the subject portion of City Property is \$8400.00 and will be deposited into the Land Sale Revenue Account of the General Fund. The applicant has paid the costs for preparing, processing, and recordation of the grant of easement. No additional revenue will be expended or generated by the adoption of this grant of easement.

Respectfully submitted,


CYNTHIA J. KURTZ
City Manager

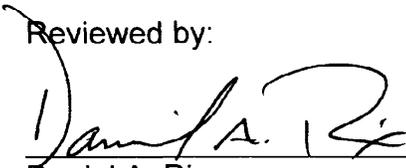
Prepared by:


Bonnie L. Hopkins
Principal Engineer

Approved by:


Martin Pastucha, Director
Department of Public Works

Reviewed by:


Daniel A. Rix
City Engineer

Attachments

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA APPROVING A GRANT OF AN EASEMENT FOR THE PROJECTION OF GLASS-ENCLOSED PORCHES INTO THE PUBLIC RIGHT-OF-WAY LOCATED AT 355 EAST COLORADO BOULEVARD TO MS PROPERTY COMPANY

WHEREAS, MS Property Company has requested an easement to allow for the projection, into the public right-of-way, glass enclosed, habitable porches or rooms known as solaria ("Solaria") and have agreed to pay the market value of the easement and all costs associated with granting thereof; and

WHEREAS, both the Department of Public Works and the City Attorney's office have reviewed the proposed dedication;

NOW THEREFORE, BE IT RESOLVED by the City Council of the City of Pasadena as follows:

That the easement for Solaria, presented herewith, and graphically shown on Exhibit "C" presented herewith, is approved for dedication.

Adopted at the _____ meeting of the City Council on the _____ day of _____, 2005, by the following vote:

AYES:

NOES:

ABSENT:

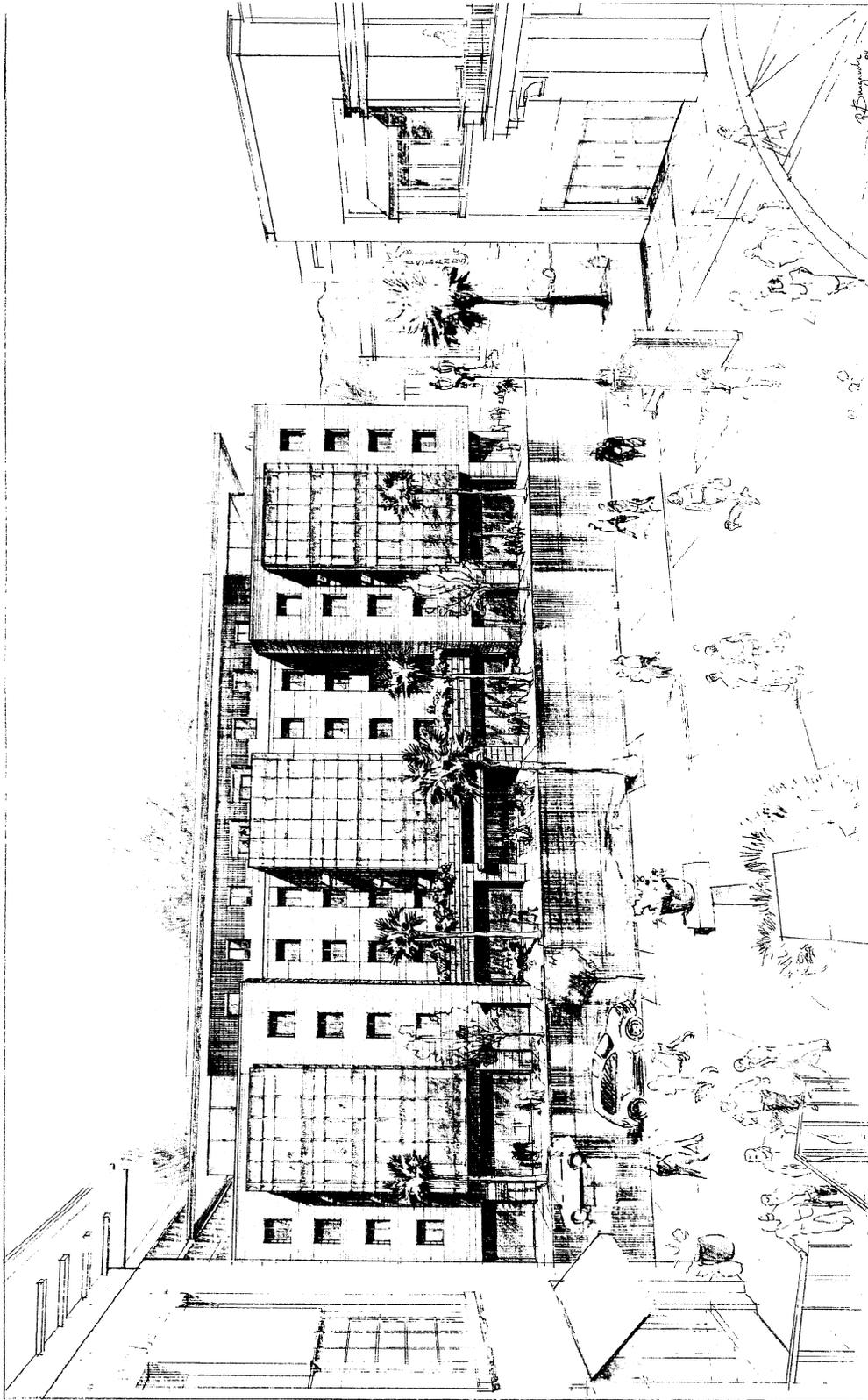
ABSTAIN:

