



AGENDA REPORT

Meeting Date: December 18, 2007

Item Number: E-1A and E-1B

To: Honorable Mayor & City Council

From: Laurence S. Wiener, City Attorney

Subject: (A) AN ORDINANCE OF THE CITY OF BEVERLY HILLS CREATING THE ENTERTAINMENT OFFICE PLANNED DEVELOPMENT OVERLAY ZONE (E-O-PD) ZONE, AMENDING THE BEVERLY HILLS MUNICIPAL CODE, AND APPLYING THE ENTERTAINMENT OFFICE PLANNED DEVELOPMENT OVERLAY ZONE TO PROPERTY KNOWN AS 231-265 NORTH BEVERLY DRIVE IN CONJUNCTION WITH CONSTRUCTION OF A HEADQUARTERS OFFICE FOR WILLIAM MORRIS AGENCY; AND

(B) AN ORDINANCE OF THE CITY OF BEVERLY HILLS APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS, BEVERLY WILSHIRE OWNER, LP AND WILLIAM MORRIS AGENCY, LLC FOR PROPERTY LOCATED AT 231-265 NORTH BEVERLY DRIVE IN CONJUNCTION WITH CONSTRUCTION OF A HEADQUARTERS OFFICE FOR WILLIAM MORRIS AGENCY.

Attachments: 1. Ordinances (2)

RECOMMENDATION

It is recommended that the City Council adopt (1) the ordinance creating the Entertainment Office Planned Development Overlay Zone (E-O-PD) Zone, amending the Beverly Hills Municipal Code, and applying the Entertainment Office Planned Development Overlay Zone to property known as 231-265 North Beverly Drive in conjunction with construction of a headquarters office for William Morris Agency; and (2) the ordinance approving a Development Agreement with Beverly Wilshire Owner, LP and William Morris Agency, LLC for property located at 231-265 North Beverly Drive in conjunction with construction of a headquarters office for William Morris Agency.

INTRODUCTION

The two ordinances pertain to the project at 231-265 North Beverly Drive for the construction of a six story office building on the 48,067 square-foot site. At the City Council meeting of December 5, 2007, the City Council conducted a first reading of each ordinance.

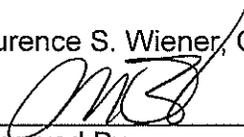
DISCUSSION

The ordinance creating the Entertainment Office Planned Development Overlay Zone will allow entertainment related uses in the designated area described in the ordinance. The second ordinance approves the Development Agreement which was discussed at the December 5, 2007, City Council meeting.

FISCAL IMPACT

As stated in the previous agenda report for this project, firms such as William Morris Agency potentially produce a higher rate of direct and indirect tax revenue dollars than most other office-based business in the City. Additional monetary benefits are provided through the development agreement.

Laurence S. Wiener, City Attorney



Approved By

ORDINANCE NO. 07-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS CREATING THE ENTERTAINMENT OFFICE PLANNED DEVELOPMENT OVERLAY ZONE (E-O-PD) ZONE, AMENDING THE BEVERLY HILLS MUNICIPAL CODE, AND APPLYING THE ENTERTAINMENT OFFICE PLANNED DEVELOPMENT OVERLAY ZONE TO PROPERTY KNOWN AS 231-265 NORTH BEVERLY DRIVE IN CONJUNCTION WITH CONSTRUCTION OF A HEADQUARTERS OFFICE BUILDING FOR WILLIAM MORRIS AGENCY

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. Legislative Findings. Due to special circumstances surrounding the property at 231-265 North Beverly Drive, the City Council finds that certain commercially zoned properties in the City may be appropriately used for entertainment talent agency purposes and that such uses are unique and warrant specific development standards and criteria. The objectives of the Entertainment Office Planned Development Overlay Zone (E-O-PD) shall include those objectives set forth in the proposed section 10-3-861 of the Overlay Zone, as set forth in full in Section 5 below.

Section 2. The Planning Commission considered this Ordinance at duly noticed public hearings on July 25, August 9, September 5, September 6, September 27, October 11, and October 25, 2007. Evidence both written and oral was presented during the hearings. After considering the evidence, the Planning Commission recommended that the City Council adopt this Ordinance.

Section 3. The City Council considered this Ordinance at duly noticed public hearings on November 7, 2007 and November 20, 2007. Evidence, both written and oral, was presented at said hearings.

Section 4. The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the City’s Local CEQA Guidelines. The City prepared an initial study and, based on the information contained in the initial study, concluded that there was substantial evidence that the Project might have a significant environmental impact on several specifically identified resources. Pursuant to CEQA Guidelines Sections 15064 and 15081, and based upon the information contained in the Initial Study, the City ordered the preparation of an EIR for the Project to analyze the Project’s potential impacts on the environment. The City Council, by Resolution No. 07-R-_____ adopted on December 5, 2007, (a) made certain CEQA findings and determinations, (b) certified the EIR (c) adopted a Statement of Overriding Considerations and (d) adopted a Mitigation Monitoring and Reporting Program. That Resolution is incorporated herein by reference, and made a part hereof as if fully set forth herein. The documents and other material that constitute the record on which this decision is based are located in the Department of Community Development and are in the custody of the Director of Community Development.

Section 5. A new Article 18.6 is hereby added to Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

“ARTICLE 18.6. ENTERTAINMENT OFFICE PLANNED DEVELOPMENT
OVERLAY ZONE (E-O-PD Overlay Zone)

10-3-1860: CREATION OF THE OVERLAY ZONE:

There is hereby created an overlay zone designated as the Entertainment Office
Planned Development Overlay Zone (E-O-PD Overlay Zone).

10-3-1861: OBJECTIVES OF THE E-O-PD OVERLAY ZONE:

The objectives of the- E-O-PD Overlay Zone shall be as follows:

A. To provide additional opportunities to locate a quality major
entertainment talent agency that would not otherwise be allowed by the underlying zone due to
height and floor area ratio limitations, in order to maintain and strengthen the economic base of
the City;

B. To encourage the development and redevelopment of the property at 231-
265 North Beverly Drive to provide for single and multi-tenant entertainment talent agency
businesses not currently available in the city;

C. To provide for the enhancement of employment and commerce within the
Project area by locating new entertainment talent agency offices in the area;

D. To provide retail/commercial and entertainment talent agency business
uses responsive to the city’s needs and regional market forces;

E. To encourage the provision of pedestrian-friendly amenities at the street
level;

F. To augment the city's economic base by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the entertainment talent agency business, and increased assessed land and building values, which should generate additional property taxes.

G. To protect the health, safety, and welfare of residents, businesses and visitors of the E-O-PD Overlay Zone and surrounding areas;

H. To foster development in the E-O-PD Overlay Zone that is environmentally sensitive;

I. To ensure that development, which includes floor area in excess of the density or other zoning limitations of an underlying zone and deviations from the parking stall size and configuration standards of an underlying zone, shall not be a right of the property owner, but instead shall be permitted only upon a determination that such development would meet the objectives set forth in this section; and

J. To ensure that development in the E-O-PD Overlay Zone will not materially and adversely affect the businesses adjacent to the E-O-PD Overlay Zone;

10-3-1862: DEFINITIONS:

Unless the context otherwise requires, the following definitions shall govern the construction of this article:

ANCILLARY COMMERCIAL: Commercial uses that are ancillary to an entertainment talent agency business, such as food service, reprographics, news stands, and similar service oriented activities.

ENTERTAINMENT TALENT AGENCY: Entertainment talent agency shall mean a business establishment with representation in multiple sectors of the entertainment industry, including, for example, motion pictures, television, music, modeling, Broadway theatre, sports, book publishing, and commercial endorsements.

OVERLAY ZONE: A zoning district which governs the same territory as an underlying zone, but provides alternative development standards for a specified type of development or use.

PLANNED DEVELOPMENT: A development that is approved pursuant to the procedures of article 18.4 of this chapter.

TANDEM SPACE: A parking space that can only be accessed through another parking space.

UNDERLYING ZONE: The primary zone designation which would govern development on a particular site if such development were not otherwise governed by an overlay zone.

10-3-1863: PERMITTED AND PROHIBITED USES

Except as otherwise provided or restricted by this article, no lot, premises, building or portion thereof in the E-O-PD Overlay Zone shall be used for any purpose except the uses permitted in the applicable underlying zone.

The following uses shall not be permitted in a E--O-PD Overlay zone without the prior approval of the Planning Commission: medical offices; commercial exercise clubs and training centers, medical laboratories, hair salons; nail salons, real estate offices; non-office retail establishments, except on the ground floor and any mezzanine; and restaurants in excess of 5% of the total gross square footage of the building.

Ancillary commercial uses may be permitted on any floor. However, the total floor area occupied by ancillary commercial uses above the ground floor shall not exceed 5% of the floor area of the building.

10-3-1864: APPLICABILITY OF UNDERLYING ZONE REGULATIONS:

Except as otherwise specifically provided in this article, development and uses in an E-O-PD Overlay Zone shall comply with the zoning regulations applicable to the underlying zone.

