



## CITY OF BEVERLY HILLS AGENDA REPORT

**Meeting Date:** April 6, 2010  
**Item Number:** E-2  
**To:** Honorable Mayor & City Council  
**From:** Susan Healy Keene, AICP, Director of Community Development  
**Subject:** Discussion of an Amendment to a Covenant Regarding Real Property at 8601 Wilshire Boulevard  
**Attachments:**

1. Applicant 's Request
2. Covenant Containing Restrictions Affecting Real Property Agreement No-21-03
3. Resolution No-03-R-11280 & Resolution No.03-R-11517
4. Letters from former Councilmembers Associated with this Project

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### **RCOMMENDATION**

Receive this report and provide direction to staff.

### **INTRODUCTION**

It is requested that the City Council provide direction to staff relating to a request to amend an existing covenant affecting the existing 37-unit apartment building located at 8601 Wilshire Boulevard. The covenant prohibits the applicant from submitting applications to convert the existing apartments to condominiums.

The existing apartment building was previously a commercial building before receiving approval to convert to apartments. During the public hearing process, concerns were raised about the lack of new or high-end rental units in the City. It was noted that over the last 20 years, many types of multi-family residential condominium structures were built in the City, but no new luxury rental units were constructed and many existing apartment buildings were demolished. The conversion of the commercial building to rental apartments was viewed as a way increase the City's rental housing stock, however, there was concern over the loss of commercial space within the City and its impact of business tax which would only remain if the project remained as rental apartments. To assuage these concerns, the applicant agreed to a covenant prohibiting the property owner from submitting applications to convert the apartments to

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condominiums in the future. The covenant was approved by the City Council on February 4, 2003 and recorded by the Property Owner on May 11, 2004.

On February 2, 2010, an application was filed requesting the City Council amend the Covenant Containing Restrictions Affecting Real Property (Agreement No. 21-03) to allow applications to convert the rental apartment units to condominiums to be processed by the City. (See Attachments 1 and 2, Applicant's Request and Covenant Containing Restrictions Affecting Real Property, respectively).

## **BACKGROUND**

On February 4, 2003, the City Council permitted the conversion and renovation of an existing commercial building to residential uses at 8601 Wilshire Boulevard. The approval allowed for the renovation and conversion of the existing legally non-conforming 11-story office building into 37 residential rental units (apartments) with approximately 650 square feet of ground floor retail and 114 on-site parking spaces. The project site is located at the northwest corner of Wilshire Boulevard and Stanley Drive. Adjacent developments consist of a mix of commercial and residential uses.

The building permits for the project were issued on June 30, 2005. The building received Certificate of Occupancy on April 18, 2008.

The project presented before the City Council was for rental units and, during the course of the public hearing process, to allay City's concern over the potential condominium conversion, the applicant stated that he would record a covenant prohibiting the conversion of the 37 rental units to condominiums in the future. The Covenant was recorded on May 11, 2004 (Attachment 2).

Section 3 of the Covenant, "Conversion Prohibited," states in part that:

*All of the residential units shall be exclusively used as residential units and neither owner or its successors, assignees, and every successor in interest to the property or any part thereof shall submit an application to convert the residential units to condominium or stock cooperative ownership.*

As indicated in Section 12 of the attached covenant, the Covenant may be modified by the City Council. On October 29, 2009, Mr. Egerman on behalf of property owner Carlyle/Galaxy Wilshire, LP., submitted applications to convert the apartment building to condominiums. However, due to the restrictions contained in the covenant, the City Council must first amend the covenant before staff can process the condominium conversion request. In this regard, on February 4, 2010, Mr. Egerman submitted the subject request to amend the covenant.

## **DISCUSSION**

The property is located along Wilshire Boulevard in a predominantly commercially zoned area. The City Council adopted an overlay zone for this property in order to allow the conversion of the commercial building to 37 apartment units. As noted above, the project before the City Council was a rental project and the applicant stated that they would record a covenant against the property to ensure that it would not become

condominiums. Based on this representation, in making findings that the project was consistent with the General Plan, the City Council found that the implementation of the project would, "...advance the City's goal to expand its rental housing stock" (Section (d), Page 9 of Resolution 03-R-11280) and help to satisfy the need for rental housing in the City, thereby, promoting the public welfare of all residents of the City. At the time, new apartment complexes were not being developed in the City and the City sought to encourage the development of new rental housing in the City to advance the Housing Element and Land Use goals and objectives of City's General Plan. The Land Use Element identifies the east Wilshire area as an area of limited development potential and provides that the City should explore the feasibility of mixed-use developments in order to expand the variety of housing types available and to improve the commercial/residential transitions.

The City Council found that the proposed residential use would be compatible with the adjacent single-family residential neighborhood and would provide a buffer to shield the adjacent single-family residential neighborhood from the intrusive effects of the higher intensity commercial uses along Wilshire Boulevard with higher traffic volumes. Further, the City Council found that the project would provide an opportunity for a quality mixed-use development which would provide additional housing with high quality amenities and high quality architectural design.

The applicant's request to amend the Covenant sets forth various reasons in support of the amendment, including several statements which purport that the Covenant is either not binding, in violation of State Laws or void as against public policy. The City Attorney's Office has reviewed the applicant's request and considers that the Covenant a legally binding that does not violate law as suggested by the applicant.

Should the City Council determine that an amendment to the Covenant is appropriate, the applicant would be afforded an opportunity to submit applications to convert the apartments to condominiums. While it is anticipated that a loss of business tax revenue would be associated with the conversion, the applicant has suggested other possible public benefits that may off-set those lost revenues. If a conversion application is ultimately submitted, staff would conduct a thorough review of the project, including a comprehensive fiscal analysis.

## **PROCESS**

The City Council is being asked to amend a Covenant which restricts the property owner from submitting applications to the City to convert an existing apartment building to condominiums. If the Council's desire is not to amend the Covenant, no further analysis will be completed. However, if directed, staff will bring an amended Covenant before the City Council at a future meeting for formal action.

Amending the Covenant does not mean that the City Council is supportive of a condominium conversion, just that it would allow staff to process applications required for the conversion. Based on staff's understanding of the project, the following entitlements would be needed to allow the conversion:

1. Zone text amendment to allow smaller average floor area for all residential units as specified within the Adaptive Reuse Planned Development Overlay Zone and to not comply with all aspects of the City's Common Interest Development Ordinance;

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2. Subdivision and Development Plan Review applications to allow condominium conversion
3. General Plan Amendment to allow residential condominium on commercially zoned properties.

If the Covenant is amended, these applications would be analyzed by staff and the conversion project would be subject to public hearings before both the Planning Commission and the City Council.

**FISCAL IMPACT**

There is no fiscal impact related to the City Council's action to amend the covenant. If amended, the review of the conversion from apartments to condominiums would include an analysis of the fiscal impacts as revenue generated by apartments is different than revenue generated by condominiums.

Susan Healy Keene, AICP Director  
of Community Development

  
Approved By

# **1. Applicant 's Request**

**CITY OF BEVERLY HILLS  
APPLICATION TO AMEND COVENANT**

*Applicant's Name:* Carlyle/Galaxy Wilshire, LP

*Applicant's Address:* 11100 Santa Monica Blvd., Ste. 750  
Los Angeles, CA 90025

*Applicant's Telephone No.:* 310-575-1735

*Property for which the application is requested (give street address and exact legal description of the property):*

8601 Wilshire Blvd., Beverly Hills, CA 90211. APN: 4334-014-045; Lot 200 and 201 of Tract No. 4988, in the City of Beverly Hills, County of Los Angeles, State of California, as per Map recorded in Book 54, Pages 98 and 99 of Maps, in the office of the County Recorder of said County.