JANE L. RODRIGUEZ, City Clerk

Approved as to form:

8/28/05


Nicholas G. Rodriguez
Assistant City Attorney



PERSPECTIVE PASEO VIEW
PRECAST CONCRETE
25 MAY 2005

THE MONTANA
WEST BUILDERS | NAKADA + ASSOCIATES P.C. | NAKAKI BASHAW GROUP

MS PROPERTY COMPANY



CIVIL ENGINEERING
SURVEYING+MAPPING
LAND DEVELOPMENT

MOLLENHAUER GROUP
CIVIL ENGINEERING, SURVEYING+MAPPING, LAND DEVELOPMENT
601 S. Figueroa Street, Fourth Floor, Los Angeles, California 90007
Phone 213.624.2661 - Fax 213.614.1863

EXHIBIT "C"

**LEGAL DESCRIPTION
SOLARIUM 1**

That portion of Lot 7 of the G.E. MeHarry's Subdivision of Lot 10 in Block "C" of San Pasqual Tract, as per map recorded in Book 7, Page 31 of Miscellaneous Records, also being a portion of Colorado Boulevard, 100.00 feet wide, all in the City of Pasadena, County of Los Angeles, State of California, described as follows:

Commencing at the centerline intersection of Euclid Avenue, 70.00 feet wide, and Colorado Street, 100.00 feet wide, as shown on said plat map; thence along said centerline of Euclid Avenue, North 00°00'54" East, 50.00 feet; thence departing said centerline of Euclid Avenue, North 89°58'40" West, 53.50 feet to the **Point of Beginning** of Solarium 1;

Thence South 00°01'20" West, 3.00 feet; thence North 89°58'40" West, 27.00 feet; thence North 00°01'20" East, 3.00 feet; thence South 89°58'40" East, 27.00 feet to the **Point of Beginning** and having a vertical range with a lower limit of 857.50 feet and an upper limit of 912.20 feet .

Containing a total linear area of 81 square feet more or less.



Gregory D. Hindson

Gregory D. Hindson, P.L.S. 5670

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CIVIL ENGINEERING
SURVEYING+MAPPING
LAND DEVELOPMENT

MOLLENHAUER GROUP
CIVIL ENGINEERING, SURVEYING+MAPPING, LAND DEVELOPMENT
601 S. Figueroa Street, Fourth Floor, Los Angeles, California 90007
Phone 213.624.2661 - Fax 213.614.1863

EXHIBIT "C"

**LEGAL DESCRIPTION
SOLARIUM 2**

That portion of Lot 7 of the G.E. MeHarry's Subdivision of Lot 10 in Block "C" of San Pasqual Tract, as per map recorded in Book 7, Page 31 of Miscellaneous Records, also being a portion of Colorado Boulevard, 100.00 feet wide, all in the City of Pasadena, County of Los Angeles, State of California, described as follows:

Commencing at the centerline intersection of Euclid Avenue, 70.00 feet wide, and Colorado Street, 100.00 feet wide, as shown on said plat map; thence along said centerline of Euclid Avenue, North 00°00'54" East, 50.00 feet; thence departing said centerline of Euclid Street, North 89°58'40" West, 198.50 feet to the **Point of Beginning** of Solarium 2;

Thence South 00°01'20" West, 3.00 feet; thence North 89°58'40" West, 27.00 feet; thence North 00°01'20" East, 3.00 feet; thence South 89°58'40" East, 27.00 feet to the **Point of Beginning** and having a vertical range with a lower limit of 857.50 feet and an upper limit of 912.20 feet .

Containing a total linear area of 81 square feet more or less.