10-3-1865: HEIGHT LIMIT

Building projects shall be constructed, altered, or enlarged in the E-O-PD Overlay Zone in accordance with the following height restrictions:

A. Stories: No building project shall exceed six (6) stories, measured as set forth in the definition of “story” in section 10-3-100 of this chapter.

B. Height: Building height shall not exceed eighty-eight feet (88'), except that up to a maximum of ninety two feet (92') may be permitted at the discretion of the Director of Community Development due to technical difficulties that may be encountered during construction, when located within a commercial underlying zone.

C. Unoccupied Architectural Features: Notwithstanding subsection A7 of the definition of "height of building" in section 10-3-100 of this chapter, unoccupied architectural features may exceed the height limits of this section by not more than fifteen feet (15') in height if such unoccupied architectural features are approved by the Planning Commission as part of a planned development pursuant to article 18.4 of this chapter.

D. Vertical Circulation Spaces: Vertical circulation spaces such as stair shafts or elevator shafts shall not be subject to the six story limitation set forth in subsection A of this section if such vertical circulation spaces are approved by the Planning Commission as part of a planned development pursuant to article 18.4 of this chapter.

E. Mechanical Penthouse: A mechanical penthouse may exceed the story limitation set forth in subsection A of this Section.

10-3-1866: DENSITY:

A building project located in the E-O-PD Overlay Zone shall have a floor area ratio no greater than three and six-tenths to one (3.6:1).

10-3-1867: PARKING, ACCESS, AND CIRCULATION:

Except as otherwise provided in this section, parking for a building project located in the E-O-PD Overlay Zone shall be provided in accordance with sections 10-3-2727 through 10-3-2736, inclusive, of this chapter.

A. As part of a planned development application pursuant to article 18.4 of this Chapter, the Planning Commission, after reviewing a parking program with a finding that the proposed parking plan will have no adverse impact to the site or the surrounding properties, may allow tandem spaces and/or compact spaces as follows:

(1) Tandem spaces may be used, measuring not less than 9' x 17'. The amount of tandem parking spaces shall be in conformance with an approved parking program pursuant to subsection B of this Section.

(2) Compact spaces may be used, measuring not less than 7.5' x 17' to satisfy up to 17% of the parking requirement.

(3) Parking spaces that are both compact and tandem may be used, measuring not less than 7.5' x 17' to satisfy up to 7% of the parking requirement.

B. All parking that is required by this article shall conform to a parking program approved by the Planning Commission as part of a planned development approval pursuant to article 18.4 of this chapter. The parking program shall include monitoring programs and may include measures such as: 1) free parking for employees, and 2) free validated self- and valet-parking for patrons, as necessary to minimize the parking and circulation impacts of the project on the surrounding streets and to ensure that vehicle queuing will not occur in the public right-of-way or impede access to a parking facility. The monitoring program shall be

implemented by the applicant, tenant or building owner at its expense. In addition, the monitoring program shall provide the city with continuing jurisdiction to require the implementation of additional measures by the applicant to ensure vehicles will not impede traffic in the public right-of-way.

C. Any building project developed pursuant to the provisions of this article shall provide a valet queuing area of sufficient size and configuration to ensure that vehicle queuing will not occur in the public right of way or impede access to a parking facility.

D. Parking spaces in a building in the E-O-PD Overlay Zone shall not be leased or rented to persons who are not tenants of the building except as may be allowed by a planned development approval pursuant to article 18.4 of this chapter.

10-3-1868: LOADING AND ANCILLARY FACILITIES:

Loading facilities shall be governed by the following provisions:

A. Notwithstanding any other provision of this code, the number and size of required loading spaces for a building project that is located in the E-O-PD Overlay Zone may be established by the Planning Commission as part of a planned development approval pursuant to article 18.4 of this chapter.”

Section 6. The official zoning map of the City is hereby amended to apply the E-O-PD overlay zone to the property known as 231-265 North Beverly Drive, Beverly Hills, as described in the legal description attached hereto as Exhibit A, and incorporated herein by reference.

Section 7. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be remain in full force and effect and shall control as to each property to which the E-O-PD overlay zone has been applied.

Section 8. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 9. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

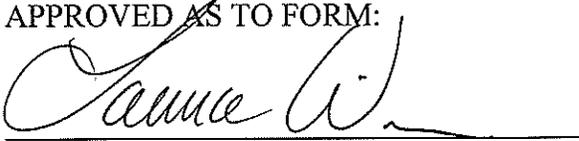
JIMMY DELSHAD
Mayor of the City of Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

[Signatures continue on next page.]

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager



VINCENT P. BERTONI, AICP
Director of Community Development

EXHIBIT A

Legal description of the Project Site

The northerly 13.8 feet of lot 10 and all of lots 11, 12, 13, 14, 15 and 16 in Block 10 of Beverly drive inn the City of Beverly Hills, County of Los Angeles, State of California as per Book 11, Page 94 of Maps, of the Office of the County Recorded of said County.

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ORDINANCE NO. 07-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS, BEVERLY WILSHIRE OWNER, LP AND WILLIAM MORRIS AGENCY, LLC FOR PROPERTY LOCATED AT 231-265 NORTH BEVERLY DRIVE IN CONJUNCTION WITH CONSTRUCTION OF A HEADQUARTERS OFFICE FOR WILLIAM MORRIS AGENCY

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY ORDAINS AS FOLLOWS:

Section 1. The City of Beverly Hills (“City”) and Beverly Wilshire Owner, LP (“Developer”) and William Morris Agency, LLC (“William Morris”) desire to enter into that certain development agreement (the “Development Agreement” herein), attached to this Ordinance as Exhibit A in connection with the construction of a Class “A” six story office building with retail/commercial uses on the ground floor and five stories of office space at property located at 231-265 North Beverly Drive (the “Project”).

Section 2. The Development Agreement has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000 et seq. (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.), and the City’s Local CEQA Guidelines. An Environmental Impact Report was prepared in connection with the Project. The City Council has certified the Final Environmental Impact Report (“FEIR”) and made environmental findings in connection with the approval of the Project, including this Development Agreement, and adopted a Mitigation Monitoring and reporting program for the Project, as fully set forth in Resolution No. 07-R-_____ adopted by the City Council on December 5, 2007. That Resolution is incorporated herein by reference, and made a part hereof as if fully set forth herein.

Section 3. On October 11, 2007 and October 25, 2007, the Planning Commission conducted a duly noticed public hearing to consider the Development Agreement and the Project. Notices of the time, place and purpose of public hearing were duly provided in accordance with California Government Code Sections 65867, 65090 and 65091.

Section 4. On November 7, 2007 and November 20, 2007, the City Council conducted a duly noticed public hearing to consider the Development Agreement and the Project. Notices of the time, place and purpose of the public hearing were duly provided in accordance with California Government Code Sections 65867, 65090 and 65091.

Section 5. The provisions of the Development Agreement are consistent with the City of Beverly Hills General Plan and comply with its objectives and policies including the objective of developing standards to provide opportunities to locate quality entertainment talent agencies that may not be otherwise be encouraged, to maintain and strengthen the economic base of the City, to provide for the enhancement of employment and commerce within the project area, to provide retail/commercial and entertainment talent agency office uses responsive to the City's needs and regional market forces, and to augment the City's economic based by providing tax generating revenues from various sources, commercial and residential uses. The Development Agreement implements the terms of the General Plan and City ordinances, including a General Plan Amendment processed in connection with the Project to establish the Project site as Medium Density Commercial.

Section 6. The City Council hereby approves the Development Agreement and authorizes the Mayor to execute the Development Agreement on behalf of the City.

Section 7. No later than ten (10) days after the effective date of this Ordinance, the City Clerk shall record with the County Recorder a copy of the Development Agreement and the notice shall describe the land to which such contract applies.

Section 8. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code; shall certify to the adoption of this Ordinance and shall cause this ordinance and this certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 9. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:
Effective:

JIMMY DELSHAD
Mayor of the City of Beverly Hills, California

ATTEST:

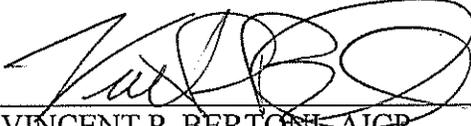
(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager


VINCENT P. BERTONI, AICP
Director of Community Development

EXHIBIT A
DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY:
CITY OF BEVERLY HILLS

AND WHEN RECORDED MAIL TO:

City of Beverly Hills
Attention: City Attorney's Office 455 N. Rexford Dr.
Room 220
Beverly Hills, CA 90210

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "Agreement") is made by and between THE CITY OF BEVERLY HILLS, a California municipal corporation (the "City"), Beverly Wilshire Owner, LP, a Delaware limited partnership (the "Developer"), and William Morris Agency, LLC, a Delaware limited liability company ("William Morris"). The City and Developer are individually referred to herein as a "Party" and collectively referred to as the "Parties."