*Identify the specific boundaries of the area:*

The site is located at the northwest corner of Wilshire Boulevard and Stanley Avenue. It is bounded by Wilshire Boulevard on the south, Stanley Avenue on the east, the northerly boundary line of lots 200 and 201 on the north, and the westerly boundary line of lot 200 on the west.

**NEIGHBORING USES:**

North:	Residential	South:	Commercial
East:	Commercial	West:	Commercial

## HISTORICAL BACKGROUND

The real property located at 8601 Wilshire Boulevard, Beverly Hills, California was originally constructed as an eleven story office building. An application was filed on behalf of the then owner 8601 Wilshire Associates, LLC for approval of a Planned Development to renovate and convert the office building into 37 residential rental units. Pursuant to Resolution No. 03-R-1128 (the "Resolution"), the City Council on February 4, 2003, approved a Planned Development for Adaptive Re-Use. A copy of said Resolution is attached hereto as Exhibit "A." During the public hearing on the matter the applicant volunteered to record a covenant prohibiting the conversion of the 37 rental units into condominiums (See Section 6.1(d) of the Resolution). Under Section 7.1 of the Resolution the Council approved 37 residential rental units for the Planned Development. Although the Resolution restricted the use to residential rental units, the Resolution also contemplated that the applicant in the future could apply to the Council for conversion of the residential apartments into condominiums or for other uses. Specifically, Section 9-7.1 states:

"No uses other than those specifically approved in Section 7 of this Resolution (i.e., residential rental apartments and ground floor commercial) shall be permitted as part of this Planned Development. This condition shall not be construed to bar the applicant from requesting a modification at a later date to permit additional uses as part of this Planned Development."

Thereafter, S.O.N.I., a neighborhood organization, filed an action against the City and 8601 Wilshire Associates, LLC to prevent the Planned Development, under Los Angeles Superior Court case number BS 081500. The lawsuit was resolved by a Judgment Pursuant to Stipulation ("Judgment") dated November 25, 2003, of which the City was a party. Attached hereto as Exhibit "B" is a true and correct copy of the Judgment. All parties, including the City, recognized in the Judgment that the owner or a future owner of the property could apply to convert the property into condominiums. Paragraph 2 H of the Judgment states in part:

"These modifications shall remain in full force for the duration of the life of the Project. In the event that the Project is subsequently modified to permit conversion of some or all of the currently contemplated and approved rental units to condominium or similar equity ownership (which conversion is not hereby sanctioned by this Judgment and each party reserves all of its rights with respect thereto) all of the provisions of this Judgment shall apply to said modified Project. . . ."

Thereafter, on May 11, 2004, a Covenant Containing Restrictions Affecting Real Property was recorded with the Los Angeles County Recorder's Office as instrument number 04-1193758 (the "Covenant"). Attached hereto as Exhibit "C" is a true and correct copy of the Covenant. The Covenant, as drafted, violates the express provisions of the Resolution and the Judgment. It not only prohibits the conversion of the property into condominiums, but also restricts an owner from making application to convert, directly contrary to Section 9-7.1 of the Resolution and paragraph 2. H. of the Judgment.

Paragraph 3 of the Covenant provides as follows:

"Conversion Prohibited The Owner covenants and agrees for itself, its successors, assignees, and every successor in interest to the Property or any part thereof that the thirty-seven (37) Residential Units approved by the City pursuant to Resolution No. 03-R-11280, as modified by Resolution No. 03-R-11517, and the Property shall be restricted as provided in this Section 3 in perpetuity. All of the Residential Units shall be exclusively used as residential rental units and neither Owner nor its successors, assignees, and every successor in interest to the Property or any part thereof shall hereafter submit an application for or otherwise attempt to convert the Residential Units to Condominium or Stock Cooperative ownership."

Paragraph 12 of the Covenant also provides that it may be released, amended, or modified with the permission of the City Council:

"Amendment. This Covenant may not be release[d], amended or modified without the written consent of the City Council of the City of Beverly Hills and any such release, amendment or modification will not be effective until an instrument memorializing the same is executed and acknowledged by both City and Owner or their respective successors in interest and recorded in the Official Records of the Los Angeles County Recorder's Office."

The last phrase of paragraph 3 of the Covenant: ". . . and neither Owner nor its successors, assignees, and every successor in interest to the Property or any part thereof shall hereafter submit an application for or otherwise attempt to convert the Residential Units to Condominium or Stock Cooperative ownership" is contrary to the express terms of the Resolution and Judgment and, as such, should be deleted from the Covenant. Carlyle Galaxy filed applications to convert the rental units to condominiums. City staff has declined to process the applications because of the language in the Covenant.

**APPLICANT REQUESTS THAT THE CITY COUNCIL  
AMEND THE COVENANT BY DELETING THE PROVISION  
THAT PROHIBITS THE FILING OF AN APPLICATION TO CONVERT**

Carlyle/Galaxy Wilshire, LP requests that the City Council amend the Covenant to delete the following language from paragraph 3 of the Covenant:

“ . . . and neither Owner nor its successors, assignees, and every successor in interest to the Property or any part thereof shall hereafter submit an application for or otherwise attempt to convert the Residential Units to Condominium or Stock Cooperative ownership.”

The request is made for the following reasons:

1. The Covenant’s prohibition against filing an application to convert residential rental units into condominiums exceeds the authorization of the Resolution and is contrary to the acknowledgment in the Judgment.
2. The Covenant’s prohibition against filing an application before a governmental body is void as against public policy.
3. The Covenant’s provision against filing an application with the City is not binding because there was no consideration.
4. The Covenant should be amended to reflect the true intent of the parties, which was to allow the filing of an application for a different use.
5. The Covenant’s prohibition against filing an application to convert residential rental units into condominiums is in violation of the Ellis Act.
6. The Covenant’s prohibition against filing an application to convert the units to condominiums is void as it unduly restricts the use of the property.
7. The City Council should not be denied the opportunity to review the application so the City Council can approve or disapprove the application based on its merits.

**THE COVENANT'S PROHIBITION AGAINST FILING AN  
APPLICATION TO CONVERT THE UNITS TO CONDOMINIUMS IS  
CONTRARY TO THE TERMS OF THE RESOLUTION AND JUDGMENT**

Resolution No. 03-R-11280 is the enabling Resolution authorizing the Covenant. Section 6.1(d) contains the language that was "translated" into the Covenant's prohibition against filing an application to convert the residential rental units into condominiums. The actual language in Paragraph 6.1(d), however, is not nearly as restrictive as the language contained in the Covenant. Paragraph 6.1(d) of the Resolution states:

"The Applicant has voluntarily stated on the record that it will record a covenant prohibiting the conversion of the 37 rental units to condominiums. Based on this representation, the City Council finds that implementation of the Planned Development will advance the City's goal to expand its rental housing stock."

Further, Section 9-7.1 of the Resolution specifically states:

"No uses other than those specifically approved in Section 7 of this Resolution (i.e., residential rental apartments and ground floor commercial) shall be permitted as part of this Planned Development. This condition shall not be construed to bar the applicant from requesting a modification at a later date to permit additional uses as part of this Planned Development."

The Covenant's language, as stated earlier, is directly contrary to the Resolution. Notably, it restricts the rights of successors-in-interest, who were not signatories to the Covenant, and prevents them from filing an application to convert the residential rental units into condominiums. Since the language in the Covenant's provision does not track the language in the Resolution, it should be deleted. Nowhere in the Resolution does it authorize a Covenant provision that prohibits any person from filing an application to convert the residential rental units into condominiums.

The Resolution merely states that the Applicant would voluntarily record a covenant prohibiting the conversion of the 37 rental units to condominiums. Pursuant to the Resolution, there is no restriction on a party from applying to rescind or amend the Resolution and Covenant. Thus, there is a significant difference between what the Resolution authorizes and what the Covenant states. Put simply, the Resolution does not authorize the prohibition of filing applications with the City. Therefore, the Covenant should be amended to delete the offending language.