Gregory D. Hindson

Gregory D. Hindson, P.L.S. 5670

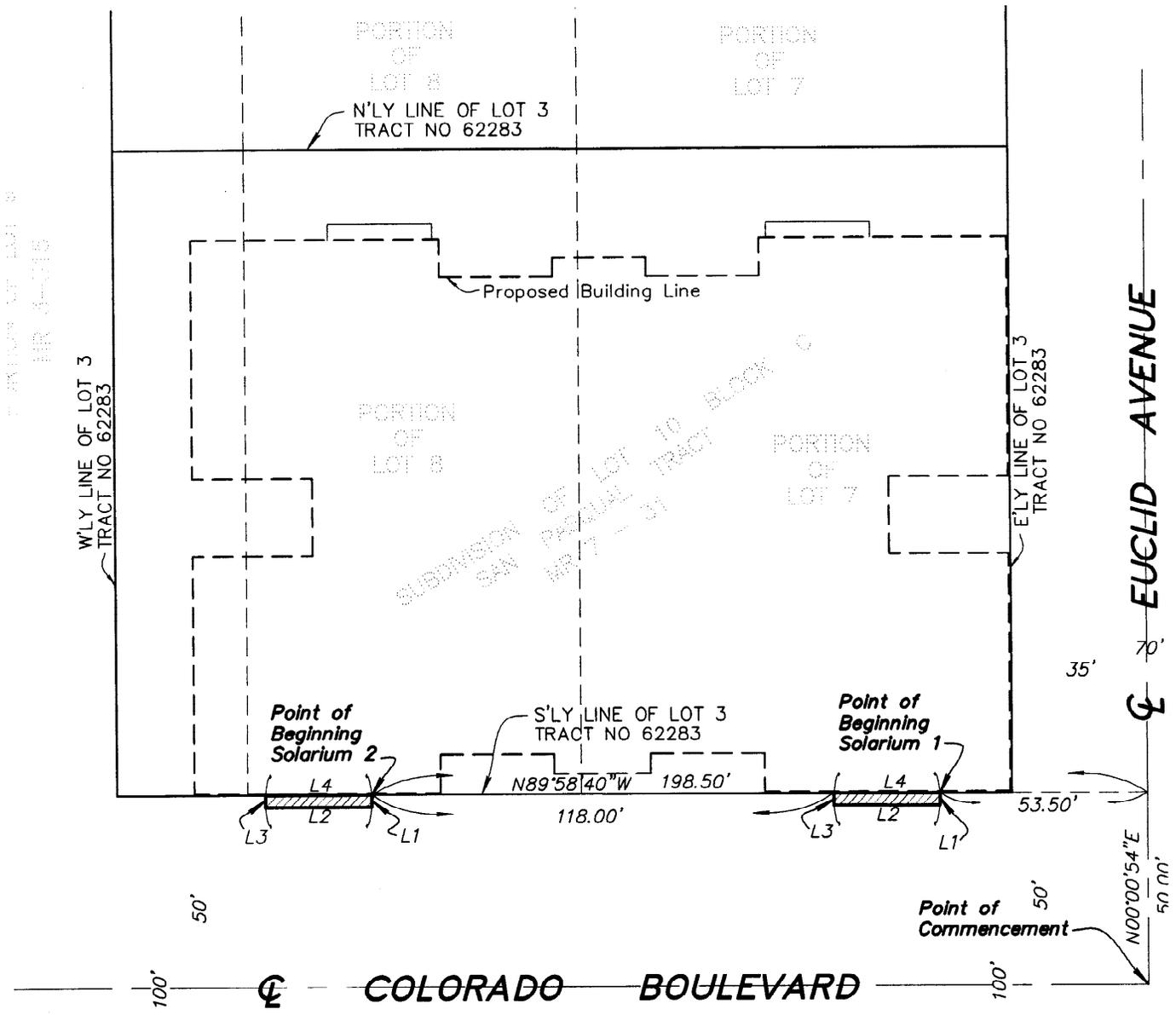
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EXHIBIT "C"

SOLARIUM EASEMENT FROM THE CITY OF PASADENA (LEVEL 2 - 5)

LINE DATA:

LINE	BEARING	DISTANCE
L1	S 00°01'20" W	3.00'
L2	N 89°58'40" W	27.00'
L3	N 00°01'20" E	3.00'
L4	S 89°58'40" E	27.00'




MOLLENHAUER GROUP
CIVIL ENGINEERING
SURVEYING+MAPPING
LAND DEVELOPMENT

601 S. FIGUEROA STREET, FOURTH FLOOR
LOS ANGELES, CA 90017
213 624 2661 TEL
213 614 1863 FAX

MONTANA 1, EXHIBIT 'C'

EXHIBIT "C"