RECITALS

This Agreement is made and entered into with regard to the following facts, each of which is acknowledged as true and correct by the Parties to this Agreement.

- A. Developer is the fee owner of that certain real property located in the City of Beverly Hills, California and described in Exhibit A attached hereto and incorporated herein by reference;
- B. Developer desires to construct the Project (as hereafter defined);
- C. Developer has applied to the City for approval of this mutually binding Agreement, pursuant to the provisions of the Development Agreement Act (as hereinafter defined) and other applicable laws;
- D. William Morris desires to be the principal office tenant of the Project and has entered into a Lease, dated September 29, 2006 to occupy the Project (the "Lease"). The parties and William Morris desire to include provisions in this Agreement that recognize William Morris' tenancy as a material benefit that the City seeks to secure by entering this Agreement;
- E. In anticipation of the development of the Project, Developer has made application to the City (in its governmental capacity) for certain approvals, entitlements, findings and permits required for the development and construction of the Project, including, without limitation (i) application for a general plan amendment and zone change; and (ii) application for a development agreement for the Project under the Development Agreement Act;
- F. The Developer has, as of the Agreement Effective Date, received approval of the Project Approvals (as hereinafter defined) allowing the development and construction of the

Project;

G. The City Council has specifically considered and approved the impact and benefits of this Project upon the welfare of the City;

H. This Agreement eliminates uncertainty in planning and provides for the orderly development of the Project in a manner consistent with the City's Official Zoning Regulations, the Applicable Rules (as hereinafter defined) and the General Plan;

I. To provide such certainty, the City desires, by this Agreement, to provide the Developer with assurance that the Developer can proceed with development of the Project with the uses, density and other land use characteristics specified in the Project Approvals. The Developer would not enter into this Agreement, or agree to provide the public benefits and improvements described herein without the City's agreement that the Project can be developed, during the term of this Agreement, with the uses, density and other land use characteristics specified in the Project Approvals;

J. The City has determined that, as a result of the development of the Project in accordance with the Project Approvals and this Agreement, substantial benefits will accrue to the public, including without limitation, the development of a Class "A" six story office building with retail/commercial uses on the ground floor and five stories of office space above in a prominent location in the Business Triangle of Beverly Hills; the retention of the William Morris headquarters in the City of Beverly Hills; maintaining and strengthening the economic base of the City by retaining William Morris, which provides substantial economic benefit to the City and businesses within the City; providing high-class retail/commercial space and eating facilities; providing for the enhancement of employment and commerce within the Project area; developing retail/commercial and entertainment office uses responsive to the City's needs and regional market forces; building a subterranean parking structure; building a project that provides pedestrian-friendly amenities at the street level; and augmenting the City's economic base by providing tax-generating revenues from sales from the retail/commercial stores, increased business license fees from the office tenants, and increased property taxes by increasing the assessed value of the land and building;

K. On October 25, 2007, pursuant to the requirements of the Development Agreement Act, the Planning Commission of the City of Beverly Hills conducted a hearing on the Developer's application for this Agreement;

L. On November 7 and November 20, 2007, pursuant to the requirements of the Development Agreement Act, the City Council of the City of Beverly Hills (the "City Council") conducted a hearing on the Developer's application for this Agreement;

M. The City Council has found and determined that this Agreement is consistent with the City's General Plan and all other plans, policies, rules and regulations applicable to the Project;

N. On _____, 2007, the City Council adopted Ordinance No. _____ approving this Agreement, and such ordinance became effective on January _____, 2008; and

O. By Resolution No. _____ adopted by the City Council on December 5, 2007, the City Council reviewed and certified, after making appropriate findings, a Environmental Impact Report for the Project that contemplates this Agreement.

AGREEMENT

NOW THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and in consideration of the mutual promises and covenants herein contained and other valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

1. Definitions. For all purposes of this Agreement, except as otherwise expressly provided herein, or unless the context of this Agreement otherwise requires, the following words and phrases shall be defined as is set forth below:

(a) "Applicable Rules" means the rules, regulations, ordinances, resolutions, codes, guidelines, and officially adopted procedures and official policies of the City governing the use and development of real property, including, but not limited to, the City's Official Zoning Regulations and building regulations, adopted as of the Effective Date of this Agreement. Among other matters, the Applicable Rules set forth and govern the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the development of the Property.

(b) "Business Triangle" means the area in the City of Beverly Hills generally bounded by Wilshire Boulevard on the south, Santa Monica Boulevard, South Roadway, on the north, and the alley between Crescent Drive and Canon Drive on the east.

(c) "CEQA" means the California Environmental Quality Act (California Public Resources Code Section 21000 et seq.), as it now exists or may hereafter be amended.

(d) "Change of Control" shall refer to a transaction whereby a transferee who is not an Existing Owner acquires a beneficial ownership interest in Developer (or in an Existing Owner) such that after such transaction there is a change of identity of the person or entity that has the power to direct or cause the direction of the management and policies of the Developer, whether through the ownership of voting securities, by contract or otherwise.

(e) "Conditions of Approval" shall mean those conditions of approval imposed by the City upon the Project Approvals.

(f) "Developer Fees" shall mean those fees established and adopted by City with respect to development and its impacts pursuant to applicable governmental requirements, including Section 66000 et seq., of the Government Code of the State of California, including impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact

fees or charges imposed on or in connection with new development by the City. Developer Fees do not mean or include Processing Fees.

(g) "Development Agreement" or "Agreement" means this Agreement

(h) "Development Agreement Act" means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code.

(i) "Discretionary Action(s)" or "Discretionary Approval(s)" means an action which requires the exercise of judgment, deliberation or discretion on the part of the City, including any board, agency, commission or department and any officer or employee thereof, in the process of approving or disapproving a particular activity, as distinguished from an activity which is defined herein as a Ministerial Permit or Ministerial Approval.

(j) "Effective Date of this Agreement" shall mean the date this Agreement, fully executed, is recorded in the official records of the Los Angeles County Recorder.

(k) "EIR" shall mean the final Environmental Impact Report (Sch #2006081074) which was prepared, circulated and certified in accordance with applicable law, including, without limitation, CEQA. "EIR Mitigation Measures" shall mean the mitigation measures imposed upon the Project pursuant to the EIR and the Conditions of Approval.

(l) "Existing Owner" shall mean an entity that has an ownership interest in Developer on the Effective Date of this Agreement.

(m) "General Plan" means the General Plan of the City, as it exists as of the Effective Date of this Agreement.

(n) "Green Building Standards" means building development standards, in addition to those set forth in the California Building Code as adopted and amended by the City, that are designed to reduce energy consumption and green house gas emissions.

(o) "Lease" shall mean the lease as defined in Recital D, as it existed upon its execution, without amendment.

(p) "Ministerial Permit(s)," or "Ministerial Approval(s)" means a permit or approval, including, but not limited to, building permits, grading permits, zone clearances, and certificates of occupancy, which requires the City, including any board, agency, commission or department or any officer or employee thereof, to determine whether there has been compliance with applicable rules, statutes, ordinances, conditions of approval, and/or regulations, as distinguished from an activity which is included in the definition of Discretionary Action or Discretionary Approval.

(q) "Processing Fees" means all processing fees and charges required by the City and applied uniformly to all construction or development related activity including, but not limited to, fees for land use applications, building permit applications, building permits, grading permits, subdivision or parcel maps, lot line adjustments, street vacations, inspection fees,

certificates of occupancy and plan check fees. Processing Fees shall not mean or include Developer Fees.

(r) "Project" means the Project as defined in the EIR.

(s) "Project Approvals" shall include, collectively, a General Plan Amendment, Zoning Code Amendment, and Planned Development Permit approved by the City with respect to the Project and shall include any Subsequent Project Approvals (as hereinafter defined).

(t) "Property" means the real property described on Exhibit "A."

(u) "Reserved Powers" means the rights and authority excepted from this Agreement's restrictions on the exercise of City's police powers.

(v) "Sales Transaction" means any transaction evidenced by the recording of a conveyance document, except for leases of all or a part of the Property, that conveys the Property, or any subdivided portion of the Property, and which conveyance would be subject to, and not exempt from, the Los Angeles County Documentary Transfer Tax (Los Angeles County Code, Chapter 4.60) or the City of Los Angeles Real Estate Transfer Tax (Los Angeles City Municipal Code, Chapter 2, Article 1.9) as those taxes existed on the Effective Date of this Agreement. A transaction whereby the possession of all or a portion of the Property is transferred, except for leases of all or a part of the Property, wherein the seller retains the title as security for the payment of the price shall be deemed a Sales Transaction. Notwithstanding the foregoing, a transfer of all or a portion of the Property as a result of a judicial or non-judicial foreclosure, or by deed in lieu of foreclosure, initiated by a Mortgagee, shall not be deemed a Sales Transaction. For the purposes of triggering the EMS Fee only, a Sales Transaction shall include: (i) any sale, assignment, or transfer of fifty percent (50%) or more of the beneficial ownership interest in Developer, whether in one transaction or a series of transactions, provided however, that any transfers of ownership interests among the Existing Owners (or the beneficial owners of such Existing Owners) shall not be deemed a Sales Transaction, (ii) any sale, assignment, or transfer of fifty percent (50%) or more of the beneficial ownership interest in a successor developer, whether in one transaction or a series of transactions, provided however that any transfers of ownership interests among the then current owners of the successor developer (or the beneficial owners of such owners) shall not be deemed a Sales Transaction so long as the EMS Fee shall have been paid in connection with the acquisition of the Property by such successor developer and the transferee was an owner at the time of such acquisition, and (iii) any Change of Control; provided, however, the following shall not constitute a change of control and shall not trigger the EMS Fee: (i) appointment or replacement of a non-owner manager or non-owner managing partner or (ii) the designation of an Existing Owner as a managing member of a successor developer unless fifty percent (50%) or more of the ownership interest of the successor developer is owned by persons or entities who are not partners of Developer on the Effective Date of this Agreement.

