

MEETING DATE: 05/23/11

AGENDA ITEM: CITY COUNCIL AGENDA ITEM: Consideration of an Encroachment Permit Agreement with Century Wilshire Incorporated for Installation of Public Right-of-Way Improvements Adjacent to the Culver Hotel, and Review of Plans and Specifications for Improvements to the Culver Hotel.

ATTACHMENTS

<u>Item</u>	<u>Description</u>	<u>Pages</u>
1	Encroachment Permit Agreement	1 - 13
2	Plans and Drawings of Agency-Funded Hotel Improvements	14-19

ENCROACHMENT PERMIT AGREEMENT

PARTIES:

City of Culver City, a California municipal corporation
 9770 Culver Boulevard
 Culver City, California 90232
 ATTN: Public Works Director/City Engineer
 ("City")

Culver City Redevelopment Agency, a public body, corporate and politic
 9770 Culver Boulevard
 Culver City, California 90232
 ATTN: Sol Blumenfeld, Asst. Executive Director
 ("Agency")

Century Wilshire, Inc., a California corporation, dba "The Culver Hotel"
 9400 Culver Boulevard
 Culver City, CA 90232
 ATTN: Maya Mallick
 ("Permittee")

RECITALS:

- A. WHEREAS**, Permittee wishes to encroach onto the City's public right-of-way (the "Property"), which is illustrated in Exhibit "A," by installing certain exterior and underground improvements to The Culver Hotel, located at 9400 Culver Boulevard, Culver City, California;
- B. WHEREAS**, the City will be issuing an encroachment permit authorizing the installation of these exterior and underground improvements;
- C. WHEREAS**, Agency will be reimbursing Permittee for the cost to install some or all of these exterior and underground improvements;
- D. WHEREAS**, the parties wish to memorialize the terms and conditions applicable to the installation of these exterior and underground improvements and to the issuance of the related encroachment permit.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter contained, the parties hereto agree as follows:

1. Pursuant to Section 204 of that certain Owner Participation Agreement executed by and between Agency and Permittee on January 15, 2011, Agency hereby approves the plans and drawings previously submitted by Permittee, for those exterior and underground improvements that may in whole or in part be funded by the Agency, as

Encroachment Permit Agreement

City of Culver City, Culver City Redevelopment Agency and Century Wilshire, Inc.

Page 2 of 13

specified in Attachment No. 3 of the Owner Participation Agreement, and which are the subject of this Encroachment Permit Agreement ("Agreement").

2. The City hereby grants Permittee permission to encroach onto the Property via the installation of the following exterior and underground improvements (as depicted in Exhibit "B" of this Agreement):

- a. Illuminated bollards;
- b. In-ground sidewalk up lights;
- c. An awning attached to the Culver Hotel including necessary support structures;
- d. A blade sign attached to The Culver Hotel;
- e. Electrical conduit lines providing power from The Culver Hotel to the illuminated bollards and in-ground sidewalk up lights;
- f. A ladder system attached to the Culver Hotel.

3. The rights granted by this Agreement are granted based upon the above-referenced representations. If Permittee uses the Property for any uses other than installation of the above-described exterior and underground improvements, the City may terminate this Agreement after providing Permittee written notice and an opportunity to cure its non-permitted use(s) within 30 days of receipt of such notice.

4. The City reserves the right to charge Permittee reasonable compensation consistent with applicable law for the use of the Property. By entering into this Agreement, the City has determined that it will not charge Permittee for the use of the Property, but such determination shall not constitute a waiver of any rights, either legal or equitable, to which it may otherwise be entitled.

5. After installation of any of the above-referenced exterior or underground improvements, Permittee, at its sole cost and expense, shall return any portion of the Property disturbed by installation of these improvements to the condition it was in prior to installation of these improvements by Permittee.

6. Permittee, at its sole cost and expense, shall be responsible for the maintenance of all exterior or underground improvements installed by Permittee pursuant to this Agreement and any and all damage to these exterior or underground improvements shall be repaired by Permittee, at no cost or expense to the City or Agency and to the reasonable satisfaction of the City's Public Works Director, unless such damage to the exterior or underground improvements is caused by either the Agency or the City, in which

Encroachment Permit Agreement

City of Culver City, Culver City Redevelopment Agency and Century Wilshire, Inc.

Page 3 of 13

case the Agency or the City shall be responsible for making such repairs at no cost or expense to the Permittee. In the event Permittee declines to make repairs reasonably deemed necessary, the City may terminate this Agreement after providing Permittee written notice and an opportunity to make the necessary repairs to the improvements within 30 days of receipt of such notice.

7. Permittee, at its sole cost and expense, shall provide electricity to any of the exterior or underground improvements needing electricity to operate.

8. Aside from installing the above-referenced exterior and/or underground improvements in a manner approved by the City, Permittee shall not modify the Property in any manner.

9. The parties agree that this Agreement may be terminated, in whole or in part, to accommodate the City or the Agency's modifications or improvements to the Property or to accommodate any public use. Within 30 days of termination of this Agreement, Permittee, at its sole cost and expense, shall, to the extent required by any involved notice of termination, remove the above-referenced exterior and underground improvements and return the impacted Property to the condition it was in prior to installation of the exterior and underground improvements. This provision shall not apply to the blade sign or ladder system attached to the Culver Hotel.