PROPOSED LOT 3, TRACT NO 62283

SOLARIUM EASEMENT

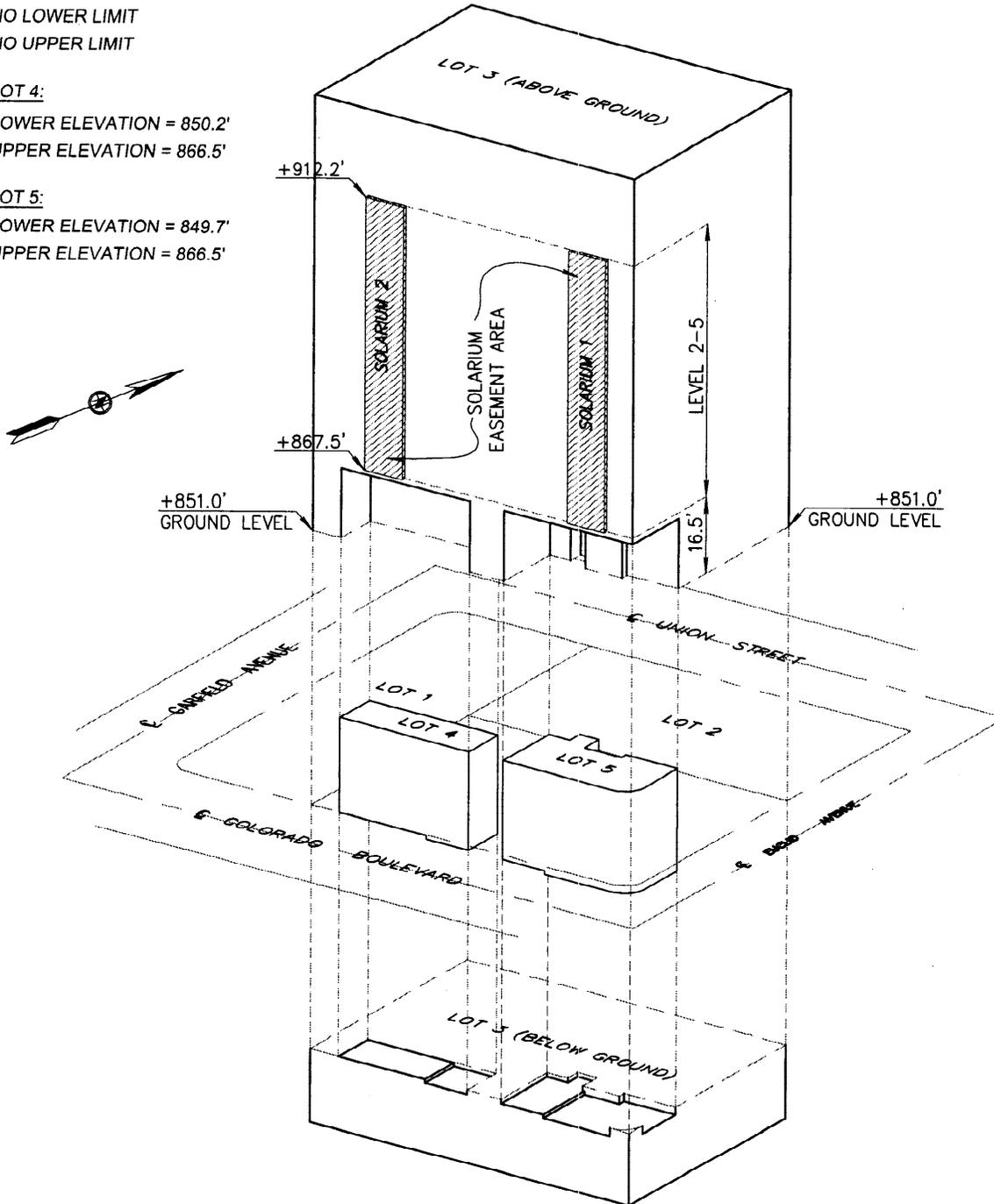
FROM THE CITY OF PASADENA

AIRSPACE

LOT 3:
 NO LOWER LIMIT
 NO UPPER LIMIT

LOT 4:
 LOWER ELEVATION = 850.2'
 UPPER ELEVATION = 866.5'

LOT 5:
 LOWER ELEVATION = 849.7'
 UPPER ELEVATION = 866.5'



601 S. FIGUEROA STREET, FOURTH FLOOR
 LOS ANGELES, CA 90017
 213 624 2661 TEL
 213 614 1863 FAX

CIVIL ENGINEERING
 SURVEYING+MAPPING
 LAND DEVELOPMENT

MONTANA 1, EXHIBIT 'C'

Recording Requested By:
And When Recorded Mail To:

MS PROPERTY COMPANY
301 East Colorado Boulevard
Suite 301
Pasadena, California 91101
Attention: President

Space above this Line for Recorder's Use

GRANT OF EASEMENT AND AGREEMENT – MONTANA I

THIS GRANT OF EASEMENT AND AGREEMENT ("Agreement") is made as of _____, 2005, by and between the CITY OF PASADENA, a municipal corporation ("Grantor") and MS PROPERTY COMPANY, a California corporation ("Grantee").