(w) "Subsequent Land Use Regulations" means any change in or addition to the Applicable Rules adopted after the Effective Date of this Agreement, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, including, without limitation, any such change by means of an ordinance, initiative,

resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the Mayor, City Council, Planning Commission or any other board, agency, commission or department of City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project.

(x) "Subsequent Project Approvals" shall mean all further Discretionary Actions or Discretionary Approvals, Ministerial Permits and Ministerial Approvals required or requested with respect to the Project. Following adoption, a Subsequent Project Approval shall become a Project Approval.

(y) "Transfer Premium" shall mean all rent, additional rent or other consideration (including any key money, bonus money or other cash consideration paid by a Transferee in connection with a lease or sublease of office space in the Project) payable by a Transferee in connection with the lease or sublease of office space in excess of the rent and additional rent (as defined in the Lease) payable by William Morris under the Lease during the term of the lease or sublease to the Transferee for the space leased or subleased (as applicable), after first deducting all reasonable expenses incurred by Developer or William Morris in connection with such lease or sublease, including, without limitation, (i) any improvement allowance or other economic concessions (space planning allowance, moving expenses, etc.) paid by Developer or William Morris to the lessee or sublessee in connection with the lease or sublease; (ii) any brokerage commissions incurred by Developer or William Morris in connection with the lease or sublease, (iii) any attorneys' fees actually incurred by Developer or William Morris in connection with the lease or sublease, (iv) any lease takeover incurred by Developer or William Morris in connection with the lease or sublease, and (v) any actual out-of-pocket costs of advertising the space subject to the lease or sublease (collectively, "Subleasing Costs") which Subleasing Costs shall expressly exclude any amounts allocable to the unamortized cost of the Tenant's Work as defined in the Lease or rent payable by William Morris prior to the execution of a sublease. In calculating the Transfer Premium the amount paid by the lessee or sublessee shall also include any payment in excess of fair market value for services rendered by Developer or William Morris to the lessee or sublessee or for assets, fixtures, inventory, equipment, or furniture transferred by Developer or William Morris in connection with the lease or sublease. The determination of the amount of City's share of the Transfer Premium (as determined below in Section _____) shall be made on a monthly basis as rent or other consideration is received by Developer or William Morris from the lessee or sublessee. For purposes of calculating the Transfer Premium on a monthly basis, the rent paid (or the rent that would have been paid) for the subject space by William Morris shall be computed after adjusting such rent to the actual effective rent to be paid, taking into consideration any and all leasehold concessions granted in connection with the Lease, including, but not limited to, any rent credit and tenant improvement allowance.

Notwithstanding the above, in the event that William Morris vacates the Project as a result of filing for bankruptcy, or making an assignment for the benefit of creditors, or if William Morris breaches the Lease by not paying rent or other consideration and vacates the Project or is evicted, then the Transfer Premium shall be reduced by rent lost as a result of the bankruptcy, assignment or breach. Developer shall use commercially reasonable efforts to re-lease the space. The Transfer Premium shall be increased by any recovery by Developer as compensation due to William Morris's bankruptcy, assignment, or breach, less actual and reasonable attorney's fees and court costs.

(z) "Transferee" shall mean an office tenant of the Project other than William Morris.

(aa) "Zoning Regulations" shall mean the official zoning regulations of the City adopted as of the Effective Date of this Agreement.

2. Recitals of Premises. Purpose and Intent.

(a) State Enabling Statute. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows: "The Legislature finds and declares that:

"(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

"(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic cost of development."

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties.

(b) The Project. It is the Developer's intent to develop the Property as described in the Project Approvals, the EIR and the final plans submitted to the City, subject to the Applicable Rules, the Project Approvals, and the Conditions of Approval. The Parties hereby agree that, for the Term of this Agreement, the permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, provisions for reservation or dedication of land for public purposes and location of public improvements, and the design, improvement, construction and other guidelines, standards and specifications applicable to the development of the Property shall be those set forth in the Project Approvals, the Applicable Rules and this Agreement, including the Conditions of Approval for the Project.

3. Property Subject to Agreement. This Agreement shall apply to all of the real property described in Exhibit A attached hereto (the "Property"), and all such real property shall be subject to this Agreement.

4. Application of Agreement. This Agreement shall apply to the development and use of the Property. Such development shall be in accordance with the Project Approvals and this Agreement.

5. Term of Agreement. The term of this Agreement shall commence on the Agreement Effective Date, and shall continue until July 1, 2024.

6. Timing of Development. The parties acknowledge that Developer cannot at this time predict when or if the Property will be developed. Such decisions depend upon numerous factors which are not within the control of Developer. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Property consistent with the Project Approvals and the Conditions of Approval in such order and at such rate and at such times as the Developer deems appropriate within the exercise of its sole and subjective business judgment during the Term of this Agreement.

7. Permitted Uses: Density: Building Heights and Sizes: Required Dedications. The City and the Developer hereby agree that the permitted uses of the Property, the density and intensity of such uses, the maximum heights and sizes of the buildings and improvements to be constructed on the Property, and the reservation and dedication of land for public purposes required in connection with the development of the Property shall be as set forth in and consistent with the Project Approvals. The Developer shall not cause or permit any use of the Property that is not permitted by the Project Approvals, and shall not cause or permit the construction of any building or improvement that exceeds the maximum density, building heights and/or building sizes set forth in or otherwise required by the Project Approvals.

8. Developer's Rights. The Developer shall have and is hereby vested with the rights, during the term of this Agreement, to develop the Project as set forth in the Project Approvals, all of which are hereby incorporated in this Agreement by reference.

9. Changes in Applicable Rules.

(a) Nonapplication of Changes in Applicable Rules. The adoption of any Subsequent Land Use Regulations after the Effective Date of this Agreement, or any change in, or addition to, the Applicable Rules (other than changes in Processing Fees as provided in this Agreement), including, without limitation, any changes in the General Plan or the Zoning Regulations (including any regulation relating to the timing, sequencing, or phasing of the Project or construction of all or any part of the Project), adopted after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by any board, agency, commission or department of the City, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way with or be more restrictive than the Applicable Rules or Developer's entitlements under the Project Approvals, shall not be applied to the Project

unless such changes represent an exercise of the City's Reserved Powers. The City's Reserved Powers are defined as the enactment of regulations and/or the taking of Discretionary Actions if the same is expressly found by the City to be necessary to protect the residents of the City, those employed in the City, or visitors to the City, from a condition that is dangerous to public health and safety or if the same is required to comply with State or Federal laws (whether enacted previous or subsequent to the Effective Date of this Agreement).

(b) Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, development of the Project shall be subject to changes occurring from time to time in the provisions of the City's building, mechanical, plumbing and electrical regulations which are based on the recommendations of a multi-state professional organization and become applicable throughout the City, including, but not limited to, the California Building Code, and other similar or related uniform codes.

(c) Changes Mandated by Federal or State Laws or Regulations. Changes in, or additions to, the Applicable Rules adopted or made operative on or after the Effective Date of this Agreement shall apply to the Project, if such changes or additions are specifically mandated to be applied to developments such as the Project, by applicable State or Federal laws or regulations. Where City or Developer believes that such a change or addition exists that Party shall provide the other Party hereto with a copy of such State or Federal law or regulation and a statement of the nature of its conflict with the provisions of the Applicable Rules and/or of this Agreement. The City's determination as to the applicability of State or Federal laws to the Project shall be final and conclusive.

(d) Changes in Processing Fees Under Applicable Rules. The Project shall be subject to any increase in Processing Fees imposed by the City, provided that such a change is applied on a City wide basis.

10. Developer's Obligations.

(a) Conditions of Approval. The Developer shall comply with the Conditions of Approval.

(b) Approval Processing Fees. On the Effective Date of this Agreement, Developer shall pay all outstanding fees for the processing of the Project Approvals, including legal and environmental processing costs related to the Project Approvals and preparation of this Agreement, if any.

(c) Other Processing Fees. Developer agrees to pay all Processing Fees, including City plan check fees, building inspection fees, and permit fees, at the rate and amount in effect at the time the fee is required to be paid.