10. Prior to starting any construction or excavation pursuant to this Agreement, Permittee shall file with City a Ten Thousand Dollar (\$10,000) cash deposit or a non-cancellable letter of credit, in a form acceptable to City's City Attorney, to ensure satisfactory completion of Permittee's duties pursuant to Para. 9 of this Agreement. A cash deposit made pursuant to this paragraph, Para. 10, shall be held by the City, without liability for interest, for the duration of this Agreement. The rights and remedies granted to City pursuant to this paragraph are in addition to City's other remedies as provided in this Agreement or by law. A cash deposit or letter of credit deposited with City pursuant to the provisions of this paragraph, Para. 10, will be refunded to Permittee upon termination of this Agreement and confirmation by City's Public Works Department that Permittee has complied with the provisions of Para. 9 of this Agreement.

11. The permission granted under this Agreement shall not in any event constitute an easement on or an encumbrance against the Property. No right, title or interest in the Property, or any part thereof, shall vest or accrue to Permittee or any other entity or person by reason of this Agreement, the issuance of any related encroachment permit(s) or the exercise of the privileges given thereby.

12. Upon receipt of any notice of termination from City, Permittee shall have 180 days to cease use of the Property; except that in the event of an emergency, as reasonably determined by City's Public Works Director, Permittee shall immediately cease use of the Property upon notification by the City's Public Works Director. This provision shall not

Encroachment Permit Agreement

City of Culver City, Culver City Redevelopment Agency and Century Wilshire, Inc.

Page 4 of 13

apply to the blade sign or ladder system attached to the Culver Hotel.

13. In the event of termination of this Agreement, but excepting any unlawful breach or repudiation of this Agreement by the Agency, Permittee hereby waives and releases any and all rights or claims for cost reimbursement, inverse condemnation, relocation benefits or any other legal or equitable action the Permittee may otherwise have against the City or Agency.

14. Without limiting any other obligation set forth in this Agreement, Permittee shall provide City with a Certificate of Insurance in the amount of Two Million Dollars (\$2,000,000) for General Liability (the "Policy"). That amount may be provided by two separate One Million Dollar (\$1,000,000) policies, provided the aggregate limits are Two Million Dollars (\$2,000,000). The Policy(ies) shall provide, or be endorsed, with an endorsement approved by the City Attorney's Office, which shows the City, the Agency and their officers and employees are additional insureds under the Policy, the Policy is primary, the Policy has a severability provision and any City-policy is non-contributing.

15. Except for such liability and obligations as the City has to maintain the Property as a public sidewalk and/or public right-of-way, Permittee and its successors and assigns shall and do hereby indemnify, hold harmless and defend the Agency, the City, its elected and appointed officials, officers, employees, agents and representatives ("Indemnitees") from any and all suits and causes of action, claims, charges, damages, judgments, demands, civil fines, penalties or losses of any kind or nature whatsoever, including attorney fees and court costs, which may arise against any or all Indemnitees by reason of any real or personal property damage, personal injury or death arising or resulting from Permittee's use and/or control of the exterior and underground improvements located in the City's public rights-of-way pursuant to this Agreement. This indemnity and obligation to hold harmless shall apply regardless of whether or not Agency or City prepared, supplied, or approved plans or specifications or inspected any work or repairs to the above-referenced exterior improvements.

16. Prior to starting any construction or excavation pursuant to this Agreement, Permittee shall file with City a performance and completion bond in the amount of Twenty Five Thousand Dollars (\$25,000), in a form acceptable to City's City Attorney, to ensure satisfactory completion of the exterior and underground improvements and restoration of the Property after completion of the exterior and underground improvements. Alternatively, Permittee may comply with this requirement by filing a Twenty Five Thousand Dollar (\$25,000) cashier's check with City prior to starting any construction or excavation pursuant to this Agreement. Upon completion of the exterior and underground improvements and compliance with the provisions of Para. 5 of this Agreement, City will release the performance and completion bond or return the cashier's check to Permittee.

17. Prior to starting any construction or excavation pursuant to this Agreement, Permittee shall file with the City a payment bond in the amount of Twenty Five Thousand

Encroachment Permit Agreement

City of Culver City, Culver City Redevelopment Agency and Century Wilshire, Inc.

Page 5 of 13

Dollars (\$25,000), in a form acceptable to City's City Attorney, to guarantee payment to any contractors or sub-contractors involved in the construction or installation of the exterior and/or underground improvements.

18. If litigation arises out of this Agreement for the performance thereof, then the court shall award costs and expenses, including attorney's fees, to the prevailing party. In awarding attorney's fees, the court shall not be bound by any court fee schedule, but shall award the full amount of costs, expenses and attorney's fees paid or incurred in good faith.

19. The terms of this Agreement shall be interpreted according to the laws of the State of California. If litigation occurs, then venue shall be in the Superior Court of Los Angeles County.

20. All notices required or provided for under this Agreement shall be in writing, delivered in person or by certified mail, return receipt requested, or by a nationally recognized overnight delivery service addressed to the parties as indicated on the first page of this Agreement. Any notice so delivered shall be effective upon the date of personal delivery or, in the case of mailing, upon delivery. Any party may change its address for notice by giving 10 days' notice of such change in the manner provided for in this Paragraph.