Further, the City of Beverly Hills is a party to the Judgment. The Judgment specifically contemplates the possibility that the Property will be converted into condominiums. It was specifically approved as to form by legal counsel for the City. Paragraph 2. H. of the Judgment states:

“In the event that the Project is subsequently modified to permit conversion of some or all of the currently contemplated and approved rental units to condominium or similar equity ownership (which conversion is not hereby sanctioned by this Judgment and each party reserves all of its rights with respect thereto) all of the provisions of the Judgment shall apply to said modified Projects. . . .”

Since the Judgment specifically anticipates the possibility of an application for conversion, it is at odds with the Covenant’s provision prohibiting the filing of an application to convert the units into condominiums. In light of this fact the language in the Covenant prohibiting the filing of an application should be deleted.

**THE COVENANT’S PROHIBITION AGAINST FILING AN APPLICATION TO CONVERT THE UNITS TO CONDOMINIUMS IS CONTRARY TO PUBLIC POLICY AND, AS SUCH, SHOULD BE DELETED**

A contract or provision that is contrary to public policy is illegal and void. The Civil Code classifies illegal contracts in three groups: (1) those contrary to express statutes; (2) those contrary to the policy of express statutes; (3) those otherwise contrary to good morals. 1 WITKIN, *Summary 10th (2005) Contracts*, §451, p. 492 citing C.C. 1667.

The offending provision is contrary to both stated law and contrary to the policy expressed in the law. The provision preventing an applicant, who is a non-contracting party, from petitioning the government is in direct violation of the applicant’s constitutional rights. The right to petition is a fundamental and constitutional right under both the U.S. and California Constitutions.

The First Amendment of the United States Constitution states:

“**Congress shall make no law** respecting an establishment of religion, or prohibiting the free exercise thereof; or **abridging** the freedom of speech, or of the press; or **the right of the people** peaceably to assemble, and **to petition the Government for a redress of grievances.**”

The right to petition is also protected in the California Constitution. Article 1, Section 3 (a) of the California Constitution states:

“The people have the right to instruct their representatives, petition government for redress of grievances . . . (2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision, shall be broadly construed if it furthers the people's right of access, and narrowly construed if it limits the right of access. A statute, court rule, or other authority adopted after the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.”

The right to petition the government has been interpreted as extending to petitions to all three branches of government: the legislative, the executive and the judiciary. The Supreme Court has interpreted “redress of grievances” broadly.

As expressed in the U.S. and California Constitutions, there is a strong, fundamental public policy in preserving a person’s right to petition, which includes the right to petition the City Council of Beverly Hills to convert residential rental units into condominiums.

Case law is in accord. *Abramson v. Juniper Networks, Inc.* (2004) 115 Cal.App.4th 638 involved an arbitration provision wherein an employee had to pay one-half of the up-front arbitration fees. In *Abramson*, the Court struck the contractual provision concluding that it was unconscionable and void as against public policy, since it had the practical effect of reducing access to the court system and the alternative arbitration forum.

Case law and public policy have always looked unfavorably on the impairment of a constitutional right, such as the constitutionally guaranteed right to petition. In *Johnson v. Avery* (1969) 393 U.S. 483, 89 S.Ct. 747, the Supreme Court held that a regulation preventing lay prisoners from advising other prisoners on the preparation of writs was void. The Supreme Court reasoned that just as the rule forbidding illiterate or poorly educated prisoners to file habeas corpus petitions was unconstitutional since it prevented prisoners’ access to the courts, a regulation that had the same practical effect was also void. *Id.* at 749.

In *In re Harrell* (1970) 2 Cal.3d 675, the Court of Appeal exhaustively reviewed the constitutional implications of the *Johnson* case and concluded that the validity of a particular restriction is determined by measuring “the extent of restriction against the need for restriction.” *Id.* at 686. Courts have held that restrictions on constitutional rights only pass constitutional muster when the

restriction is necessary to achieve a compelling state interest. In other words, a restriction is not valid if there are alternative means by which to secure the compelling state interest. See *Wood v. Superior Court (Bd. of Medical Quality Assur.)* (1985) 166 Cal.App.3d 1138. In the present case, the Covenant's provision is an unnecessary restriction on an applicant's right to petition the government. The restriction serves no legitimate purpose, since any application would remain subject to the City Council's approval.

Moreover, any contractual provision that has a tendency to hurt the public welfare is void as against public policy. See 1 WITKIN, *Summary 10th (2005) Contracts*, §452, p. 492. In *Cariveau v. Halferty* (2000) 83 Cal.App.4th 126, the court concluded that when the policy of the statute or rule outweighs the interest in enforcement of a contractual term, a court will not assist in giving effect to the contractual term. *Id.* at 132. In *Cariveau*, a securities dealer was investigated and disciplined after a former client complained of the dealer's misconduct. The dealer then sued the client for breach of a confidentiality clause in an earlier "forbearance agreement," which prohibited the client from discussing the dealer's misconduct with regulatory authorities. The court held that the confidentiality clause was void and unenforceable as a violation of public policy based on the fact that it would tend to injure the public welfare by not enforcing regulations against unethical dealers.

In the present case, preventing a land owner from petitioning the City to allow the conversion of units into condominiums is not only contrary to the rights of the individual, but also contrary to the public's interest of being able, through its elected representatives, to determine whether a conversion of the units into condominiums is in the public's interest. The provision prevents an airing of the issue before the Planning Commission and City Council and, therefore, is against the public policy of having these types of decisions made in public with all sides being given the opportunity to be heard.

**THE PROVISION IN THE COVENANT AGAINST FILING AN APPLICATION  
TO CONVERT THE UNITS TO CONDOMINIUMS WITH THE CITY SHOULD BE  
DELETED BECAUSE THERE WAS NO CONSIDERATION**

Finally, as expressly stated in the Resolution, the provision in the Covenant prohibiting an application to the City to convert of the 37 rental units to condominiums was not only not part of the enabling Resolution, there was also no consideration to support the provision. In *Bard v. Kent* (1942) 19 Cal.2d 449, 452 a lessee, having an option for which no consideration had been given, spent money for architect's drawings of proposed improvements in the property. The court held that the option was revocable because the offeror had not agreed to accept these acts as consideration.

for architect's drawings of proposed improvements in the property. The court held that the option was revocable because the offeror had not agreed to accept these acts as consideration.

"In the words of the Restatement of Contracts (§ 75): Consideration must actually be bargained for as the exchange for the promise. . . . The existence or non-existence of a bargain where something has been parted with by the promisee or received by the promisor depends upon the manifested intention of the parties. . . . The fact that the promisee relies on the promise to his injury, or the promisor gains some advantage therefrom, does not establish consideration without the element of bargain or agreed exchange.'"

In the present situation, the agreement to record a covenant that the units would remain rental units did not include an understanding that the promisor would never in the future apply to amend or rescind the covenant and apply to have units converted into condominiums. Not filing future applications was not part of the bargained for exchange. In *Stern v. Franks* (1939) 35 Cal.App.2d 676, 678, the court held that consideration must be bargained for: "Nothing is consideration that is not regarded as such by both parties. It is the price voluntarily paid for a promisor's undertaking." (Internal citations and quotations omitted.) No consideration was given in exchange for the a commitment not to file an application in the future, and, as such, the provision is revocable.

Also, past consideration is insufficient and cannot be consideration for a new promise. 1 Witkin, Summary 10th (2005) Contracts , § 217, p. 250 citing *Lagomarsino v. Giannini* (1905) 146 C. 545, 546. So to the extent that contemporaneous agreements were made, these do not alleviate or mitigate the fact that no consideration was given for the provision in the Covenant not to file an application for conversion of the rental units into condominiums which was made "voluntarily."

"However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract." Civil Code § 1648.

