

Agenda Report

TO: CITY COUNCIL

Date: August 7, 2006

FROM: CITY MANAGER

SUBJECT: APPROVE THE SALE OF AN EASEMENT AND ADOPTION OF A RESOLUTION TO GRANT AN EASEMENT FOR THE ENCROACHMENT OF A DRIVEWAY AND PARKING/STORAGE AREA INTO THE PUBLIC RIGHT-OF-WAY LOCATED AT 65 NORTH ARROYO 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 a driveway, parking/storage area in the public right-of-way located at 65 North Arroyo Boulevard.

BACKGROUND

The property owner of 65 N. Arroyo Boulevard has requested that the City grant an easement to this property for a private driveway within the public right-of-way along Arroyo Boulevard and for parking and the storage of personal items under the Arroyo Boulevard Bridge.

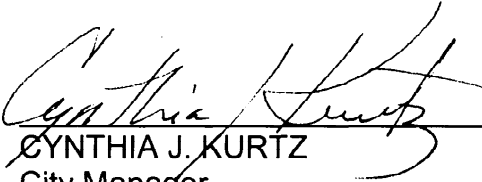
The single family home located at 65 N. Arroyo Boulevard was constructed in 1953. There is no existing location for a private driveway or parking area on the private property. The use of the public right-of-way has taken place since the construction of the home without any agreement or approval from the City. The approval of the easement will allow this use to continue with conditions. The driveway is approximately 12 feet in width and the area under the bridge is used to park vehicles and to turn around.

The proposed easement area is located within the public right-of-way along Arroyo Boulevard. The City of Pasadena owns the fee title to this portion of Arroyo 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 access to the property will still need to be retained in order to maintain the bridge.

FISCAL IMPACT

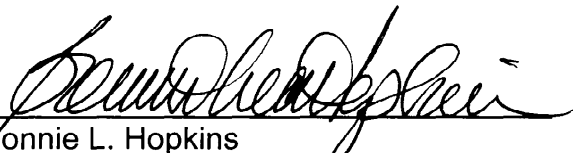
The estimated value of the subject portion of City Property is \$11,000.00 and will be deposited into the Land Sale Revenue Account of the General Fund. The applicant has paid the costs for preparing, processing, and recordation of the grant of easement. No additional revenue will be expended or generated by the adoption of this grant of easement.

Respectfully submitted,



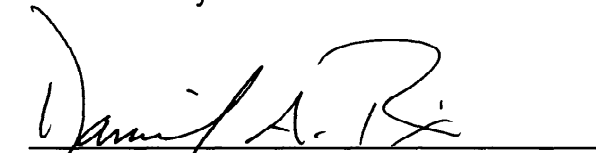
CYNTHIA J. KURTZ
City Manager

Prepared by:



Bonnie L. Hopkins
Principal Engineer

Reviewed by:



Daniel A. Rix
City Engineer

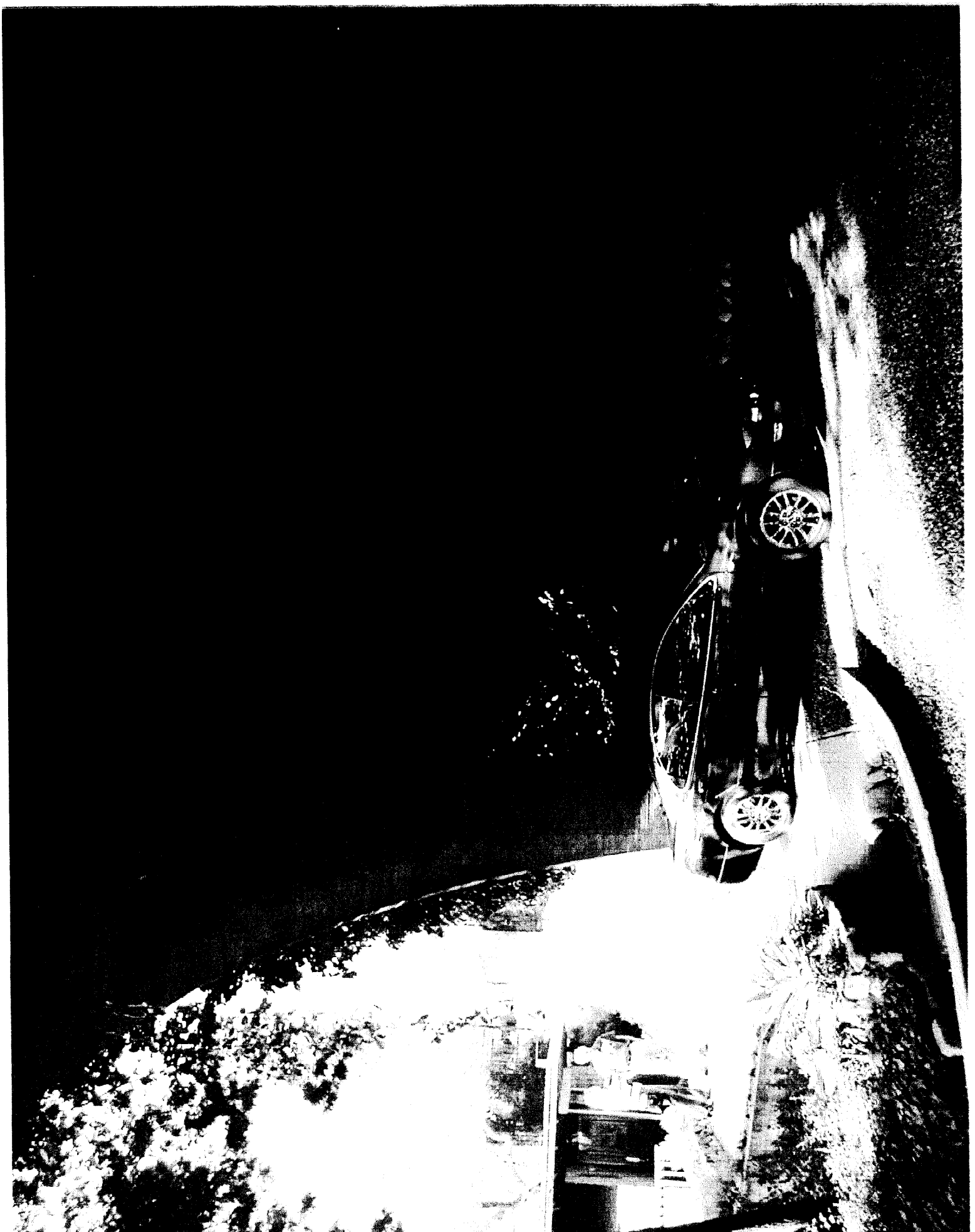
Approved by:



Martin Pastucha, Director
Department of Public Works

Attachments





RECORDING REQUESTED BY
City of Pasadena

WHEN RECORDED MAIL TO

NAME City Clerk
MAILING ADDRESS 117 E. Colorado Blvd.
6th Floor
CITY, STATE Pasadena, CA
ZIP CODE 91105

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE
RESOLUTION NO.

GRANT OF EASEMENT AND AGREEMENT

THIS GRANT OF EASEMENT AND AGREEMENT ("Agreement") is made as of _____, 2006, by and between the CITY OF PASADENA, a municipal corporation ("City") and BRIAN O'NEIL, an individual ("Grantee").

RECITALS

- A. City 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 Arroyo Boulevard and is used as a public street and bridge (the "Street and Bridge").
- 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. City desires to grant to Grantee the easement as provided herein.