21. While that certain Owner Participation Agreement executed by and between Agency and Permittee on January 15, 2011 is in effect, Permittee shall provide City's Public Works Director/City Engineer with written notice of assignment of the Owner Participation Agreement at least four weeks prior to the effective date of such assignment. Such notice shall provide, at a minimum, the name and address of the proposed assignee and the expected effective date of such assignment. After that certain Owner Participation Agreement executed by and between Agency and Permittee on January 15, 2011 is no longer in effect, Permittee shall not transfer or assign this Agreement without the written consent of City.

22. A waiver by either party of any breach of any term, covenant, or condition contained in this Agreement shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant, or condition contained in this Agreement whether of the same or different character.

23. The parties agree that no possessory interest is created by this Agreement. However, to the extent that a possessory interest is deemed created, Permittee acknowledges that notice is and was hereby given to Permittee, pursuant to California Revenue and Taxation Code Section 107.6, that use or occupancy of any public property pursuant to the authorization herein set forth may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Permittee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes levied against Permittee's right to possession, occupancy, or

Encroachment Permit Agreement

City of Culver City, Culver City Redevelopment Agency and Century Wilshire, Inc.

Page 6 of 13

use of any public property pursuant to any right of possession, occupancy or use created by this Agreement.

24. Permittee shall comply with all applicable federal, state and local laws, rules and regulations.

25. Permittee shall obtain all City-required approvals and permits necessary for installation or continued use of the exterior and/or underground improvements.

26. If any part of this Agreement is held invalid, the remaining terms and conditions shall not be affected unless their enforcement under the circumstances would be unreasonable, inequitable, or otherwise frustrate the purposes of this Agreement.

27. Except for that certain Owner Participation Agreement executed by and between Agency and Permittee on January 15, 2011 and the agreements referred to therein, this Agreement, including the exhibits attached hereto, constitutes the entire agreement between the parties and supersedes any previous verbal or written agreements with respect to the subject of this Agreement. Nothing in this Agreement shall be deemed to modify, alter or amend that certain Owner Participation Agreement executed by and between Agency and Permittee on January 15, 2011.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the dates indicated below.

-- Signatures on the following page --

Encroachment Permit Agreement
 City of Culver City, Culver City Redevelopment Agency and Century Wilshire, Inc.
 Page 7 of 13

"City"

**CITY OF CULVER CITY, a
 Municipal Corporation**

By: _____
 John Nachbar
 City Manager

Date: _____

"Permittee"

**CENTURY WILSHIRE, INC.,
 a California Corporation**

By: _____
 Maya Mallick
 Owner

Date: _____

"Agency"

**CULVER CITY REDEVELOPMENT AGENCY, a
 public body, corporate and politic**

By: _____
 Sol Blumenfeld
 Assistant Executive Director

Date: _____

Approved as to Content

Approved as to Form and Legal Content

 Charles D. Herbertson
 Public Works Director/City Engineer

Date: _____

 Carol A. Schwab
 City Attorney

Date: _____

Encroachment Permit Agreement
 City of Culver City, Culver City Redevelopment Agency and Century Wilshire, Inc.
 Page 8 of 13