Since the Resolution states that the applicant voluntarily agreed to covenant that the rental units will remain rental units, there is uncontroverted evidence that the Covenant's provision prohibiting the mere application to convert the units into condominiums is not supported by any consideration.

**THE COVENANT SHOULD BE INTERPRETED IN A MANNER THAT  
REFLECTS THE TRUE INTENT OF THE PARTIES**

There is no evidence that the former owner or the City intended that the Applicant's and its successors in interest's constitutional right to petition was being waived. In the present case, a mistake occurred. The Resolution setting for the agreement was mistakenly broadened when the Covenant was drafted.

"When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded." Civil Code § 1640.

"When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value." Civil Code § 3399.

The purpose of the Civil Code statutes is to give effect to the intentions of the parties. Since the Resolution does not contain language prohibiting the application to convert the units into condominiums, it appears that the Covenant's inclusion of this restriction was simply a mistake. Further evidence of a mistake is found in the Judgment, which demonstrates the parties' true intent, which was to allow the original applicant or a successor in interest to apply to convert the units into condominiums. Thus, the provision was a mistake, does not articulate the parties' intent, and should be deleted.

"A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful." Civil Code § 1636.

"A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates." Civil Code § 1647.

**THE COVENANT'S PROHIBITION AGAINST FILING AN APPLICATION  
TO CONVERT THE UNITS TO CONDOMINIUMS SHOULD BE  
DELETED AS IT IS IN VIOLATION OF THE ELLIS ACT**

The Ellis Act prevents a municipality from forcing a landlord to stay in the rental market business. The Act protects an individual's right to stop operating a rental property and stop leasing to tenants. In short, a landlord has the right under the Ellis Act to evict tenants and go out of the rental market business. Pursuant to the Ellis Act:

"No public entity, as defined in Section 811.2, shall, by statute, ordinance, or regulation, or by administrative action implementing any statute, ordinance or regulation, compel the owner of any residential real property to offer, or to continue to offer, accommodations in the property for rent or lease." Gov. Code § 7060(a).

The Covenant's prohibition against filing an application to convert residential rental units into condominiums is void as contrary to the express terms of the Ellis Act. The Covenant's provision requires that the property be operated as an apartment building. This type of requirement is expressly forbidden by the Ellis Act. The Ellis Act, by its express terms, supersedes the decision in *Nash v. City of Santa Monica*, 37 Cal.3d 97, which had upheld the City of Santa Monica's ordinance which prevented the landlord from exiting the rental market business by preventing the landlord from evicting tenants and demolishing his apartment building. The Ellis Act has been used countless times since its adoption to protect a property owner's right to exit the rental market business and convert his property into condominiums. Since the passing of the Ellis Act, restrictions that prevent a property owner from exiting the rental market business are not only against public policy, but also contrary to State Law.

**THE COVENANT'S PROHIBITION AGAINST FILING AN APPLICATION  
TO CONVERT THE UNITS TO CONDOMINIUMS SHOULD BE DELETED  
AS IT UNDULY RESTRICTS THE USE OF THE PROPERTY**

There is a long standing rule that restrictions on alienation are void when they are contrary to the transfer of the ownership interest. *See Bonnell v. McLaughlin* (1916) 173 Cal. 213 (the court held that where a deed conveyed property to the grantees, a subsequent provision that the grantees may not sell or mortgage it during their natural lives was void as repugnant to the granting clause). The rule against restrictions on alienation was codified in Civil Code Section 711, entitled: "Conditions Restraining Alienation Void," which states:

“Conditions restraining alienation, when repugnant to the interest created, are void.”

This restriction on conditions restraining alienation do not just apply to direct restraints, but also on indirect restraints. In *Dawn Investment Co. v. Superior Court* (1982) 30 Cal.3d 695, the Court of Appeal held that a due-on sale clause contained in a promissory note or deed of trust cannot be enforced upon the occurrence of an outright sale unless the lender can demonstrate that enforcement is reasonably necessary to protect against impairment to its security or the risk of default as it had a tendency to restrict the alienability of property.

The provision in the Covenant prohibiting the filing of an application has a tendency to restrict the alienability of the property. The provision also prevents the property’s best and most productive use. The same underlying rationale that supports the public policy against restrictions on alienation support the public policy against restrictions against improving the property by preventing an application to convert the units into condominiums. The Covenant’s provision prevents the owner from even attempting to maximize the property to its best and most productive use and that is contrary to public policy and the public’s general welfare.

**THE AMENDMENT IS IN THE CITY’S BEST INTEREST IN  
THAT IT ALLOWS THE CITY COUNCIL TO APPROVE OR  
DISAPPROVE THE APPLICATION ON THE MERITS**

The City Council should not be denied the opportunity to review the applications to convert so the City Council can approve or disapprove the applications based on their merits. The City Council is best served by giving the citizens of the City an opportunity to be heard on the merits of any application. The City Council should be afforded the opportunity to be presented all of the facts regarding the proposed conversion so it can determine whether a conversion of the units into condominiums is in the public’s interest.

By deleting the provision, the City Council will be able to review the filed applications, have that applications reviewed by the Planning Commission, have citizens of the City give input regarding the applications, and ultimately decide whether the conversion is in the best interest of the City.

## CONCLUSION

For the foregoing reasons Carlyle/Galaxy Wilshire, LP respectfully requests that the City Council of Beverly Hills amend the Covenant by deleting the following words from the third paragraph of the Covenant, "and neither Owner nor its successors, assignees, and every successor in interest to the Property or any part thereof shall hereafter submit an application for or otherwise attempt to convert the Residential Units to Condominium or Stock Cooperative ownership." The City Council would, of course, retain all of its rights to approve or disapprove the application for conversion. The amendment to the Covenant would simply allow the applications to convert to be processed, subject to the City Council's ultimate approval.

Dated: February 2, 2010

Carlyle/Galaxy Wilshire, LP

By:   
MARK EGERMAN

EXH. A

RESOLUTION NO. 03-R -11280

RESOLUTION OF THE COUNCIL OF THE CITY OF  
BEVERLY HILLS CONDITIONALLY APPROVING A  
PLANNED DEVELOPMENT FOR AN ADAPTIVE RE-USE  
PROJECT AT 8601 WILSHIRE BOULEVARD

The City Council of the City of Beverly Hills does resolve as follows:

Section 1. Lee Silver of Ervin, Cohen & Jessup LLP on behalf of 8601 Wilshire Associates LLC (hereinafter the "Applicant") has applied for approval of a Planned Development to renovate and convert an existing legally nonconforming office building into 37 residential rental units (apartments) with approximately 650 square-feet of ground floor retail and 114 on-site parking spaces (the "Planned Development") for property generally located at 8601 Wilshire Boulevard (the "project site"). The Planned Development is sometimes referred to herein as the "Project."

The project site is located in a Commercial C-3 zone at the northwest corner of Wilshire Boulevard and Stanley Drive. The property is currently developed with an eleven-story, legally nonconforming office building constructed in 1971. The existing building includes an 11-story office tower located along the Wilshire frontage setback approximately 80 feet from the northerly property line, which abuts a single-family residence. There is a three-level, above grade parking structure with rooftop parking located within the 80-foot setback and one subterranean parking level.

Adjacent development consists of a mix of commercial and residential uses. Development east and west of the project site along Wilshire Boulevard development is

comprised of commercial uses. To the south, across Wilshire Boulevard, are commercial structures that vary in height and density. South of the Wilshire Boulevard frontage, development primarily consists of Single Family Residential (R-1). Development east of La Cienega consists of Multiple Family Residential (R-4) south of Wilshire Boulevard, while development between Robertson and La Cienega is comprised of Single Family Residential (R-1).