(d) Public Benefit Contribution. Prior to the issuance of a building permit for the project, Developer shall pay to City a public benefit and infrastructure contribution of \$370,000.

(i) The City shall apply \$136,000 of the public benefit and infrastructure contribution to the applicant's fair share of offsite

traffic mitigation identified in the EIR. Developer shall be required to make no further contribution toward offsite traffic mitigation.

(e) Discounted Public Parking. Developer shall make the Project's parking garage available for public parking after 7:00 p.m. in the evening and on weekends. Patrons entering the parking garage after 7:00 p.m. and on the weekends shall pay no more than the rate charged by the City at City owned parking lots with entrances on North Beverly Drive. If there are different rates charged among City owned parking lots with entrances on North Beverly Drive, then the City may elect and, may at any time with reasonable notice to Developer change, the parking lot to be used as the basis for the limitation of this Section. Developer shall keep the parking garage open to public parking until the later of the closing times of City owned parking lots with entrances on North Beverly Drive; provided however, Developer shall not be required to keep the parking garage open to public parking later than midnight. Developer shall open the garage to public parking on weekends no later than the City opens the R Lot parking facility (or if the R Lot facility is not open for public parking on weekends, then no later than the nearest City owned parking facility that is open for public parking on weekends). The Director of Parking Operations or his successor may shorten the hours that the Project's parking garage must be available for public parking if the Director determines, in his sole discretion, that there is no need for public parking at the Project site during all or a portion of the hours set forth above.

(f) Environmental Mitigation and Sustainability Fee.

(i) *Amount of fee.* Concurrent with the close of each Sales Transaction, the seller shall pay or cause to be paid to City an Environmental Mitigation and Sustainability Fee ("EMS Fee"). The amount of the EMS Fee shall be equal to \$4.50 for each \$1,000 of the consideration or value of the interest or property conveyed (exclusive of the value of any lien or encumbrance remaining thereon at the time of sale), subject to adjustment as set forth in Section 10(f)(ii) below. The EMS Fee shall be paid from the escrow account set up for the Sales Transaction. The fee shall be paid upon any Sales Transaction by Developer, and upon each subsequent Sales Transaction by the then current owner.

(ii) *Adjustment of EMS Fee.* If, after the Effective Date of this Agreement, the City adopts or increases a real estate transfer tax or documentary transfer tax for Beverly Hills, so that the combined total of the City's taxes and the County of Los Angeles Documentary Transfer Tax exceeds the current \$1.10 per \$1000 of City and County documentary transfer taxes, then the EMS Fee imposed upon all subsequent Sales Transactions shall be reduced by the amount of the combined taxes that exceeds \$1.10 per \$1000. For example, if the City adopts a real estate transfer tax of \$2.20 per \$1000, thus increasing the combined City and County real estate transfer taxes and documentary transfer taxes to \$3.30 per \$1,000 of sales price, then the EMS Fee on all subsequent Sales Transactions would be \$2.30 per \$1000 of sales price (\$4.50-

\$2.20= \$2.30). If the City increases the documentary transfer tax or adopts a real estate transfer tax so that the combined taxes exceed \$5.60 per \$1000 of sales price, then no further EMS Fee shall be due or payable.

- (iii) *Liens for EMS Fee Payable Upon Sale.* Developer hereby grants to the City, with power of sale, a lien on the Property to secure the payment of the EMS Fee payable upon each Sales Transaction. In the event that the EMS Fee secured by such lien is not paid concurrently with and as a condition to the closing of a Sales Transaction by Developer or any successor-in-interest to Developer, then City may enforce such lien by sale by City, its attorney or any other person or entity authorized by the City Manager to conduct the sale. Any such sale shall be conducted in accordance with California Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h, or in any other manner permitted or provided by law. City, through its agent authorized by the City Manager, shall have the power to bid on the encumbered property at the sale, using as a credit bid the amounts secured by such lien, its own funds, or funds borrowed for such purpose, and to acquire the lot or parcel. City is hereby granted, in trust, the applicable lot or parcel and is appointed as trustee for purposes of noticing and effecting any sale pursuant to the provisions of this Section and is hereby expressly granted a "power of sale" in connection therewith. Developer, or any subsequent owner of the Property or any portion thereof, shall provide notice to City, in a form satisfactory to the City, upon any opening of escrow that will result in a Sales Transaction or any other conveyance of the Property or portion thereof. The notice shall include a declaration stating the amount of the EMS Fee due upon closing of any Sales Transaction, or in the case of a conveyance that is not a Sales Transaction, the reason that such conveyance is not a Sales Transaction and therefore not subject to the EMS Fee. Upon receipt of the full amount of the EMS Fee payable with respect to a sale, City shall execute and deliver such documentation, in recordable form, as Developer, the buyer or the title company may reasonably request to evidence the payment of the EMS Fee and extinguishment of the City's lien rights with respect to such sale. Such documentation shall also indicate that payment of the EMS Fee shall not extinguish the City's lien rights with respect to subsequent Sales Transactions.

(g) Streetscape Improvements. Developer shall install streetscape improvements, including granite sidewalks, flower pots and street furniture as approved by the City, along the Dayton Way and Beverly Drive frontages of the Project provided that the City adopts a program by December 31, 2008 to generally require developments in the business triangle similar to the Project to install similar streetscape improvements.

(h) Closed Circuit Television. Developer will participate in the City's closed circuit television monitoring program for the City's streets by allowing cameras to be placed on the Project and on the adjacent Bank of America building at the intersection of Wilshire Boulevard and Beverly Drive. The cameras shall be placed in locations reasonably acceptable to Developer and City that allow the cameras to have an unobstructed view of the adjacent right of way for a range of at least ninety (90) degrees. Prior to issuance of a building permit, Developer shall also pay to City \$25,000 toward the placement of cameras in the right of way adjacent to the Project. Developer will participate in any other fee or assessment program applied generally to property owners in the Business Triangle for the purpose of funding the security camera program but will receive a credit toward any such assessment for the \$25,000 paid by Developer pursuant to this Agreement. Developer shall have no obligation to maintain or repair the cameras. Developer's obligations under this section shall terminate if the City's closed circuit television monitoring program is terminated.

(i) Green Building Standards. If the City has not adopted Green Building Standards that apply to projects that would include the Project before the Effective Date of this Agreement, then Developer shall construct the Project to a level equivalent to LEED Certified status as determined by the City's Director of Building and Safety prior to issuance of a building permit. If the City has adopted Green Building Standards that apply to projects that would include the Project, Developer shall construct the Project according to such standards.

(j) William Morris Occupancy. It is the intent of the parties that William Morris be the principal occupant of the Project and William Morris has executed the Lease for the purpose of the occupying the Project. The Lease provides that William Morris will occupy the building for a term of 20 years, but that William Morris may cancel the Lease upon a date that is 14 years after the date that the Lease commences (the "Lease Cancellation Date.") If, at any time prior to the Lease Cancellation Date, William Morris occupies less than one hundred thousand rentable square feet of the Project (as measured pursuant to the standards set forth in ANSI Z65.1 1996, promulgated by the Building Owners and Managers Association) (the "Threshold"), then the City shall receive fifty percent of any Transfer Premium realized from leasing or subleasing office space within the Project that is leased or subleased during the time period when William Morris occupies less than one hundred thousand rental square feet of the Project during any time prior to the Lease Cancellation Date. Neither Developer nor William Morris shall have any obligation to pay the Transfer Premium for any period of time after the Lease Cancellation Date.

(A) *Calculation of Transfer Premium*. The Parties and William Morris desire to select a neutral party to calculate the Transfer Premium in the event that William Morris occupies less than the Threshold prior to the Lease Cancellation Date (the "Neutral"). The Parties shall select the Neutral pursuant to the procedure described below, no later than thirty (30) days after approval of this Agreement by the City Council. The Neutral selected by the Parties is [to be inserted upon selection of the Neutral]. The Lease shall be provided to the Neutral upon selection of the Neutral. In the event that William Morris occupies less than the Threshold, then Developer and William Morris, as appropriate, will provide the Neutral with all leases or subleases for office space in the Project and with any other documentation related to consideration paid in connection with

occupancy of office space within the Project. Such documentation shall be provided within thirty (30) days of the date that William Morris first occupies less than the Threshold. The Neutral shall also be provided with any other documentation requested by the Neutral from Developer, William Morris or a future lessee or sublessee of the Project, for the purpose of calculating the Transfer Premium. Such documentation will be provided within ten days of making such request. In addition, upon executing any additional lease, sublease or other document related to the consideration paid for office space within the Project, Developer and William Morris shall provide such lease, sublease or other document to the Neutral. After examining all relevant documents, the Neutral shall provide the Parties, and in the case of a sublease, William Morris, with a calculation of the Transfer Premium and a payment schedule for payment of the Transfer Premium. Such calculation and payment schedule may be updated by the Neutral at any time that it receives additional information pursuant to this subsection 10(j). The determination by the Neutral of the Transfer Premium and the payment schedule for the Transfer Premium shall be final and the Parties and William Morris intend that the Neutral shall have the sole and exclusive authority to calculate the Transfer Premium and establish the payment schedule. The Parties and William Morris shall share equally the reasonable cost of retaining the Neutral, calculating the Transfer Premium and establishing the payment schedule pursuant to this Section.