ENCROACHMENT PERMIT AGREEMENT: EXHIBIT A

Exhibit A

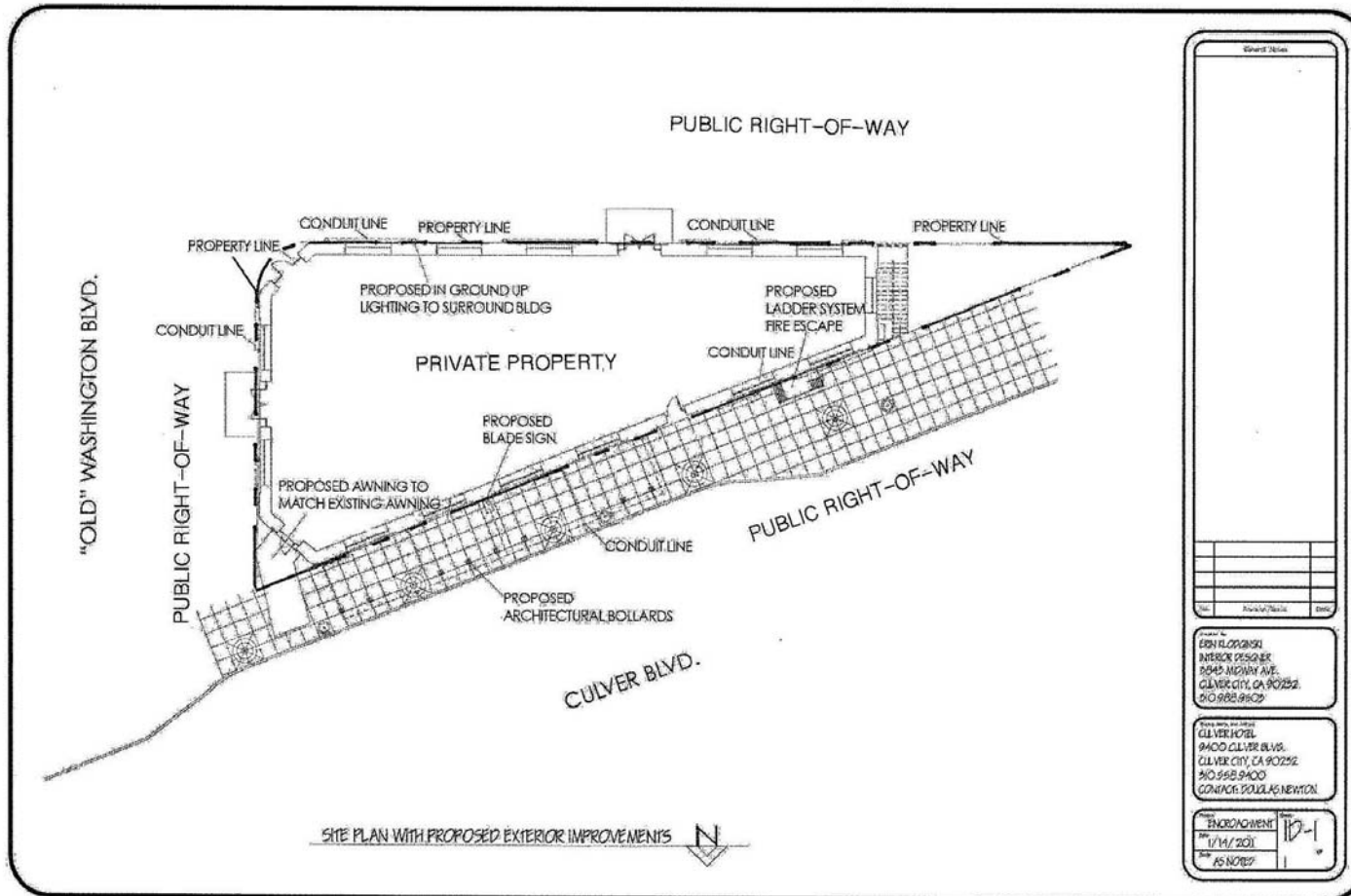
Page 1 of 1

City _____ Date _____

Agency _____ Date _____

Permittee _____ Date _____

Site Plan Depicting the Delineation Between Public Right-of-Way and Private Property



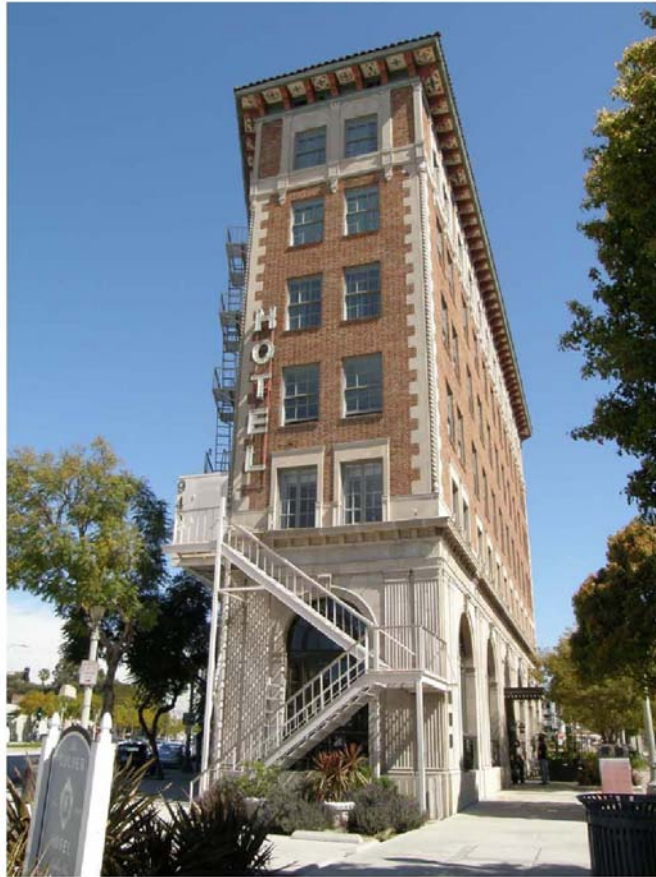
Encroachment Permit Agreement
 City of Culver City, Culver City Redevelopment Agency and Century Wilshire, Inc.
 Page 9 of 13

ENCROACHMENT PERMIT AGREEMENT: EXHIBIT B

Exhibit B
 Page 1 of 5
 City _____ Date _____
 Agency _____ Date _____
 Permittee _____ Date _____

Photographs Depicting Fire Escape Exterior Staircase Removal and Replacement with Exterior Ladder

BEFORE



AFTER



(The H-O-T-E-L sign may be replaced with a different sign)

Encroachment Permit Agreement
 City of Culver City, Culver City Redevelopment Agency and Century Wilshire, Inc.
 Page 10 of 13