The Applicant proposes to convert the existing office building into 37 rental units with ground floor retail of approximately 650 square-feet and 114 on-site parking spaces. The proposed apartment units would average 855 square feet in size and would include 29 one-bedroom units and eight two-bedroom units, with individual unit sizes ranging from a minimum of 670 square feet to a maximum of 1,175 square feet. The Applicant proposes to utilize approximately one-half of the rooftop area as an open patio. The combination of the rooftop patio and the balconies in the individual units will provide a total of 7,495 square feet of outdoor living space, slightly more than the 7,400 square feet of outdoor living space required by the Beverly Hills Municipal Code.

As part of the project, the Applicant is concurrently requesting a Zoning Code amendment to establish an adaptive re-use planned development overlay zone over the project site to be known as the C-3(A) Zone (proposed Article 19.6 of the Beverly Hills Municipal Code). The proposed Zoning Amendment would permit the conversion of the existing office building to residential uses. Approval of the Project will require the City Council to adopt the Zoning Amendment and approve the Planned Development.

Section 2. The Planning Commission conducted duly noticed public hearings on September 25, October 23, November 20, and December 12, 2002, at which times it received oral and documentary evidence relative to the Negative Declaration and the applications for the Zoning Amendment and the Planned Development. On December 12, 2002, the Planning Commission adopted Planning Commission Resolution No. 1264 recommending that the City Council adopt the proposed Zoning Code amendment establishing an adaptive reuse planned development overlay zone and approve the Planned Development for an adaptive re-use project at 8601 Wilshire Boulevard.

Section 3. On January 7, 2003, the City Council held a duly noticed public hearing to consider the application for a planned development to convert the existing legally nonconforming office building at 8601 Wilshire Boulevard to 37 residential rental units with ground floor retail. At said hearing, the City Council also considered concurrent requests by the Applicant for a Zoning Code amendment to establish an adaptive reuse planned development overlay zone. Evidence, both written and oral, including the staff report, supporting documentation and the record of the proceedings before the Planning Commission on the dates set forth in Section 2, was presented at said hearing. At the conclusion of the public hearing the City Council waived full reading and introduced Ordinance No. 03-O-2422 establishing the C-3(AR) Zone, an adaptive reuse planned development overlay zone and regulations pertaining thereto, and directed staff to prepare a resolution approving the Project subject to certain conditions.

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 and supporting technical studies, determined that there was no substantial evidence that approval of the Project may have significant environmental impact. Accordingly, the City prepared a negative declaration in accordance with Section 15070 of the State CEQA Guidelines. Pursuant to Section 15074(b) of said Guidelines, the City Council independently reviewed and considered the contents of the initial study and the negative declaration prior to deciding whether to approve the Project. Based on the initial study, the negative declaration, the comments received thereon, and the record before the City Council, the City Council hereby finds that the negative declaration prepared for the Project represents the independent judgment of the City and that there is no substantial evidence that the approval of the Project may have any significant environmental impact. The documents and other material which constitute the record on which this decision is based are located in the Department of Planning and Community Development and are in the custody of the Director of Planning and Community Development.

Section 5. In reviewing the Planned Development application, the City Council considered the following in accordance with the provisions of Section 10-3.1966 of the proposed Zoning Amendment:

- (1) Whether the Planned Development is consistent with the General Plan and any specific plans adopted for the area;
- (2) Whether the Planned Development will adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;
- (3) Whether the Planned Development will ensure the efficient use of existing resources and provide additional housing opportunities;
- (4) Whether the Planned Development will create any significant, adverse traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will minimize impediments to vehicular circulation and pedestrian safety;
- (5) Whether the Planned Development will encourage development of pedestrian friendly environments by allowing the conversion of impersonal, underutilized commercial buildings to residential uses while preserving a street-level presence that holds the interest of pedestrians and attracting additional neighborhood commercial uses; and
- (6) Whether the Planned Development will promote the public health, safety or general welfare.

Section 6. Based upon the evidence presented, including the staff report and oral testimony, the City Council hereby finds as follows with respect to the Planned Development:

6.1 The Planned Development is consistent with and implements the City's General Plan and conforms to the land use designations for the project site. The General Plan Land Use Element designates the project site Low Density Commercial, which permits mixed-use developments. Ordinance No. 03-O-2422 referenced above establishes development

standards to authorize the introduction of mixed land uses at the project site. The Planned Development will renovate an existing legally, nonconforming building and help rejuvenate the east Wilshire area. Additionally, the Planned Development will advance several of the primary goals and objectives set forth in the General Plan. Specifically, the Planned Development furthers the following General Plan goals:

(a) The Land Use Element sets the following goal with respect to development along Wilshire Boulevard east of the Business Triangle: *“Areas of limited development potential. There are areas of the community which consist predominantly of strip commercial uses. These areas are located outside the Business Triangle and are characterized by varying degrees of vitality and obsolescence. The role of these strip commercial uses with regard to the community's long-term objectives and with respect to their surroundings needs to be more adequately defined. Depending upon the specific location, it may be appropriate for commercial development to be concentrated and encouraged in certain parts of these areas and discouraged from others. The area of primary concern is along Wilshire Boulevard east of the Business Triangle.”*

The project site is located in one of the areas identified in the General Plan where commercial development should potentially be discouraged. Implementation of the Planned Development will replace the existing general commercial uses at the project site with residential uses and neighborhood commercial uses. The existing nonconforming structure is currently underutilized, but existing entitlements for the building would allow 26,509 square feet of general commercial uses and 10,450 square feet of medical office uses. These uses are higher intensity than the residential uses and limited commercial use proposed by the Planned

Development and less compatible with the adjacent single-family residential neighborhoods to the north and south of the project site. The Planned Development provides a good transition use between the commercial uses along Wilshire Boulevard and the single-family residential neighborhood to the north and introduces a buffer to shield the adjacent residential neighborhood from the intrusive effects of the higher intensity commercial uses along Wilshire Boulevard. As discussed more fully below, the Planned Development will result in lower overall traffic and will encourage the growth of additional neighborhood commercial, which will improve the pedestrian appeal of the east Wilshire area.

(b) The Land Use Element also sets the following goal with respect to mixed-use projects: *"The feasibility of allowing mixed commercial/residential uses should be analyzed in order to expand the variety of housing types available and, in certain areas, to improve commercial/residential transitions."*

The Planned Development provides an opportunity to construct a quality mixed-use development that would not otherwise be encouraged by the underlying zone. Ordinance No. 03-O-2422 establishes development standards which will ensure that the conversion of the existing building is accomplished in a manner that is compatible with surrounding development. Subject to these standards, the Planned Development introduces mixed uses to the east Wilshire area, an identified goal of both the Land Use Element and the Housing Element. Further, the Planned Development provides additional housing, an identified goal of the Housing Element. The Planned Development provides sufficient floor area to allow the applicant to construct residential rental units that include high quality amenities and high quality architectural design commensurate with the City's established standards and the character

of the nearby residential neighborhoods. Moreover, the Planned Development provides an opportunity for the City to improve the pedestrian appeal of the east Wilshire area. The design of the Planned Development will include a commercial retail presence along the Wilshire Boulevard frontage that will contribute to the urban design amenities that serve as a visual and pedestrian link between other commercial areas along Wilshire Boulevard. In addition, the Planned Development will replace the existing impersonal commercial office use with residential and neighborhood commercial retail, which will benefit all adjacent residents and will in turn help attract other neighborhood commercial uses to the area.

(c) The Land Use Element of the General Plan sets forth the following goal: *Transitional conflicts resulting from the juxtaposition of commercial and residential uses should be mitigated through a program which would provide adequate buffers between conflicting uses.*

The Planned Development, as revised and recommended, will further this goal by providing a buffer between the residential uses situated north of the project site and the more intense commercial uses along Wilshire Boulevard. The design of the Planned Development incorporates features, including sound barriers, noise-reducing coatings, and visual screens, to preserve the privacy of and reduce potential impacts to nearby residents, thereby shielding surrounding development north of the project site from the intrusive effects of the commercial uses along Wilshire Boulevard. Moreover, the predominantly residential nature of the proposed use is more comparable in intensity and harmonious with nearby residential development. Implementation of the Planned Development will remove the possibility for other

potentially more intrusive development on the site and will help preserve the existing character of the neighborhood to the maximum extent feasible.