AGREEMENTS

THEREFORE, 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.** City grants to Grantee an appurtenant, non-exclusive easement (the "Easement") for a driveway, parking area, and the storage of personal items (the "Private Improvements") in that certain portion of City's Property described on Exhibit C (the "Easement Area"), including the portion under the Arroyo Boulevard bridge. 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 used for driveway purposes, a parking area, and for storage and use of personal items. 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 and Bridge. Prior to occupancy of the Easement Area, there shall be an inspection of the soffit of the bridge for any loose concrete. The inspection shall be performed by the City at the sole cost and expense of the Grantee. All spall repair needed as a result of this inspection shall be completed prior to occupancy of the Easement Area and shall be at the sole cost and expense of the Grantee. Grantee shall not permit any items within three feet of the bridge structure and shall not attach anything to the bridge structure without prior approval of the City. Grantee shall not permit any hazardous, toxic or explosive material, waste or similar substance to be placed upon or under 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 Property and of the Easement.

1.3 Access to Easement Area. Grantee agrees to allow the City, and other agencies and/or consultants under contract or agreement with the City, access, without any requirement of notice or further permission, to inspect and maintain all existing public improvements within or adjacent to the Easement Area, including, but not limited to, the bridge structure and footings, pavement, trees, lighting and public utilities. Grantee also agrees to provide the City with any keys or codes to access the Easement Area.

1.4 Termination on Cessation of Use; Rights Retained by the 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 Private Improvements as set forth in Subsection 1.2 hereof. If at any time the Easement Area ceases to be used for the Private Improvements as set forth in Subsection 1.2 hereof for a continuous five (5) year period, then the City shall have the right to terminate this Agreement, and the Easement shall automatically revert to the City. Upon the termination of this Agreement, the City may require that the Private Improvements in the Easement Area be removed and the area restored substantially to its prior condition at the sole cost and expense of the Grantee. Notwithstanding the Easement, the City retains the right to use, develop, and maintain the Property in any manner consistent with its use as a public street and bridge.

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

3. Repair. If at any time any condition of the Private Improvements threatens safety at, or operation of, the Street and Bridge, 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.

Grantee shall also notify the City of needed repairs to the public property; pay for repairs to any public property damaged by grantee, its guests or invitees; repair Private Improvements in the Easement Area at its own expense regardless of cause; and take appropriate precautions to ensure safety of users of the Easement Area at its own expense, regardless of cause.

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 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 the 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 Private Improvements within the Easement Area, and the construction of any improvements therein. Grantee shall also indemnify, hold harmless and defend the 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) use of the Easement Area under the Arroyo Boulevard Bridge with respect to items falling off of the bridge soffit and from items falling from the street and/or bridge to the Easement Area. However, this shall not require Grantee to indemnify the City against matters arising out of its breach of any obligation of the City set forth in this Agreement, or resulting from sole negligence or intentional acts or omissions of the 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 One Million Dollars (\$1,000,000), with reasonable and customary deductibles, and property insurance insuring loss or damage to the Private Improvements in the Easement Area in an amount equal to the full replacement cost thereof. Grantee shall cause the 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 the 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 the City in the manner set forth in Section 14 below.

7. **Enforcement.** In the event of a default or breach in the performance of any of the obligations or agreements herein, the City shall have the right, but not the obligation, to cure such default for the account and at the expense of Grantee, and the 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. 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 the 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 the City shall be deemed to refer to the 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 the 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
P.O. Box 7115
Pasadena, California 91109-7215
Attn: City Manager

If to Grantee: BRIAN O'NEIL
65 North Arroyo Boulevard
Pasadena, California 91105

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

By _____
Cynthia J. Kurtz, City Manager

Date _____

GRANTEE:

BRIAN O'NEIL,
an individual

By Brian O'Neil

Name Brian O'Neil

Title _____

ATTEST:

Jane Rodriguez, City Clerk

APPROVED AS TO FORM:

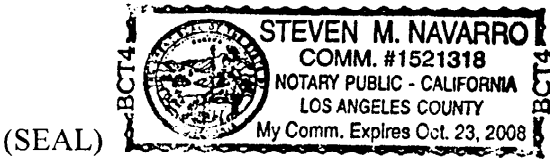
Michele B, Bagneris, City Attorney

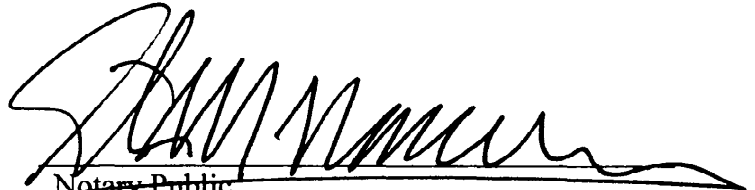
By _____
Nicholas G. Rodriguez
Assistant City Attorney

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

On July 24, 2006, 2006, before me, Steven M. Navarro, Notary Public, a Notary Public in and for said County and State, personally appeared Brian Oncil, ~~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.




Notary Public

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

On _____, 2006, 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"

EASEMENT FOR A PORTION OF ARROYO BOULEVARD
ADJACENT TO 65 NORTH ARROYO BOULEVARD

That portion of the 50' strip of land described in Decree of Condemnation recorded July 23, 1926 in Book 5684, Page 335, of Official Records, in the office of the County Recorder of Los Angeles County, State of California, described as follows:

Commencing at the most westerly corner of Lot 46 of Park Place Addition, of Lot 16 of Mrs. J. H. Hoods Tract, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 25, Page 122 of Miscellaneous Records, in the office of the County Recorder of said county; Thence N 41°54'45" E 74.79' to a point in the southwesterly line of said 50' strip of land;

Thence along the southwesterly and westerly line of said 50' strip of land the following courses: S 45°33'45" E 3.99' to the beginning of a tangent curve concave to the southwest, having a radius of 225.00'; Thence southeasterly along said curve through a central angle of 11°41'39", an arc distance of 45.92' to the Point of Beginning; Thence continuing along said curve through a central angle of 24°45'30", an arc distance of 97.22' to the beginning of a compound curve, having a radius of 1,185.00'; Thence southerly along said curve through a central angle of 01°26'00", an arc distance of 29.64';

Thence leaving said westerly line of the 50' strip of land N 75°47'53" E 6.37'; Thence S 36°53'15" E 4.73'; Thence N 75°57'03" E 14.78'; Thence N 21°17'12" E 3.47' to the beginning of a tangent curve concave to the southeast, having a radius of 14.77'; Thence northeasterly along said curve through a central angle of 62°34'31", an arc distance of 16.13'; Thence N 11°02'46" W 42.22'; Thence N 75°37'32" W 27.97' to the beginning of a non-tangent curve concave to the southwest, having a radius of 164.11', the radial line at said point has a bearing of N 78°10'42" E; Thence northerly along said non-tangent curve through a central angle of 25°18'19", an arc distance of 72.50'; Thence S 52°51'59" E 14.40' to the Point of Beginning.

Reviewed by:

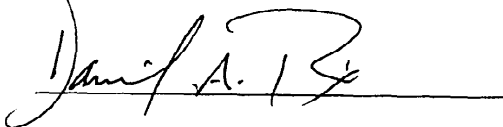
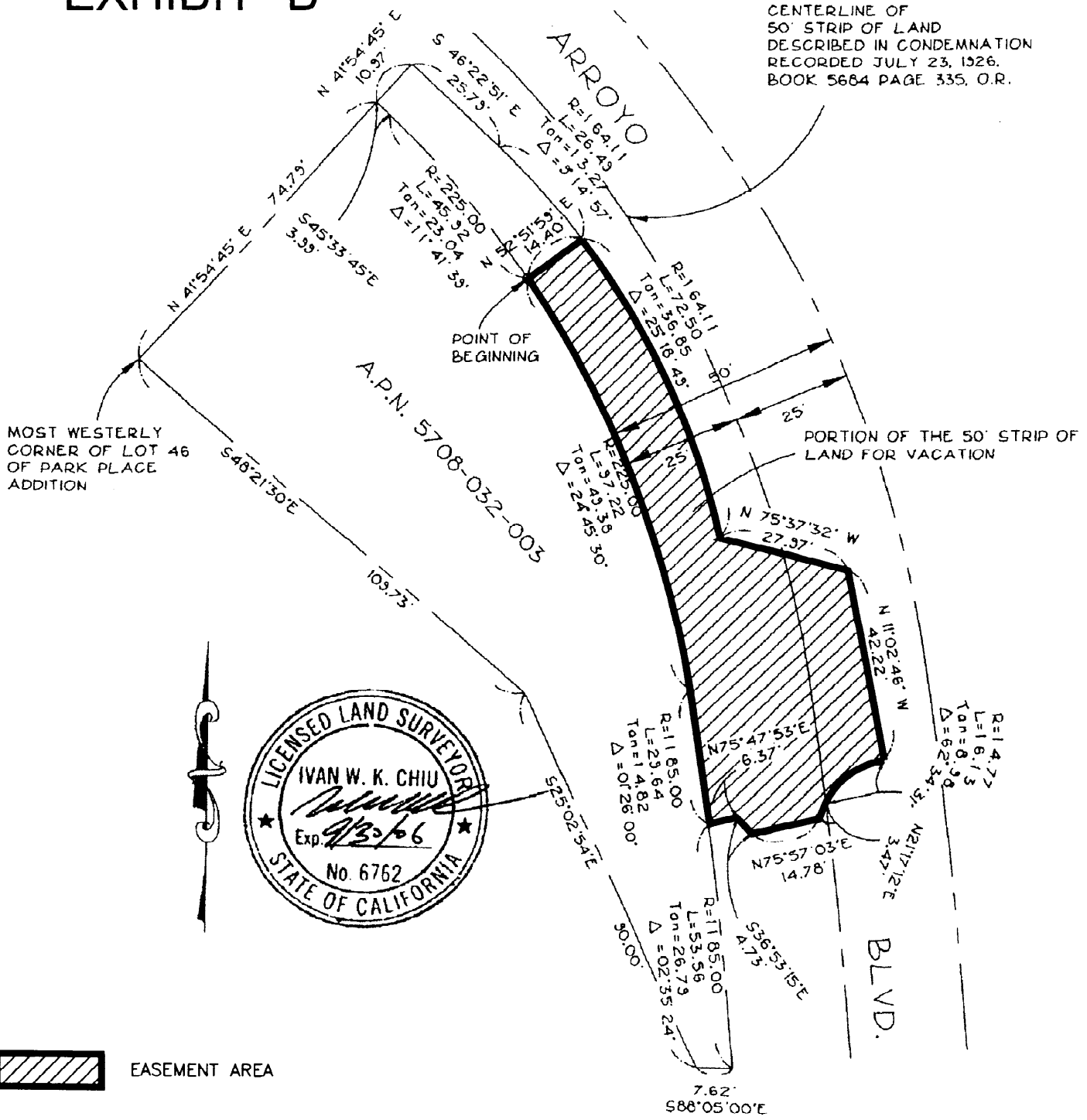





EXHIBIT "B"

CENTERLINE OF
50' STRIP OF LAND
DESCRIBED IN CONDEMNATION
RECORDED JULY 23, 1926.
BOOK 5684 PAGE 335, O.R.