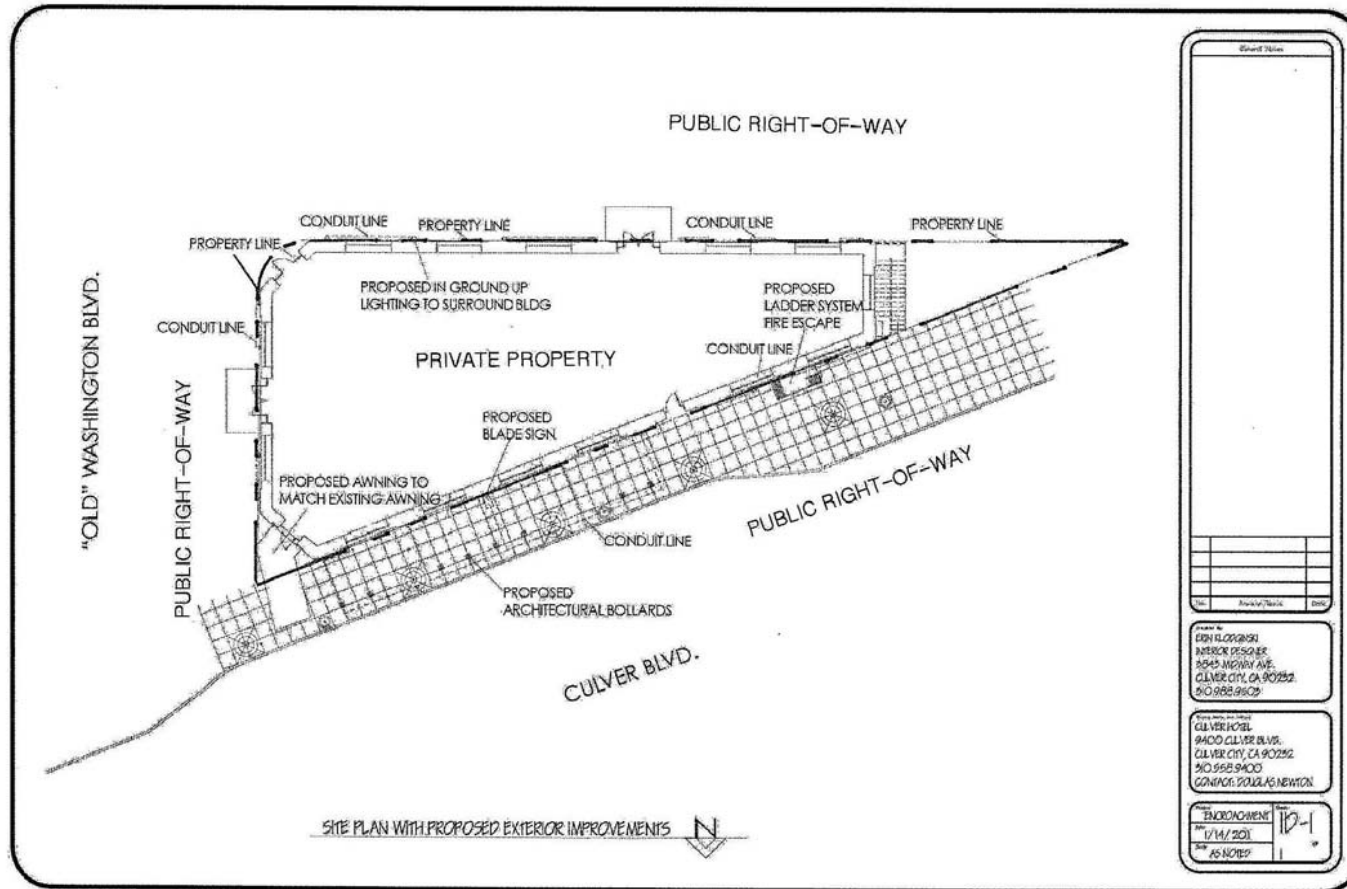
ENCROACHMENT PERMIT AGREEMENT: EXHIBIT B

Exhibit B

Page 2 of 5

City _____ Date _____
 Agency _____ Date _____
 Permittee _____ Date _____

Site Plan Depicting Placement of Sidewalk Up Lights, Awning,
 Fire Escape Ladder, Electrical Conduit Line, Blade Sign and Illuminated Bollards



Encroachment Permit Agreement
 City of Culver City, Culver City Redevelopment Agency and Century Wilshire, Inc.
 Page 11 of 13