(d) The Housing Element sets forth a goal to seek opportunities to expand rental housing affordable to lower income households. Although the Planned Development, by itself, would not specifically advance this goal, the Planned Development is consistent with Beverly Hills Ordinance No. 82-O-1839 which was adopted to implement this goal. Moreover, implementation of the Planned Development adds 37 units to the City's rental housing stock (representing one of the first increases in rental housing in almost two decades) and helps the City meet its share of the regional housing needs by providing 37 market rate housing units. The Applicant has voluntarily stated on the record that it will record a covenant prohibiting the conversion of the 37 rental units to condominiums. Based on this representation, the City Council finds that implementation of the Planned Development will advance the City's goal to expand its rental housing stock.

(e) The Housing Element also sets forth a goal to "*Maintain the general scale and character of the City through directed revitalization.*" The Planned Development will further this goal by converting an existing building from commercial uses to 37 residential units with limited commercial components. This conversion will result in a development that is more comparable in intensity and harmonious with nearby residential development and a reduction in the traffic and noise impacts associated with the existing entitlements for the project site. The Planned Development's parking, modern features and design will be consistent with the character and quality of life generally associated with the City and the surrounding neighborhood. Moreover, the Planned Development will be expressly conditioned to require residential tenants

to sign minimum one-year leases which will ensure that the operation of the Planned Development will not adversely impact the stability of the adjacent single-family residential neighborhood. Implementation of the Project allows the City to revitalize the east Wilshire area by introducing a more compatible use at the project site while preserving existing resources and the general scale and character of the area.

(f) The Housing Element further sets forth a goal to *"expand the variety of housing product on a limited basis beyond single family detached, rental apartment and condominium units"* and sets forth the following objective to implement this goal: *"Develop standards for mixed residential-commercial structures, with and without low income housing components, including additional height, in areas currently zoned for commercial use and consider appropriateness of various areas."*

The Planned Development and Zoning Amendment will further this goal and objective by creating an adaptive re-use overlay zone (the C-3(AR) Zone) and providing a mixed commercial/residential development that would not otherwise be provided in the City. Implementation of the Planned Development expands the housing opportunities available in the City and helps the City fulfill its obligations under the Housing Element and State housing law.

6.2 As conditioned, the Planned Development is compatible with existing and anticipated development in the vicinity and promotes harmonious development of the area. The Planned Development will help rejuvenate the east Wilshire area by increasing its pedestrian appeal. The Planned Development incorporates many design elements tailored to integrate the Planned Development with both the commercial areas along Wilshire Boulevard and the residential areas north of the project site and is a good transition between the commercial uses on

Wilshire Boulevard and the nearby single-family residences. The Planned Development will not adversely impact property values of surrounding development and will have similar privacy impacts on adjacent residential development as the existing office use. Moreover, approval of the Planned Development will be specifically conditioned to require design features to minimize any intrusion into the privacy of adjacent neighborhoods to the greatest extent feasible. Approval of the Planned Development is further conditioned to require the Applicant to redesign the wall enclosing the upper (rooftop) parking level in a manner to prevent visual access from the rooftop parking area to the street and nearby residences and to provide a sound barrier to minimize any impacts to adjacent residences. The City's existing noise standards will ensure that noise from the use of individual balconies will not disturb the quiet enjoyment of adjacent residents, and a condition prohibiting the use of the rooftop patio area for parties will further mitigate any noise impacts to adjacent neighbors. The annual lease requirement will reduce transient occupancy and help preserve the stability of the adjacent residential neighborhood. Finally, the entire Planned Development, including the Wilshire Boulevard facade, will be reviewed by the Architectural Commission, thus ensuring that the architectural elements of the Planned Development will be compatible with surrounding development.

The Applicant will be required to prepare and submit construction management plans and to conform all construction activities to said plans to minimize construction impacts on adjacent land uses. Said plans will address construction parking and hauling activities to ensure that construction impacts are minimized, consistent with the City's standards. Thus, the Planned Development will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.

6.3 As conditioned, the Planned Development will ensure the efficient use of existing resources and provide additional housing opportunities. The Planned Development will convert an existing building from commercial uses to 37 residential units with limited commercial components. This conversion will result in a development that is more comparable in intensity and harmonious with nearby residential development that the higher intensity medical and office uses authorized by the existing entitlements for the site while preserving a valuable resource, the existing building at the project site. The Planned Development will reduce the traffic and noise impacts associated with those existing entitlements for the project site and will provide additional rental housing, representing one of the first increases in the City's rental housing stock in nearly two decades. As noted previously, the Applicant has voluntarily stated on the record that it will record a covenant prohibiting the conversion of the 37 rental units to condominiums, thus ensuring that implementation of the Planned Development will expand the City's rental housing stock.

6.4 As conditioned, the Planned Development will not create adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards. Moreover, the Planned Development will provide ample parking to satisfy the parking demand generated by the proposed use. The Traffic Study prepared by Kaku and Associates for the Planned Development demonstrates that, with the exception of weekend traffic, the Planned Development will generate less overall traffic than the existing entitlements on the project site. Moreover, the traffic study demonstrates that the incremental increase to weekend traffic on adjacent streets is not significant. The net weekday traffic generated by the Planned Development is estimated to be about 333 less daily trips, including a reduction of 42 trips

during the morning peak hour and a reduction of 47 trips during the afternoon peak hour. On weekends, the Planned Development will result in a net increase of 124 trips on Saturdays and 189 trips on Sundays. However, as noted previously, the traffic study demonstrates that the incremental increase on adjacent streets will be less than significant. Access to the Planned Development will be provided via two driveways on Stanley Drive. The southernmost driveway is designed to exclusively serve the tenants of the Planned Development and entry will be restricted. The northernmost driveway on Stanley Drive will serve as the main entry for visitors. Access through the northern driveway will be restricted and a valet will be on-site to greet visitors between the hours of 7:00 a.m. and 10:00 p.m. In addition, a concierge will be present on site 24 hours a day to assist visitors who arrive outside of the valet hours. Conditions will be imposed on the Planned Development to reduce parking impacts, including the following: (1) on-site parking will be provided to all commercial and residential tenants of the development; (2) all commercial patrons will be provided one-hour free, validated on-site parking; (3) free on-site parking will be provided to employees of all commercial tenants at all times; (4) free on-site parking will be provided to guests of residential tenants at all times; and (5) a Loading Management Plan and a Parking Management Plan satisfactory to the Directors of Planning and Transportation will be provided. The traffic study demonstrates that the Planned Development's supply of parking is adequate to meet the parking demand generated by the Planned Development. Further, approval of the Planned Development will include a condition requiring that a follow-up traffic study be performed one year after the issuance of final occupancy permits for the Planned Development to verify whether Planned Development's actual traffic generation conforms to the Kaku estimates. If the follow-up study discloses any unanticipated impacts, the

City has expressly reserved jurisdiction to impose any additional conditions necessary to mitigate such impacts.

6.5 The Planned Development will encourage development of pedestrian friendly environments by allowing the conversion of an impersonal, underutilized commercial building to residential uses while preserving a street-level commercial presence that holds the interest of pedestrians and attracts additional neighborhood commercial uses. The proposed renovations will soften the commercial building facade and the presence of a neighborhood commercial retail use will be more inviting to pedestrians than the impersonal office uses authorized by the existing entitlements. The Planned Development will help rejuvenate the east Wilshire area and introduction of a new residential use and neighborhood commercial will help attract other neighborhood commercial uses to the area.