The Neutral, and if necessary, any replacement of the Neutral, shall have at least 10 years experience in the area of commercial real estate leasing, shall be independent of the Parties and William Morris (and their affiliates) shall hold no financial interest in or have any material financial or personal relationship with, the Parties or William Morris (or their respective affiliates) and shall not have been employed or engaged, or be under consideration for engagement, either as an employee or a consultant, by either of the Parties or William Morris. If the Parties and William Morris cannot agree on a Neutral, or a replacement for a Neutral, then a Neutral meeting the criteria of this Section shall be appointed by the office of the American Arbitration Association (“AAA”) conducting business in Los Angeles County, California.

(k) Subway Portal. Prior to obtaining a building permit for the Project, Developer shall dedicate an easement to the City substantially in the form set forth in Exhibit B. The easement shall be for the purpose of providing a portal for a subway station under Wilshire Boulevard and shall be assignable to the Metropolitan Transportation Authority or any other governmental entity responsible for constructing or maintaining a subway line. The easement shall provide that the surface area of the portion of the portal on Developer’s property at ground level shall be no more than 300 square feet. The easement shall automatically terminate unless each of the following conditions are met: (i) The City must accept the easement within twenty (20) years from the Effective Date of this Agreement; and (ii) the Metropolitan Transportation Authority, or other appropriate governmental entity, must have secured funding for construction of the station within twenty years from the Effective Date of this Agreement. The easement shall limit the portal so that it does not materially interfere with or limit access to the Project or the building at 9461-9465 Wilshire Boulevard (“B of A”), shall not cause the loss of any parking

spaces designated for the Project or B of A, nor materially affect the structural integrity of the Project or B of A.

11. Issuance of Building Permit. The City shall be under no obligation to issue a building permit for the Project until: (i) all the fees set forth in Section 10 and due before issuance of a building permit have been fully paid to City; (ii) a title company reasonably acceptable to City shall have issued a title policy in the amount of \$5 million insuring the City that this Agreement is not subject or subordinate to any liens, and (iii) Developer shall have paid all charges for such title policy. With the approval of the City, in lieu of a title policy, the Developer may obtain the acknowledgment from its lender in a form reasonably satisfactory to the City that the provisions of this Agreement relating to the economic benefits to be received by the City shall survive any foreclosure.

12. Default. Failure by City or Developer to perform any term or provision of this Agreement for a period of thirty days from the receipt of written notice thereof from the other shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such 30-day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

Subject to the foregoing, after notice and expiration of the 30-day period without cure, the notifying party, at its option, shall have all rights and remedies provided by law and/or may give notice of intent to terminate this Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the Council within thirty calendar days in the manner set forth in Government Code Sections 65867 and 65868. Following consideration of the evidence presented in said review before the Council and a determination that a default exists, the Party alleging the default by the other Party may give written notice of termination of this Agreement to the other Party.

Upon any such termination, the respective rights, duties and obligations of the Parties hereto shall without further action cease as of the date of such termination (except as to duties and obligations that arose prior to the date of such termination).

In no event shall monetary damages be available against the City for any alleged default or breach by the City.

13. Termination and Expiration. The City, at its sole option, may terminate this Agreement if Developer has not obtained a building permit for construction of the Project by July 1, 2009. Upon such termination, this Agreement shall terminate and be of no further force and effect. Upon the expiration of the Term or termination of this Agreement other than termination as provided in this Section 13, this Agreement shall terminate and be of no further force or effect; provided, however, such termination shall not affect Developer's obligations under Section 10, subsections (d) through (j) nor the obligation to pay any claim of any Party hereto, arising out of the provisions of this Agreement, prior to the effective date of such termination. The obligations under Section 10, subsections (d) through (j) and the obligation to pay any claim arising before the effective date of termination shall continue after termination in perpetuity or until completed.

14. Transfers of Interests in Property or Agreement. In the event of a proposed transfer of interest in the Property or in this Agreement by Developer, Developer agrees to provide City at least thirty (30) days written notice of such proposed transfer and shall provide satisfactory evidence that the transferee will assume in writing through an assignment and assumption agreement all obligations of Developer under this Agreement. The assignment and assumption agreement shall be in a form satisfactory to the City Attorney. However, Developer has no obligation to obtain the consent of the City to assign this Agreement to a transferee. Notwithstanding the foregoing: (i) the terms, covenants and conditions of this Agreement shall be binding upon any transferee whether or not such an assignment and assumption agreement is signed by the assignee upon acquiring the Property; and (ii) no such transfer shall relieve the Developer (transferor) of any obligations under this Agreement.

15. Mortgagee Protection

(a) *In General.* The provisions of this Agreement shall not prevent or limit Developer's right to encumber the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to such portion. City acknowledges that lenders providing such financing and other "Mortgagees" (defined below) may require certain interpretations and modifications of this Agreement and agrees upon request, from time to time, to meet with Developer and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. City shall not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement and does not, in the City's sole determination, diminish the City's benefits from this Agreement. Any person holding a mortgage, deed of trust or other security instrument on all or any portion of the Property made in good faith and for value (each, a "Mortgagee"), shall be entitled to the rights and privileges set forth in this Section.

(b) *Notice of Default to Mortgagee.* If a Mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, City shall exercise its best efforts to provide to such Mortgagee written notification from City of any failure or default by Developer in the performance of Developer's obligations under this Agreement, which notification shall be provided to such Mortgagee at such time as such notification is delivered to Developer.

(c) *Right of Mortgagee to Cure.* Any Mortgagee shall have the right, but not the obligation, to cure any failure or default by Developer during the cure period allowed Developer under this Agreement, plus an additional 60 days if, in order to cure such failure or default, it is necessary for the Mortgagee to obtain possession of the property such as by seeking the appointment of a receiver or other legal process. Any Mortgagee that undertakes to cure or attempt to cure any such failure or default shall provide written notice to City that it is undertaking efforts of such a nature; provided that no initiation of any such efforts by a Mortgagee shall obligate such Mortgagee to complete or succeed in any such curative efforts.

(d) *Liability for Past Defaults or Obligations.* Subject to the foregoing, any Mortgagee, including the successful bidder at a foreclosure sale, who comes into possession of the Project or the Property or any part thereof pursuant to foreclosure, eviction or otherwise, shall take such property subject to the terms of this Agreement and in no event shall any such property be released from any obligations associated with its use and development under the provisions of this Agreement. Nothing in this Section shall prevent City from exercising any remedy it may have for a default under this Agreement, provided, however, that in no event shall such mortgagee personally be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such property by such Mortgagee

16. Binding Effect. All of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the parties and their respective heirs, successors (by merger, reorganization, consolidation or otherwise) and assigns, devisees, administrators, representatives, lessees, and all other persons acquiring the Property, or any portion thereof, or any interest therein, whether by operation of law or in any manner whatsoever, and shall inure to the benefit of the parties and their respective heirs, successors and assigns. All of the provisions of this Agreement shall constitute covenants running with the land.

17. Indemnification.

(a) Developer agrees to and shall indemnify, hold harmless, and defend, City and its respective officers, officials, members, agents, employees, and representatives, from liability or claims for death or personal injury and claims for property damage which may arise from the acts, errors, and/or omissions of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf in relation to the Project and/or in any manner arising from this Agreement. The foregoing indemnity applies to all deaths, injuries, and damages, and claims therefor, suffered or alleged to have been suffered by reason of the acts, errors, and/or omissions referred to in this Section 16, regardless of whether or not City prepared, supplied, or approved plans or specifications, or both. In the event of litigation, City agrees, at no cost to City, to cooperate with Developer. This indemnification, hold harmless and defense requirement shall survive the termination or expiration of this Agreement. City reserves the right, in cases subject to this indemnity, to reasonably approve the attorney selected by Developer to defend Developer and City in any such action.

(b) In the event of any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the EIR prepared and certified for the Project, Developer shall defend, at its own expense, the action or proceeding. In addition, Developer shall reimburse City for City's costs in defending any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the EIR and the Developer shall also pay any award of costs, expenses and fees that the court having jurisdiction over such challenge makes in favor of any challenger and against the City. Developer shall cooperate with City in any such defense as City may reasonably request and may not resolve such challenge without the agreement of City. In the event Developer fails or refuses to reimburse City for its cost to defend any challenge to this Agreement, the Project Approvals or the EIR, City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 12 above. In all events, City shall have the right to resolve any challenge in any manner, in its sole discretion,

provided, however, the Developer's consent shall be required if the resolution of the challenge shall require a payment by the Developer or limit Developer's rights under this Agreement.