RECITALS

A. Grantor is the owner of that certain real property (the "Property") situated in the City of Pasadena, State of California, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference, which is a part of Colorado Boulevard and is used as a public street and public sidewalk (the "Street").

B. Grantee is the owner of that certain real property ("Grantee's Property") adjacent to and contiguous to the Property, situated in the City of Pasadena, State of California, as more particularly described on Exhibit B attached hereto and incorporated herein by this reference.

C. Grantor desires to grant to Grantee the easement as provided herein.

AGREEMENTS

THEREFORE, for value received and in consideration of the foregoing Recitals, which Recitals are incorporated herein by this reference, and of the easements and covenants contained herein, it is agreed as follows:

1. **Easement.**

1.1 **Grant of Easement.** Grantor grants to Grantee an appurtenant, exclusive easement (the "Easement") for projecting, glass-enclosed, habitable porches or rooms known as solaria (the "Solaria"). Grantee's Property may have up to two (2) sets of Solaria projecting over the public sidewalk portion of Grantor's Property. The Solaria will each have dimensions of approximately 27 feet in width, 50 feet in height, and 3 feet in depth. The Solaria will be located

in that certain above-ground portion of Grantor's Property described on Exhibit C (the "Easement Area"). The Easement Area shall begin at a point no lower than 13 feet above the public sidewalk level and continue to a point no higher than 66 feet above the public sidewalk level. For the purposes of the Easement Area, the Property shall be the servient tenement and Grantee's Property shall be the dominant tenement. The Easement shall be appurtenant to Grantee's Property.

1.2 Scope of Easement. The Easement shall be for the exclusive purpose of the installation, repair, replacement, maintenance, cleaning, use and habitation of the Solaria. Notwithstanding anything to the contrary herein, Grantee may not use the Easement in any manner that would result in interference with the functioning or use of the Street. Grantee shall not permit any hazardous, toxic or explosive material, waste or similar substance, other than ordinary building materials and cleaning agents, to be placed upon the Property by Grantee, or its contractors, agents or employees, during the term of the Easement. Grantee shall conduct all of its operations and work in the Easement Area at its sole cost and expense. Grantee shall comply with all applicable federal, state and local laws, regulations and orders with respect to the use of the Easement, and shall obtain at its cost any necessary governmental permits for conducting its activities.

1.3 Access to Easement Area. General access to the Easement Area shall be through Grantee's Property only, except as follows: Grantee may access the Easement Area through the Property for construction purposes or for maintenance, repair, rehabilitation or renovation purposes, only upon such written terms and conditions as the Pasadena City Manager or Pasadena Director of Public Works shall determine are reasonably necessary or desirable to protect the public interest in the Street.

1.4 Termination on Cessation of Use; Rights Retained by City. The term of the Easement shall commence on the date hereof and continue so long as the Easement Area continues to be used for the Solaria as set forth in Subsection 1.2 hereof. If at any time the Easement Area ceases to be used primarily for the Solaria as set forth in Subsection 1.2 hereof for a continuous five (5) year period, then City shall have the right to terminate this Agreement. Upon the termination of this Agreement, Grantor may require that the Solaria in the Easement Area be removed and the area restored substantially to its prior condition. Notwithstanding the Easement, City retains the right to use, develop, and maintain the Property in any manner consistent with its use as a public street, provided the same shall not unreasonably interfere with Grantee's exercise of the Easement.

2. Maintenance. Grantee shall at all times maintain, or cause to be maintained, at Grantee's own cost and expense, the Solaria and the Easement Area in a safe condition and state of repair.

3. Repair. If at any time any condition of the Solaria threatens safety at, or operation of, the Street, Grantee shall, at its sole cost and expense, perform any and all such repair or remedial work as may be reasonably necessary to eliminate or reduce the threat to safety.

4. **Property Taxes.** Grantee shall pay, or cause to be paid, directly to the appropriate governmental agencies, prior to delinquency, all real property taxes and other special taxes and assessments and/or charges, if any, including taxes, assessments or charges levied in lieu of property taxes, which may be levied or assessed against the Solaria or the Easement Area, provided that Grantee shall nonetheless have the right to contest such taxes and assessments in the manner provided by law.