6.6 As conditioned, the Planned Development will promote the public health, safety or general welfare. The Planned Development provides a good transition use between the commercial uses along Wilshire Boulevard and the single-family residential neighborhood to the north and introduces a buffer to shield the adjacent residential neighborhood from the intrusive effects of the higher intensity commercial uses along Wilshire Boulevard. The Planned Development will have similar privacy impacts on adjacent residential development as the existing office uses and the Planned Development will be specifically conditioned to require design features to minimize any intrusion into the privacy of adjacent neighborhoods to the greatest extent feasible. The Noise Study prepared by Veneklasen Associates for the Planned Development demonstrates that the proposed Project will have no adverse noise impacts on adjacent residents. The Planned Development will protect the property values of surrounding

development, will provide adequate parking to meet all of the needs generated by the proposed use, and provides adequate outdoor living area for its residents. Finally, the annual lease requirement will reduce transient occupancy and help preserve the stability of the adjacent residential neighborhood, and implementation of the Planned Development will provide additional housing, which benefits the general welfare and advances an identified goal of the City's Housing Element. Furthermore, based on the Applicant's voluntary offer to record a covenant prohibiting the conversion of the 37 rental units to condominiums, the City Council finds that implementation of the Planned Development will expand the City's rental housing stock and help to satisfy the need for rental housing in the City, thereby promoting the public welfare of all residents of the City.

Section 7. As proposed and conditioned, the Planned Development meets the objectives of the C-3(AR) Zone as set forth in Section 6 of this resolution. Therefore, as required by proposed Articles 19.6 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code, the City Council hereby approves the following elements of the planned development, as proposed and conditioned.

7.1 Pursuant to Beverly Hills Municipal Code Section 10-3.1964, the City Council hereby approves the 3,066 square feet of commercial and office uses and 37 residential rental units with 31,661 aggregate square feet for the Planned Development, as proposed and conditioned.

7.2 Pursuant to Beverly Hills Municipal Code Section 10-3.1969, the City Council hereby approves the unoccupied architectural features, rooftop windscreens, and rooftop parking wall enclosure of the Planned Development, as proposed and conditioned.

Section 8. Based upon the evidence presented, including the staff report, technical studies, and oral and written testimony, and the authority provided by the California Environmental Quality Act, the City Council hereby adopts the Negative Declaration for the Project discussed in Section 4 of this Resolution.

Section 9. Based upon the evidence presented, the City Council hereby conditionally approves the Planned Development subject to the following conditions:

1. Except as otherwise provided by these conditions, the Planned Development shall be constructed and operated in substantial compliance with the plans submitted to and approved by the City Council at its meeting of January 7, 2003.
2. This approval of the Planned Development shall not become effective until Ordinance No. 03-O-2422 adding Article 19.6 to Chapter 3, Title 10 of the Beverly Hills Municipal Code and establishing the C-3(AR) Zone, an adaptive reuse planned development overlay zone and regulations pertaining thereto, becomes effective.
3. A comprehensive Parking Management and Operations Plan shall be submitted to the Director of Planning and Community Development for review and approval prior to issuance of occupancy permits for the Planned Development. At a minimum, the plan shall address the utilization of the parking garage by the respective tenants and operators and shall ensure the effective utilization of the tandem parking by: (1) specifying how such parking will be restricted to tenants, rather than visitors; and/or (2) if utilized by commercial tenants, requiring the use of tandem parking spaces by employees of the same organization; and/or (3) if utilized by residential tenants, requiring the use of tandem parking spaces by residents of the same unit; and/or (4) providing for an attendant service to move cars; and/or (5) specifying some other method deemed acceptable by the Director of Planning. The plan shall also provide for a 24-hour attendant or concierge seven (7) days a week to ensure that visitors have access to parking provided on the project site.

4. The Applicant shall prepare a comprehensive Construction Management Plan and shall submit said plan to the City Engineer and the Directors of Planning and Building & Safety for their review and approval prior to the issuance of any demolition or building permits for the Planned Development. At a minimum, the Construction Management Plan shall address the following: (1) construction delivery schedules, (2) truck hauling/construction traffic routing and access; (3) access to and from the site by construction workers; (4) dust control measures, (5) noise mitigation measures, (6) construction site maintenance, (7) construction parking (on street construction parking shall be prohibited), and (8) management of vehicular ingress/egress from/to public rights-of-way (e.g. flagmen, etc.). The Construction Management Plan shall demonstrate that any construction impacts to normal traffic flow, on-street parking, or associated with truck access have been reduced to a level consistent with normal construction activity within the City.

The Construction Management Plan shall provide information regarding the anticipated number of workers, the location of construction parking with respect to schedules during the construction period, the arrangements of deliveries, hauling activities, the length of time of operation, designation of construction staging area and other pertinent information regarding construction related traffic. Subject to the approval of the City Engineer, the plan shall designate construction haul routes that avoid the use of residential streets and avoid peak traffic hours. Additionally, the plan shall include a traffic management plan to address any construction related impacts to normal traffic flow in the vicinity of the project site.

The plan shall further demonstrate to the satisfaction of the Directors of Planning and Building & Safety that adequate provisions for parking for construction workers have been made prior to issuance of any construction or demolition permits for the Planned Development. Adequate provisions shall be defined as demonstration that the Applicant has adequate on-site parking available to accommodate all construction related parking or, alternatively, has entered into a contract for the provision of the necessary parking. If the Applicant satisfies the construction parking requirements through the use of off-site parking facilities, such parking shall be located no more than 500 feet from the project site, unless a shuttle service is provided at the project developer's expense, which satisfactorily meet the needs of the parking users. The plan shall prohibit any construction-related parking on nearby residential streets or along Wilshire Boulevard.

5. All heavy hauling and delivery of large construction supplies shall be subject to the issuance of heavy hauling permits issued by the Department of Public Works, Engineering Division. The Applicant shall provide to the City Engineer the proposed demolition/construction staging for this Planned Development to determine the amount, appropriate routes, and time of day of heavy hauling truck traffic necessary for demolition and deliveries to the project site.

6. Construction activities on the project site, including the loading or unloading of construction materials or debris, shall be restricted to the hours between 8:00 a.m. and 6:00 p.m. Monday through Friday. No construction activities of any kind whatsoever shall be permitted on Saturdays and/or Sundays unless otherwise authorized by an after hours construction permit issued pursuant to Section 5-1.206 of the Beverly Hills Municipal Code.
7. No uses other than those specifically approved in Section 7 of this Resolution shall be permitted as part of this Planned Development. This condition shall not be construed to bar the applicant from requesting a modification at a later date to permit additional uses as part of this Planned Development.
8. The Planned Development shall provide on-site parking for its residential and commercial tenants at all times.
9. The Planned Development shall provide free, on-site parking to employees of all commercial tenants, including the on-site property management company for the Planned Development, at all times.
10. The Applicant shall provide free on-site parking for guests of residential tenants at all times. In addition, the Applicant shall provide one-hour free parking with validation for all patrons of commercial tenants.
11. The Applicant shall provide identification signs directing visitors and guests to visitor parking spaces. Directional signs and visitor parking space identification shall be designed and installed to the satisfaction of the Director of Planning and Community Development and shall clearly state that such visitor parking is available free of charge to guests and visitors of the Planned Development's tenants.
12. Prior to the issuance of a certificate of occupancy for the Planned Development, the Applicant shall install a sign and a visual warning device satisfactory to the Director of Planning and Community Development at the entrance to the parking garage to warn drivers entering/exiting the residential and commercial garage of pedestrian cross-traffic. The sign shall displaying the message "Yield to Pedestrians" or such similar message approved by the Director. The visual warning device shall be designed in a manner to prevent its visibility from the adjacent residential neighborhood.
13. The Planned Development shall comply with the applicable standard conditions and shall obtain all necessary permits from the Public Works/Engineering Department. The Standard Conditions List is attached hereto as Exhibit A and incorporated herein by this reference.