In order to ensure compliance with this section, within twenty (20) days after notification by the City of the filing of any claim, action or proceeding to attack, set aside, void or annul this Agreement, any of the Project Approvals or the EIR prepared and adopted for the Project, the Developer shall deposit with the City cash or other security in the amount of \$50,000, satisfactory in form to the City Attorney, guaranteeing indemnification or reimbursement to the City of all costs related to any action triggering the obligations of this Section. If the City is required to draw on that cash or security to indemnify or reimburse itself for such costs, the Developer shall restore the deposit to its original amount within fifteen (15) days after notice from the City. Additionally, if at any time the City Attorney determines that an additional deposit or additional security up to an additional \$50,000, is necessary to secure the obligations of this section, the Developer shall provide such additional security within fifteen (15) days of notice from the City Attorney. The City shall promptly notify the Developer of any claim, action or proceeding within the scope of this Section and the City shall cooperate fully in the defense of any such claim or action, but shall have the right to resolve any challenge, in any manner, in its sole discretion, provided, however, the Developer's consent shall be required if the resolution of the challenge shall require a payment by the Developer or limit the Developer's rights under this Agreement.

18. Relationship of the Parties. The Parties and William Morris acknowledge and agree that neither the Developer nor William Morris is acting as an agent, joint venturer or partner of the City, but each is, in fact, an independent contractual party and not in any way under the control or direction of the City except as is expressly provided to the contrary in this Agreement.

19. Recordation. As provided in Government Code Section 65868.5, the City Clerk shall record a copy of this Agreement with the Registrar-Recorder of the County of Los Angeles within ten (10) days following its execution by both Parties. Developer shall reimburse the City for all costs of such recording, if any.

20. No Third Party Beneficiaries. The only signatories to this Agreement are the City, Developer and William Morris. There are no third party beneficiaries and this Agreement is not intended and shall not be construed to benefit or be enforceable by any other person whatsoever other than the successors in interest of the signatories.

21. Advice; Neutral Interpretation. Each Party and William Morris has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. This Agreement has been drafted through a joint effort of the Parties, William Morris and their counsel and therefore shall not be construed against either of the Parties or William Morris in its capacity as draftsman, but in accordance with its fair meaning.

22. Certificate of Compliance. At any time during the term of this Agreement, any lender or other party may request any Party to this Agreement to confirm that (i) this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such

modifications) and that (ii) to the best of such Party's knowledge, no defaults exist under this Agreement or if defaults do exist, to describe the nature of such defaults and (iii) any other information reasonably requested. Each Party hereby agrees to provide a certificate to such lender or other party within ten (10) business days of receipt of the written request therefor. The failure of any Party to provide the requested certificate within such ten (10) business day period shall constitute a confirmation that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that to the best of such Party's knowledge, no defaults exist under this Agreement, except as may be represented by the requesting party.

23. Consideration. The City, Developer and William Morris acknowledge and agree that there is good, sufficient and valuable consideration flowing to the City, Developer and William Morris pursuant to this Agreement as more particularly set forth in the Recitals and Section 2 of this Agreement. The Parties and William Morris further acknowledge and agree that the exchanged consideration hereunder is fair, just and reasonable.

24. Periodic Reviews.

(a) Annual Reviews. City shall conduct annual reviews to determine whether Developer is acting in good faith compliance with the provisions of this Agreement and Government Code Section 65865.1 The reasonable cost of each annual review conducted during the term of this Agreement shall be reimbursed to City by Developer. Such reimbursement shall include all direct and indirect expenses reasonably incurred in such annual reviews.

(b) Special Reviews. In addition, the City Council of the City may order a special periodic review of Developer's compliance with this Agreement at any time. The cost of such special reviews shall be borne by the City, unless such a special review demonstrates that Developer is not acting in good faith compliance with the provisions of this Agreement. In such cases, Developer shall reimburse City for all costs, direct and indirect, incurred in conjunction with such a special review.

(c) Procedure for Review. The City's Director of Community Development (the "Community Development Director") shall conduct the review contemplated by this Section 23 to ascertain whether Developer has complied in good faith with the terms and conditions of this Agreement during the period for which the review is conducted. The Community Development Director shall give Developer written notice that any such review has been commenced, and shall give Developer at least twenty (20) days after Developer's receipt of such notice to provide to the Planning Director such information as Developer deems relevant to such review. In addition, upon the written request of the Community Development Director, Developer shall furnish such documents or other information as requested by the Community Development Director.

(d) Result of Review. If, following such a review, the Community Development Director finds good faith compliance by Developer with the terms and conditions of this Agreement, the Community Development Director shall issue to Developer an executed certificate of compliance, certifying Developer's good faith compliance with the terms and conditions of this Agreement through the period of such review. Such certificate shall be in recordable form, and shall contain such information as may be necessary to impart constructive

record notice of the finding of good faith compliance hereunder. Developer shall have the right to record such certificate of compliance in the Official Records of the County of Los Angeles.

If, following such a review, the Community Development Director, finds that Developer has not complied in good faith with the terms and conditions of this Agreement, the Community Development Director shall specify in writing the respects in which Developer has failed to so comply. The Community Development Director shall provide Developer with written notice of such noncompliance in the manner provided in Section 29, together with a written specification of the reasons therefor. Such written notice shall also specify a reasonable time for Developer to cure such non-compliance, which time shall be not less than thirty (30) days after Developer's receipt of such notice.

(e) Appeals to City Council. A determination of non-compliance by the Community Development Director pursuant to this Section 23 shall be appealable to the City Council within thirty (30) days after Developer's receipt of the Community Development Director's written notice of non-compliance given pursuant to Section (d) above. If Developer appeals such a determination to the City Council, then the City Council shall schedule a public hearing thereon not later than thirty (30) days after the date on which Developer gives its notice of appeal to City. At such hearing, Developer shall be entitled to address all of the issues considered by the Community Development Director in making such determination. Information presented by Developer at such hearing may be presented orally and/or in writing. If, after receiving any written response of Developer to the Community Development Director's determination, and after considering all of the information presented at such hearing, the City Council finds and determines that Developer has not in good faith complied with the terms and conditions of this Agreement, then the City Council shall specify in writing to Developer the respects in which Developer has failed to so comply, and shall also specify a reasonable time for Developer to cure such non-compliance, which time shall be not less than thirty (30) days after Developer's receipt of such notice. A determination by the City Council of non-compliance shall be in writing delivered in accordance with Section 29, and shall specify in detail the grounds therefor, so that Developer shall have the opportunity to implement any measures necessary to cure such non-compliance. If the noncompliance so specified by the City Council is not cured within the time so specified, then City may terminate this Agreement by providing written notice of termination.

(f) Effect on Default. Nothing in this Section 23 shall be interpreted to prevent the City from providing Developer with a notice of default hereunder at any time other than during a periodic review under this Section 23, or from terminating this Agreement pursuant to the provisions hereof following any event of default by Developer.

(g) Compliance With Law. Notwithstanding any provision of this Agreement, the Parties and William Morris agree to comply with all federal, state and local laws and to act in good faith and reasonably in carrying out the terms of this Agreement.

25. Future Litigation Expenses.

(a) Payment of Prevailing Party. If City, Developer or William Morris brings an action or proceeding (including, without limitation, any motion, order to show cause, cross-complaint, counterclaim, third-party claim or arbitration proceeding) by reason of defaults,

breaches, tortious acts, acts of omission, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit including, but not limited to, reasonable attorneys' fees and expert witness fees.

(b) Scope of Fees. Attorneys' fees under this Section shall include attorneys' fees on any appeal and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action. In addition to the foregoing award of attorneys' fees to the prevailing party, the prevailing party in any lawsuit shall be entitled to its attorneys' fees incurred in any post-judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

26. Headings. The section headings used in this Agreement are for convenient reference only and shall not be used in construing this Agreement. The words "include," "including" or other words of like import are intended as words of illustration and not limitation and shall be construed to mean "including, without limitation."

27. Amendment. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, as follows:

(i) City and Developer, by mutual agreement, may terminate or amend the terms of this Agreement, and the amendment or termination shall be accomplished in the manner provided under California law for the enactment of Development Agreement amendments.

(ii) Except as may be otherwise agreed to by the Parties, no amendment of this Agreement shall be required in connection with the issuance of any Subsequent Project Approval. Any Subsequent Project Approval issued after the Effective Date of this Agreement automatically shall be incorporated into this Agreement and vested hereby.

28. Alterations. No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Agreement, and made in the manner required by the Development Agreement Act.

29. Waiver. The failure of either party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by any party hereto of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such party.

30. Severability. If any article, section, subsection, term or provision of this Agreement, or the application thereof to any party or circumstance, shall, to any extent, be invalid

or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement, or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, except that if any provision of Section 10 is held invalid or unenforceable before issuance of a building permit for the Project, then this entire Agreement shall be void and unenforceable and of no further force and effect.