5. **Indemnification.** Grantee shall indemnify, hold harmless and defend City, its agents, officials, Council members, attorneys, and employees, lenders, and any successors thereto, from any liabilities, costs, losses, claims, or damages arising out of Grantee's (or Grantee's employees, contractors, agents, tenants, invitees or guests) operation or use of the Solaria or the Easement Area, and the construction of any improvements therein. However, this shall not require Grantee to indemnify City against matters arising out of its breach of any obligation of City set forth in this Agreement, or resulting from any negligent or intentional acts or omissions of City or its contractors, agents, guests, invitees, or employees.

6. **Insurance.** Grantee shall purchase and maintain comprehensive public liability insurance covering personal injuries and damages to personal property within the Easement Area, in the combined single limit of at least Five Million Dollars (\$5,000,000), with reasonable and customary deductibles, and property insurance insuring loss or damage to the Solaria in the Easement Area in an amount equal to the full replacement cost thereof. Grantee shall cause City and its Council members, agents, employees and attorneys, lenders, and any successor in interest thereto, to be named as additional insureds, as their interests may appear. Grantee shall deliver to City certificates of insurance evidencing compliance with these provisions. Such certificates also shall include the agreement of the carrier not to cancel or otherwise terminate such coverage without first giving at least 30 days' prior written notice to City in the manner set forth in Section 13 below.

7. **Enforcement.** In the event of a default or breach in the performance of any of the obligations or agreements herein, City shall have the right, but not the obligation, to cure such default for the account and at the expense of Grantee, and City shall have the right to recover from Grantee all costs and other sums expended in connection therewith, including attorneys' fees, plus interest thereon at the maximum legal rate permitted to be charged by non-exempt lenders under the laws of the State of California. In addition, in the event of any default by any party to this Agreement, the non-defaulting party may pursue any remedies or proceedings available to it at law or in equity against the defaulting party. Any party may, in any such proceeding, recover damages from or on account of such violation; secure by way of specific performance or otherwise the performance of such covenant, condition, easement or restriction; or obtain any other remedy provided for at law or in equity.

8. **Force Majeure.** As a matter of general applicability, each party shall be excused from performing any obligation or undertaking provided in this Agreement, except any obligation to pay any sums of money under the applicable provisions hereof (unless such payment is conditioned upon performance of an obligation or undertaking excused by this Section) in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage; inability to procure or general

shortage of labor, equipment, facilities, materials or supplies in the ordinary course on the open market; failure of normal transportation; strikes, lockouts, action of labor unions; condemnation, requisition; laws, orders of governmental, civil, military or naval authorities; the inability to obtain governmental approvals or permits despite the exercise of due diligence and best efforts by a party; or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such party, other than the lack of or inability to obtain funds to fulfill its commitments and obligations or undertakings provided under this Agreement.

9. **Covenants Shall Run With the Land.** All the agreements, rights, covenants, and grants of easements contained in this Agreement shall run with the land (as defined in California Civil Code Sections 1460 and 1462) and shall be binding upon or inure to the benefit of (as the case may require) the parties hereto, and their respective heirs, successors, and assigns, and all other persons acquiring the Property or Grantee's Property or any part thereof, whether by operation of law or in any other manner whatsoever, including, without limitation, any future condominium association and the owners of condominium interests. The Easement granted herein is an appurtenant easement, and shall be for the benefit of Grantee's Property and Grantee's successors, assigns, and transferees, and shall be binding upon the owners of the Property. Grantee's Property is benefited, and the Property is burdened, by the covenants of City set forth in this Agreement. The Property is benefited, and Grantee's Property is burdened, by the covenants of Grantee set forth in this Agreement. Despite any provision to the contrary in this Agreement, (i) all references in this Agreement to City shall be deemed to refer to City's successors entitled to the Property, and (ii) all references in this Agreement to Grantee shall be deemed to refer to Grantee or to Grantee's successors entitled to Grantee's Property. The successors or assigns of City, as the owner of the Property, are bound and benefited, and the successors and assigns of Grantee, as the owners of Grantee's Property, are bound and benefited, as applicable, by this Agreement.

10. **Recorded Instrument.** This Agreement shall be duly recorded with the County Recorder of Los Angeles County, California.

11. **Miscellaneous.** This Agreement may be amended or modified only by a written instrument executed and acknowledged by the parties or their successors in interest and recorded in the Official Records of Los Angeles County, California. The captions used in this Agreement are for convenience only and therefore do not constitute a part of this Agreement and do not amplify or limit the meaning of the provisions of this Agreement. Any provision of this Agreement adjudicated by a court of competent jurisdiction to be invalid or unenforceable for any reason shall be ineffective to the extent that such prohibition or invalidity shall not invalidate or otherwise render invalid or unenforceable any remaining provisions of this Agreement. This Agreement sets forth the entire Agreement of the parties with respect to the subject matter addressed, and all prior negotiations, representations, warranties and discussions are superseded by the provisions of this Agreement.