ENCROACHMENT PERMIT AGREEMENT: EXHIBIT B

Plans and Photograph Depicting New Culver Boulevard Side Awning

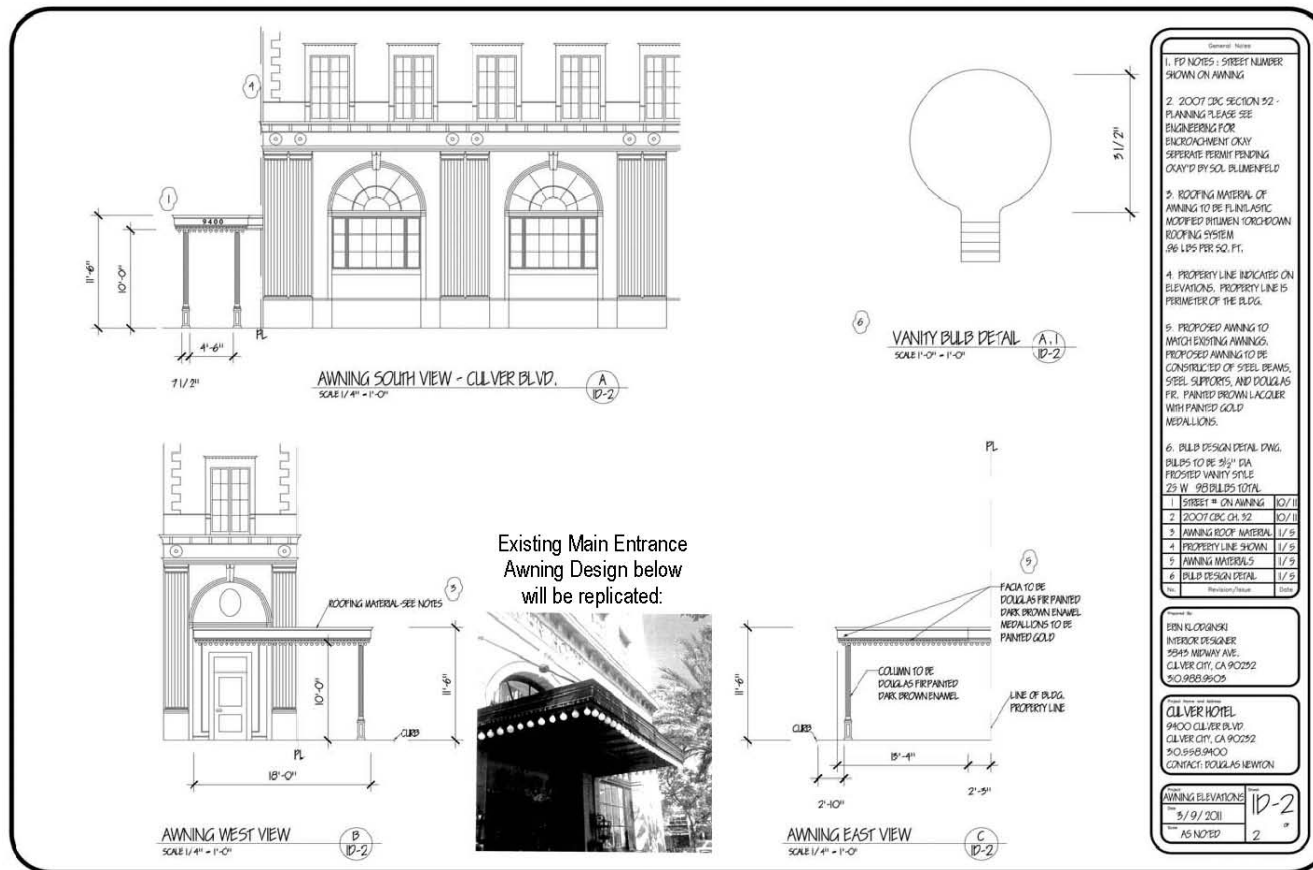
Exhibit B

Page 3 of 5

City _____ Date _____

Agency _____ Date _____

Permittee _____ Date _____



Encroachment Permit Agreement
City of Culver City, Culver City Redevelopment Agency and Century Wilshire, Inc.
Page 13 of 13

ENCROACHMENT PERMIT AGREEMENT: EXHIBIT B

Photograph Depicting New Blade Signage

Exhibit B
Page 5 of 5
City _____ Date _____
Agency _____ Date _____
Permittee _____ Date _____



Plans and Drawings of Agency-Funded Hotel Improvements

Fire Escape Staircase and H-O-T-E-L Sign Removal

BEFORE



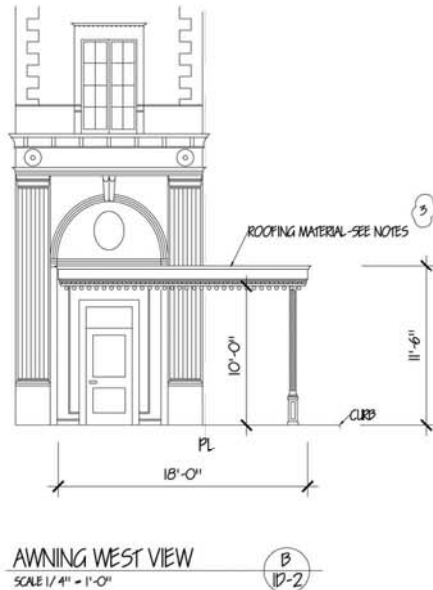
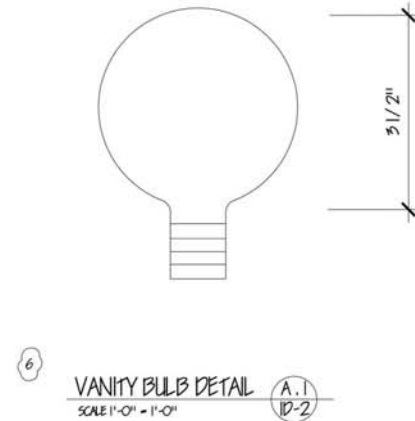
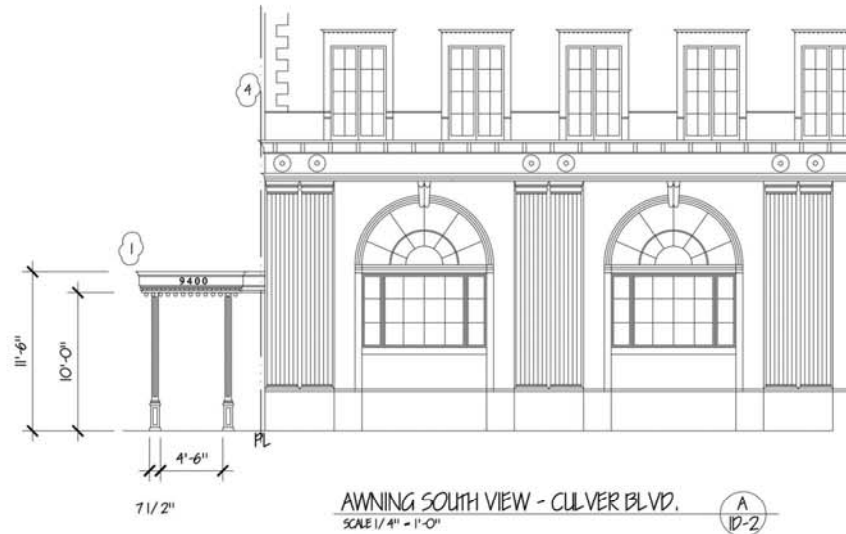
AFTER