31. William Morris Obligations. The Parties acknowledge that William Morris' obligations and rights under this Agreement are limited to Section 10(j), 20 and 21. Specifically, William Morris shall be obligated to comply with Section 10(j) in the event that William Morris subleases office space within the Project under the conditions specified in that Section. William Morris shall not be responsible for any obligation of Developer under this Agreement and Developer is not obligated in any way to William Morris under this Agreement.

32. Force Majeure. Performance by any Party of its obligations hereunder (other than for payment of money) shall be excused during any period of "Permitted Delay," which Permitted Delay shall mean and include delay beyond the reasonable control of the Party claiming the delay (and despite the good faith efforts of such Party) including without limitation all of the following: acts of God; civil commotion; riots; strikes; picketing or other labor disputes; shortages of materials or supplies; damage to work in progress by reason of fire, floods, earthquake or other casualties; failure, delay or inability of the other Party to act; and litigation brought by a third party attacking the validity of this Agreement.

33. Notices. All notices, disclosures, demands, acknowledgments, statements, requests, responses and other communications (each, a "Communication") to be given under this Agreement shall be in writing, signed by a signatory hereto (or an officer, agent or attorney of such party) giving such Communication, and shall be deemed effective (i) upon receipt if hand delivered or sent by overnight courier service; or (ii) upon delivery or the date of refusal if sent by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To the Developer: Beverly Wilshire Owner, LP
Attn: Peter Duncan
c/o George Comfort & Sons of California, Inc.
9465 Wilshire Blvd., Suite 200
Beverly Hills, CA 90212

with copy to: Mark Egerman, Esq.
Egerman & Brown, LLP
9401 Wilshire Blvd.
Suite 500
Beverly Hills, CA 90212

To the City: City Manager
City of Beverly Hills
455 N. Rexford Dr.
Beverly Hills, California 90210

with copy to: City Attorney
City of Beverly Hills
455 N. Rexford Drive
Room 220
Beverly Hills, California 90210

To William Morris: William Morris Agency
Attn: Irving J. Weintraub
1 William Morris Plaza
Beverly Hills, California 90212

with a copy to: Dan McIntosh, Esq.
Morrison & Forrester
555 W. Fifth Street
Suite 3500
Los Angeles, California 90013

Any signatory hereto may from time to time, by notice given to the other signatories hereto pursuant to the terms of this Section 29 change the address to which communications to such signatory are to be sent or designate one or more additional persons or entities to which communications are to be sent.

34. Applicable Law. This Agreement shall be governed in all respects by the laws of the State of California.

35. Time is of the Essence. Time is of the essence of this Agreement and every term or performance hereunder.

36. Entire Agreement. This Agreement supersedes any prior understanding or written or oral agreements among the Parties and William Morris hereto respecting the within subject matter and contains the entire understanding among the Parties and William Morris with respect thereto.

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

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the ____
____ day of _____, 200 ____.

CITY OF BEVERLY HILLS
A Municipal Corporation

JIMMY DELSHAD
Mayor of the City of
Beverly Hills, California

ATTEST:

BYRON POPE
City Clerk

Beverly Wilshire Owner, LP,
A Delaware limited partnership

By: GCS Wilshire LLC,
A Delaware limited liability company,
Its General Partner

By: _____
PETER S. DUNCAN
President

William Morris Agency, LLC,
A Delaware limited liability company

By: _____
IRVING J. WEINTRAUB
Chief Operating Officer

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager

EXHIBIT A

The Property situated in the State of California, County of Los Angeles described as follows:

LOTS 8 THROUGH 16 INCLUSIVE, IN BLOCK 10 OF "BEVERLY" IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11 PAGE 94 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

EXHIBIT B

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO: City Clerk City of Beverly Hills 455 N. Rexford Beverly Hills, California 90210	
THE AREA ABOVE IS RESERVED FOR RECORDER'S USE	

A.P.N.: _____

Exempt from recording fees pursuant to Government Code § 27383.

Exempt from documentary transfer taxes pursuant to Revenue Taxation Code § 11922.

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (the "Agreement") is entered into as of _____, 2007 (the "Effective Date"), by and between _____, a _____ ("Grantor") and THE CITY OF BEVERLY HILLS, a municipal corporation ("Grantee").

RECITALS

A. Grantor is the owner of the land described on Exhibit "A" and the improvements thereon ("Grantor Parcel").

B. Grantor and Grantee have entered into a Development Agreement dated _____, 2007 in connection with a proposed development on a parcel adjacent to the Grantor Parcel (the "Development Agreement").

C. The Development Agreement requires that Grantor enter into this Agreement with Grantee to provide an entranceway or "portal" for a subway station under Wilshire Boulevard that is assignable to the Metropolitan Transportation Authority (or any other governmental entity responsible for constructing and maintaining a subway station) for the benefit of a future subway line.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee, a subway portal easement (“Easement”) in, over and under the Grantor Parcel provided, however, that the surface area at ground level of such portal shall not exceed three hundred (300) square feet and shall be in an area not within the existing building.

2. Purpose of Easement. The purpose of the Easement shall be for the construction, installation, operation, maintenance, improvement and repair/replacement (as necessary) of an entrance or “portal” (and related improvements) to a subway station to be constructed under Wilshire Boulevard in the City of Beverly Hills, California.

3. Special Restrictions on Use of Easement. The Easement may not be used in a manner that materially interferes with, limits access to or materially affects the structural integrity of, or causes the loss of any parking spaces from the Grantor Parcel.

4. Expiration. The Easement will expire in the event that: (i) the Grantee does not accept the Easement in writing on or before the twentieth (20th) anniversary of the date of this Easement; or (ii) neither the Metropolitan Transportation Authority (“MTA”) nor any other appropriate governmental entity involved with the subway obtains financing for the construction of the subway station on or before the twentieth (20th) anniversary of the date of this Easement.

5. Miscellaneous.

(a) Notices. Any notice to be given under or in connection with this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (iii) two (2) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to Grantor:

Beverly Wilshire Owner, LP
Attn: Peter Duncan
c/o George Comfort & Sons of California, Inc.
9465 Wilshire Blvd., Suite 200
Beverly Hills, CA 90212

With a copy to:

Mark Egerman, Esq.
Egerman & Brown, LLP
9401 Wilshire Blvd., Suite 500
Beverly Hills, CA 90210

If to Grantee:

City of Beverly Hills
Beverly Hills City Hall
455 North Rexford Drive
Beverly Hills, California 90210
Attn: City Manager

With a copy to:

City of Beverly Hills
455 North Rexford Drive, Suite 220
Beverly Hills, California 90210
Attn: City Attorney

(b) Assignment; Successors and Assigns. The Grantee may assign its rights and obligations hereunder to the MTA or to any other governmental entity responsible for constructing or maintaining the subway station and, upon a written assumption by such assignee of the obligations hereunder, Grantee shall be released from all obligations and liabilities arising after the date of the assumption. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, each party, its successors, assigns and successors-in-interest.

(c) Running With Land. The covenants and agreements contained herein and the rights, privileges and easements herein granted shall run with, burden and shall be appurtenant to the properties described herein.

(d) Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

(e) Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the validity of the other provisions of this Agreement shall in no way be affected thereby.

(f) Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(g) Further Acts. Each of the parties shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Agreement (including, without limitation, obtaining and delivering to Grantee prior to the recordation of this Agreement reasonable subordination agreements from the holders of any liens encumbering the Easement area that are or might be senior to this Agreement as of the date of the recordation of this Agreement).

(h) Attorneys' Fees. If any action shall be commenced to enforce the terms of this Agreement or to declare the rights of the parties hereunder, the prevailing party shall be entitled to recover all of its costs and expenses (including, but not limited to, its actual attorneys fees) from the nonprevailing party. In addition to the foregoing award of attorneys' fees and other litigation costs to the prevailing party, the prevailing party in any lawsuit on this Agreement shall be entitled to its attorneys' fees and other litigation costs incurred in any post-

judgment proceedings to collect or enforce the judgment. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement. This provision shall survive the termination of this Agreement.

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

GRANTOR:

GRANTEE:

THE CITY OF BEVERLY HILLS

By: _____
Print Name: _____
Title: _____

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

Approved as to form:

Approved as to content:

LAURENCE WIENER
City Attorney

RODERICK J. WOOD
City Manager

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

On _____, 200_, before me, _____, a Notary Public, personally appeared _____, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Notary's Signature

EXHIBIT "A"

LEGAL DESCRIPTION OF THE GRANTOR PROPERTY

CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by that certain Easement Agreement dated _____, __ 200__, from _____, to the CITY OF BEVERLY HILLS, a municipal corporation (the "City"), which is a governmental agency, is hereby accepted by the undersigned officer on behalf of the City pursuant to the authority conferred by resolution of the City, Resolution Number _____, adopted on _____, and that the City consents to recordation thereof by its duly authorized officer.

Dated: _____, 200__

CITY OF BEVERLY HILLS

City Manager

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On _____, 200__, before me, _____, a Notary Public in and for the State of California, personally appeared _____, personally known to me 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 in and for the State of California

(SEAL)