12. **No Partnership.** Nothing in this Agreement shall deem the parties as partners or joint venturers.

13. **Notices.** All notices and demands shall be given in writing by certified or registered mail, postage prepaid, and return receipt requested, by personal delivery or by

overnight courier. Notices shall be considered given upon the earlier of (a) personal delivery; (b) two (2) business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested; or (c) one (1) business day following deposit with an overnight courier. Notices shall be addressed as provided below for the respective party; provided that if any party gives notice in writing of a change of name or address, notices to such party shall thereafter be given as demanded in that notice:

If to City:

CITY OF PASADENA
100 North Garfield Avenue, Room 101
Pasadena, California 91109
Attn: City Manager

If to Grantee:

MS PROPERTY COMPANY
301 East Colorado Boulevard, Suite 300
Pasadena, California 91101

14. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which when so executed and delivered shall be deemed an original and all of which taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

CITY:

CITY OF PASADENA,
a municipal corporation

GRANTEE:

MS PROPERTY COMPANY,
a California corporation

By _____
Cynthia J. Kurtz, City Manager

Date _____

By _____
Name _____

Title _____

ATTEST:

Jane Rodriguez, City Clerk

APPROVED AS TO FORM:

Michele B. Bagneris, City Attorney

By _____
Nicholas G. Rodriguez
Assistant City Attorney

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

On _____, 2005, before me, _____, a Notary Public in and for said County and State, personally appeared _____, 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/she) executed the same in (his/her) authorized capacity, and that by (his/her) signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Notary Public

STATE OF CALIFORNIA)
) SS.
COUNTY OF LOS ANGELES)

On _____, 2005, before me, _____, a Notary Public in and for said County and State, personally appeared _____, 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/she) executed the same in (his/her) authorized capacity, and that by (his/her) signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

(SEAL)

Notary Public

EXHIBIT A

DESCRIPTION OF COLORADO BOULEVARD

Those portions of Colorado Blvd., 125 feet wide, and Euclid Avenue, 70 feet wide, in the City of Pasadena, County of Los Angeles, State of California, bounded by the following described lines:

Beginning at the southwesterly corner of the easterly 5 feet of Lot 7 of G. E. Meharry's Subdivision of Lot 10 of Block C of San Pasqual Tract, recorded in Book 7 Page 31 of Miscellaneous Records of said county, being a point in the southerly line of said Lot 10, as shown on map of San Pasqual Tract, recorded in Book 3 Page 315 of Miscellaneous Records; thence northerly along said westerly line a distance of 25 feet to the northerly line of Colorado Boulevard, 125 feet wide; thence easterly along said northerly line to the intersection with the centerline of Euclid Avenue, 70 feet wide; thence southerly along said centerline, prolonged, to an intersection with the present centerline of said Colorado Boulevard; thence westerly along said centerline to the southerly prolongation of the easterly line of Garfield Avenue, 76 feet wide; thence northerly along said southerly prolongation, to the intersection with the southerly line of said Lot 9 of Block C of San Pasqual Tract; thence easterly along the southerly lines of said Lot 9 and said Lot 10 to the point of beginning.

EXHIBIT B

DESCRIPTION OF GRANTEE'S PROPERTY

PORTIONS OF LOT 9 IN BLOCK "C" OF THE SAN PASQUAL TRACT, AS PER MAP RECORDED IN BOOK 3, PAGE 315 OF MISCELLANEOUS RECORDS, PORTIONS OF LOTS 7, 8 AND 9 OF THE SUBDIVISION OF LOT 10 IN BLOCK "C" OF SAN PASQUAL TRACT, AS PER MAP RECORDED IN BOOK 7, PAGE 31 OF MISCELLANEOUS RECORDS, AND A PORTION OF THE SOUTHERLY 7 FEET OF UNION STREET WHICH WAS VACATED BY RESOLUTION NO. 8525 ON JUNE 25, 1963, ALL IN THE CITY OF PASADENA, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, DESCRIBED AS A WHOLE AS FOLLOWS:

THOSE PORTIONS OF THE ABOVE DESCRIBED LAND BOUNDED ON THE SOUTH BY THE NORTHERLY LINE OF COLORADO BOULEVARD (100 FEET WIDE), ON THE EAST BY THE WESTERLY LINE OF EUCLID AVENUE (70 FEET WIDE), ON THE NORTH BY THE SOUTHERLY LINE OF UNION STREET (VARIABLE WIDTH OF 106.30 TO 106.69 FEET), AND ON THE WEST BY THE EASTERLY LINE OF GARFIELD AVENUE (76 FEET WIDE).