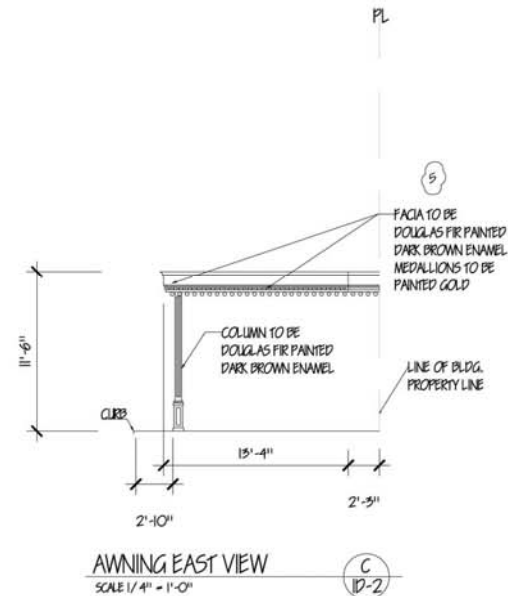
(The H-O-T-E-L sign may be replaced with a different sign)

Plans and Drawings of Agency-Funded Hotel Improvements

New Culver Boulevard Side Awning



Existing Main Entrance
Awning Design below
will be replicated:



General Notes		
1.	PD NOTES: STREET NUMBER SHOWN ON AWNING	
2.	2007 CBC SECTION 32 - PLANNING PLEASE SEE ENGINEERING FOR ENCROACHMENT OKAY SEPARATE PERMIT PENDING OKAY'D BY SOL BLUMENFELD	
3.	ROOFING MATERIAL OF AWNING TO BE FLINTLASTIC MODIFIED BITUMEN TORCHDOWN ROOFING SYSTEM .96 LBS PER SQ. FT.	
4.	PROPERTY LINE INDICATED ON ELEVATIONS. PROPERTY LINE IS PERIMETER OF THE BLDG.	
5.	PROPOSED AWNING TO MATCH EXISTING AWNINGS. PROPOSED AWNING TO BE CONSTRUCTED OF STEEL BEAMS, STEEL SUPPORTS, AND DOUGLAS FIR. PAINTED BROWN LACQUER WITH PAINTED GOLD MEDALLIONS.	
6.	BULB DESIGN DETAIL DWG. BULBS TO BE 3 1/2" DIA FROSTED VANITY STYLE 25 W 98 BULBS TOTAL	
1	STREET # ON AWNING	10/11
2	2007 CBC CH 32	10/11
3	AWNING ROOF MATERIAL	11/5
4	PROPERTY LINE SHOWN	11/5
5	AWNING MATERIALS	11/5
6	BULB DESIGN DETAIL	11/5
No.	Revision/Issue	Date

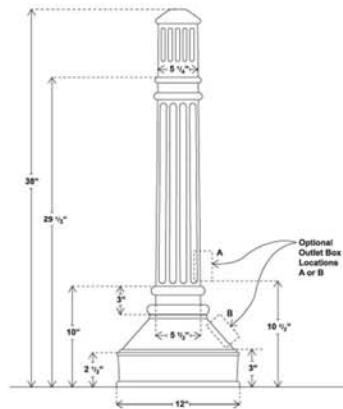
Prepared By:
ERIN KLODZINSKI
INTERIOR DESIGNER
3843 MIDWAY AVE.
CULVER CITY, CA 90232
310.988.9503

Project Name and Address:
CULVER HOTEL
9400 CULVER BLVD.
CULVER CITY, CA 90232
310.558.9400
CONTACT: DOUGLAS NEWTON

Project:	AWNING ELEVATIONS	Sheet:	1D-2
Date:	5/9/2011	Drawn:	
Notes:	AS NOTED	2	

Plans and Drawings of Agency-Funded Hotel Improvements

Illuminated Bollards and Sidewalk Up Lights



TECHNICAL SPECS FOR PROPOSED ARCHITECTURAL BOLLARDS

LIGHT SOURCE: The lighted bollards shall be furnished with an H.I.D. ballast and socket assembly. Sockets shall be glazed porcelain medium base, with a copper alloy nickel plated screw shell and center contact. The ballast shall be a core and coil, high power factor, regulating type.