 EASEMENT AREA

CITY OF PASADENA – DEPARTMENT OF PUBLIC WORKS

DRAWN BY: PRIVATE	AN EASEMENT OF A PORTION OF ARROYO BOULEVARD IN THE CITY OF PASADENA	SCALE: NTS
CHECKED BY: BLH		DATED: 7/20/06
SUBMITTED BY: BLH	APPROVED BY: <i>David A. [Signature]</i> CITY ENGINEER	5659 SHEET 1 OF 1
FIELD BOOK NO. NONE		

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA APPROVING A GRANT OF EASEMENT FOR THE ENCROACHMENT OF A DRIVEWAY AND PARKING/STORAGE AREA INTO THE PUBLIC RIGHT-OF-WAY LOCATED AT 65 NORTH ARROYO BOULEVARD

WHEREAS, the property owner of 65 North Arroyo Boulevard has requested an easement to allow for the encroachment of a driveway and parking/storage area ("Driveway"), into the public right-of-way, 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 the Driveway, presented herewith, described in Exhibit "A" and graphically shown on Exhibit "B" presented herewith, is approved for dedication.

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

AYES:

NOES:

ABSENT:

ABSTAIN:

JANE L. RODRIGUEZ, City Clerk

Approved as to form:

A handwritten signature in black ink, appearing to be 'N. Rodriguez', with the date '7/31/06' written next to it.

Nicholas G. Rodriguez
Assistant City Attorney

EXHIBIT "A"

EASEMENT FOR A PORTION OF ARROYO BOULEVARD
ADJACENT TO 65 NORTH ARROYO BOULEVARD

That portion of the 50' strip of land described in Decree of Condemnation recorded July 23, 1926 in Book 5684, Page 335, of Official Records, in the office of the County Recorder of Los Angeles County, State of California, described as follows:

Commencing at the most westerly corner of Lot 46 of Park Place Addition, of Lot 16 of Mrs. J. H. Hoods Tract, in the City of Pasadena, County of Los Angeles, State of California, as per map recorded in Book 25, Page 122 of Miscellaneous Records, in the office of the County Recorder of said county; Thence N 41°54'45" E 74.79' to a point in the southwesterly line of said 50' strip of land;

Thence along the southwesterly and westerly line of said 50' strip of land the following courses: S 45°33'45" E 3.99' to the beginning of a tangent curve concave to the southwest, having a radius of 225.00'; Thence southeasterly along said curve through a central angle of 11°41'39", an arc distance of 45.92' to the Point of Beginning; Thence continuing along said curve through a central angle of 24°45'30", an arc distance of 97.22' to the beginning of a compound curve, having a radius of 1,185.00'; Thence southerly along said curve through a central angle of 01°26'00", an arc distance of 29.64';

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Reviewed by:

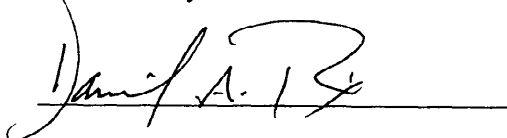
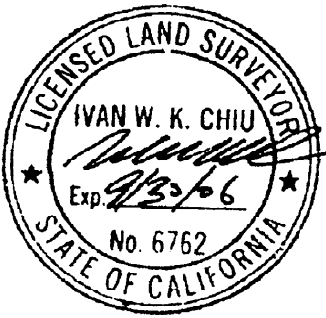
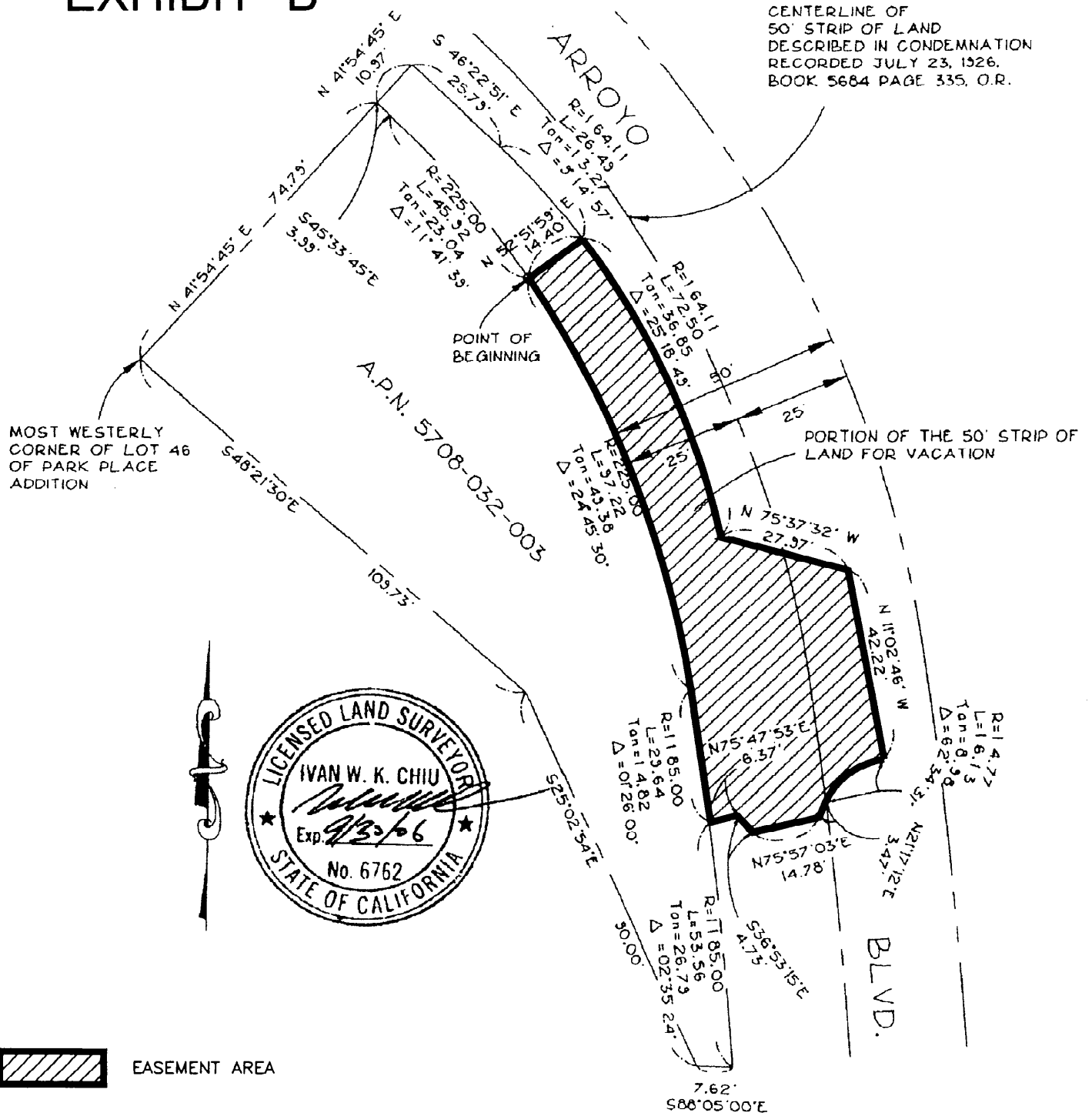




EXHIBIT "B"

CENTERLINE OF
50' STRIP OF LAND
DESCRIBED IN CONDEMNATION
RECORDED JULY 23, 1926,
BOOK 5684 PAGE 335, O.R.



EASEMENT AREA

CITY OF PASADENA – DEPARTMENT OF PUBLIC WORKS

DRAWN BY: PRIVATE	AN EASEMENT OF A PORTION OF ARROYO BOULEVARD IN THE CITY OF PASADENA	SCALE: NTS
CHECKED BY: BLH		DATED: 7/20/06
SUBMITTED BY: BLH	APPROVED BY: <i>Daniel A. Bi</i>	5659 SHEET 1 OF 1
FIELD BOOK NO. NONE	CITY ENGINEER DATE 7-31-06	