EXHIBIT C

DESCRIPTION OF EASEMENT AREA

SCALE: 1" = 40'

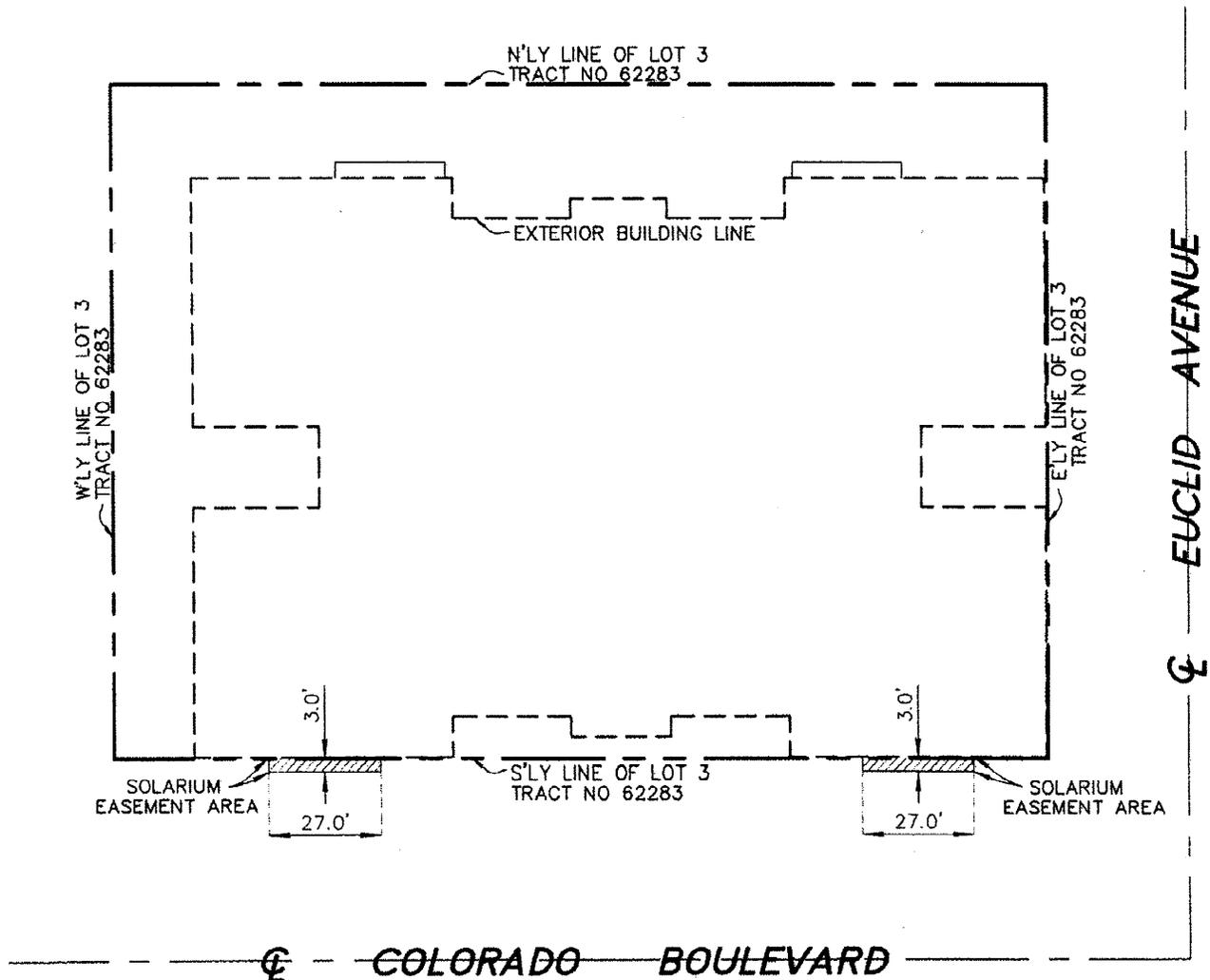
EXHIBIT "C"

PROPOSED LOT 3, TRACT NO 62283

SOLARIUM EASEMENT

FROM THE CITY OF PASADENA

(LEVEL 2 - 5)



411 WEST 5th STREET, FOURTH FLOOR
LOS ANGELES, CA 90013
213 624 2861 TEL
213 614 1863 FAX

CIVIL ENGINEERING
SURVEYING+MAPPING
LAND DEVELOPMENT

MONTANA 1, EXHIBIT 'C'