BOLT PATTERN FOR EBL

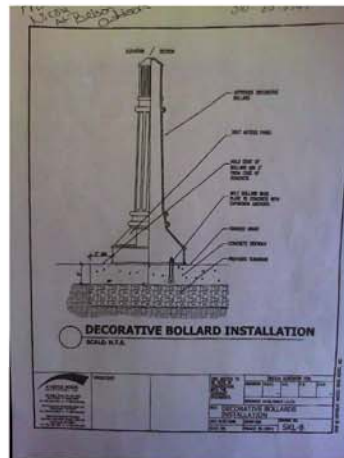


TECHNICAL SPECS FOR PROPOSED IN GROUND LIGHTING

DABMAR LIGHTING: Product # FG4450
In Ground Well Light

MATERIAL: Fiberglass
LENS: Clear, Heat Resistant, Tempered Glass

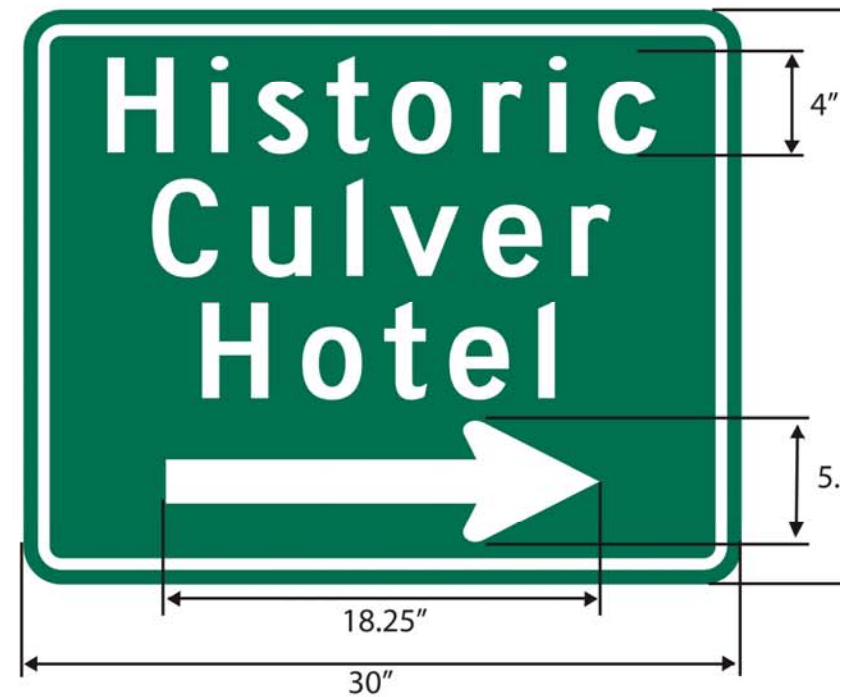
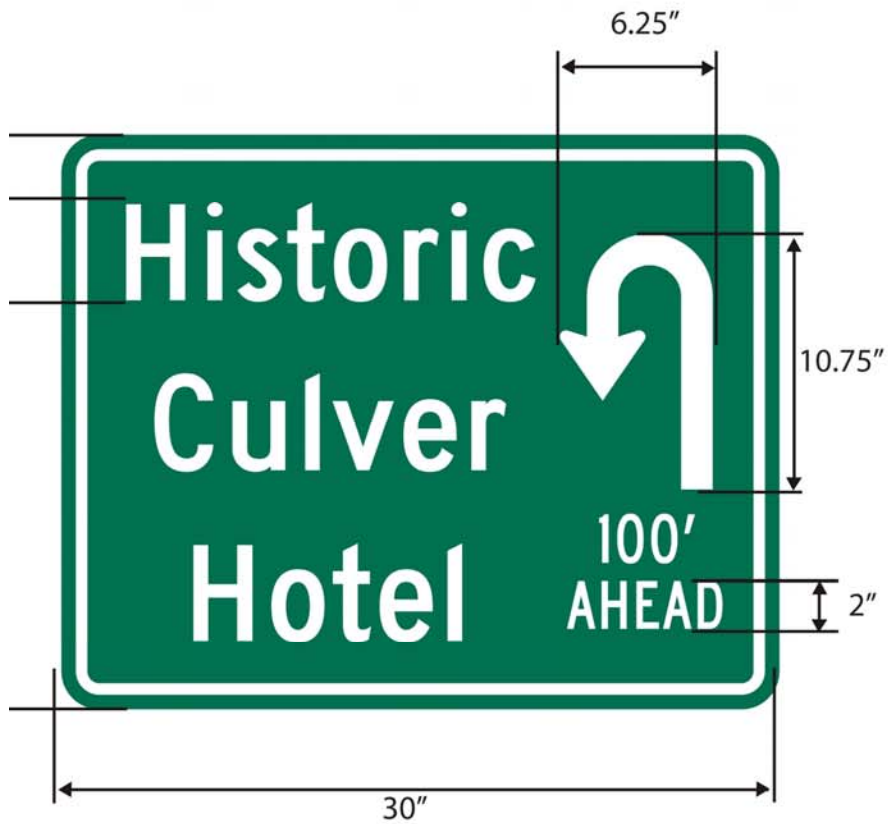
ETL APPROVED



General Notes		
No.	Revision/Issue	Date
Prepared by: ERIN KLODZINSKI INTERIOR DESIGNER 5849 MIDWAY AVE. CULVER CITY, CA 90232 310.558.9503		
Project Name and Address: CULVER HOTEL 9400 CULVER BLVD. CULVER CITY, CA 90232 310.558.9400 CONTACT: ROBERTAS NEWTON		
Project:	ENCROACHMENT	Sheet: 1D-3
Date:		
Scale:	AS NOTED	3

Plans and Drawings of Agency-Funded Hotel Improvements

Guest Way-Finding Signage



Plans and Drawings of Agency-Funded Hotel Improvements

New Blade Signage