14. The Planned Development shall comply with all applicable federal, state and local regulations, if any, with regard to accessibility, including but not limited to the provisions of Title III of the Americans With Disabilities Act (42 U.S.C. §12181 *et seq.* and implementing regulations at 28 C.F.R. Part 36), Title 24 of the California Building Code, and the California Fair Housing and Employment Act (Cal. Gov. Code § 12900 *et seq.*).
15. The use of the rooftop deck area shall be limited to the hours between 9:00 a.m. and 9:00 p.m., daily.
16. No parties, functions, receptions, or other similar events shall be permitted on the rooftop area at any time.
17. No entertainment or amplified music of any kind shall be permitted on the rooftop deck area.
18. The Applicant shall notify all tenants and visitors to refrain from parking in the adjacent single-family residential area and shall post signage, satisfactory to the Director of Planning and Community Development, near the entrance to and inside the parking garage to remind tenants and visitors of this requirement.
19. The Applicant shall notify all tenants that the Planned Development is located in a commercial zone and is not eligible for inclusion in a Preferential Parking District nor are residents of the Planned Development eligible to participate in preferential parking zones on adjacent residential streets. This notice shall be included in the lease agreements for all residential units at the Project site.
20. City staff shall periodically monitor traffic associated with the Planned Development to ensure that actual traffic levels do not significantly exceed the traffic counts projected in the traffic analysis prepared by Kaku and Associates. The City expressly reserves jurisdiction relative to traffic and parking issues. One year after the issuance of final occupancy permits for the Planned Development, the City shall require the Applicant to pay for a follow-up traffic study to verify whether the Planned Development's actual traffic generation conforms to the Kaku estimates. After reviewing said traffic study, if, in the opinion of the Director of Planning and Community Development, the parking and traffic issues merit review by the Planning Commission, the Director shall schedule a hearing in front of the Planning Commission in accordance with the provisions of Article 38 of Chapter 3 or Title 10 of the Beverly Hills Municipal Code. The Planning Commission shall conduct a noticed public hearing regarding the parking and traffic issues and may impose additional conditions as necessary to mitigate any unanticipated traffic and parking impacts caused by the proposed Planned Development in order to protect the integrity of the adjacent R-1 neighborhood. The Applicant shall forthwith comply with any additional conditions at its sole expense.

21. No demolition or material alteration of the existing building other than the removal of asbestos at the project site shall be permitted until the Applicant obtains a building permit to construct the Planned Development and (1) presents evidence satisfactory to the City's Finance Director that the Applicant has obtained sufficient financing to complete construction of the Planned Development, and (2) submits a completion bond satisfactory in form and content to the City Attorney and the Director of Building & Safety in an amount sufficient to return the building to a safe condition in the event construction is commenced but the Planned Development is not completed.
22. Prior to the issuance of building permits, the Applicant shall submit a revised landscape plan to the Director of Planning and Community Development for review and approval. The Director shall review the plan to ensure that the landscaping preserves the privacy of adjacent properties in the nearby single-family residential neighborhood to the maximum extent feasible. Planting in accordance with the approved landscape plan shall be completed prior to the issuance of occupancy permits for the Planned Development.
23. Prior to the issuance of building permits, the Applicant shall submit a sewer flow analysis prepared and signed by a mechanical engineer registered in the state of California to the City Engineer for review and approval. If the City Engineer determines that the Project will require upgrades to the City's existing sewer system, the Applicant shall install such upgrades at its sole expense.
24. The Applicant shall provide a concierge on site 24 hours a day, seven (7) days a week. An intercom system satisfactory to the Director of Planning and Community Development shall be provided to facilitate communication between the concierge and residential guests and/or commercial patrons seeking to gain access into the parking garage.
25. Each condition set forth in this resolution is a material element of the City's decision to approve the Planned Development. If any condition of approval set forth in this resolution is invalidated or rendered unenforceable by a decision of a court of competent jurisdiction in a matter where the City is a named party, then this entire resolution shall be deemed invalidated and the Project approvals set forth in this resolution shall immediately become null and void and be of no further force and effect.
26. Any failure to comply with a condition of this resolution shall be grounds for revocation of the Planned Development approval for the Planned Development. The City Council may revoke the Planned Development approval if the City Council determines that the Applicant has failed to abide by any condition. The City Council shall not make such determination unless and until the Council has conducted a hearing on the revocation and provided the applicant with an opportunity to be heard on the issue of whether the Applicant has failed to comply with the condition and whether revocation is appropriate.

27. The Applicant shall defend, with counsel satisfactory to the City, indemnify and hold harmless the City and its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers or employees, to attack, set aside, void or annul this resolution or one or more of the approvals set forth in this resolution. Alternatively, at the City's election, the City may choose to defend itself from any claim, action or proceeding to attack, set aside, void or annul this resolution or one or more of the approvals set forth in this resolution. In that case, the Applicant shall reimburse the City for all of its costs, including attorney fees, arising from such claim, action or proceeding. The obligations set forth in this condition include the obligation to indemnify or reimburse the City for any attorney fees that the City becomes obligated to pay as a result of any claim, action or proceeding within the scope of this condition.

In order to ensure compliance with this condition, within twenty days after notification by the City of the filing of any claim, action or proceeding to attack, set aside, void or annul this resolution or one or more of the approvals set forth in this resolution, the Applicant shall deposit with the City cash or other security in the amount of \$25,000, 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 condition. If the City is required to draw on that cash or security to indemnify or reimburse itself for such costs, the applicant 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 is necessary to secure the obligations of this condition, the Applicant shall provide such additional security within fifteen (15) days of notice from the City Attorney.

The City shall promptly notify the Applicant of any claim, action or proceeding within the scope of this condition and the City shall cooperate fully in the defense of any such claim or action.

28. The Planned Development shall be subject to the review and approval of the Architectural Commission and shall comply with any conditions imposed by the Architectural Commission.
29. Subject to review by the Architectural Commission, the Applicant shall redesign the wall surrounding the upper (rooftop) parking level in a manner to prevent visual access from the rooftop parking area to the street and nearby residences and to provide a sound barrier to minimize any impacts to adjacent residences.
30. The Applicant shall apply an appropriate finish to all floor surfaces in the parking structure to mitigate any potential tire squeals in the garage.
31. In order to ensure that the Applicant pays an equitable share of the cost of mitigating future improvements and programs made necessary by the Planned Development, the

Applicant shall pay any fee, tax, assessment or similar financing mechanism established by the City Council to mitigate impacts created by the conversion of commercial buildings to residential uses. If the amount of such fee, tax, assessment or similar financing mechanism has not been established at the time that the fee, tax, assessment or similar financing mechanism would be due and payable, the Applicant shall pay such fee, tax, assessment or similar financing mechanism within thirty days after the amount of the fee, tax, assessment or similar financing mechanism has been established by resolution of the City Council. If the amount of the fee, tax, assessment or similar financing mechanism has not been established before occupancy of the Planned Development, then the Applicant's obligation to pay such fee, tax, assessment or similar financing mechanism shall expire.

32. The Applicant shall require the tenants of all residential units to enter into leases with a term of no less than one year.
33. All dwelling units in the Planned Development shall be fitted with double-glazed glass windows to minimize noise impacts to both residents of the Planned Development and residents in the adjacent R-1 neighborhood in accordance with the California Building Code and the requirements of the City's noise ordinance.
34. No convenience store shall be permitted as a commercial use in the Planned Development.
35. The Applicant shall not lease any ground floor retail/commercial space without the prior review and approval of the proposed tenant by the Director of Planning and Community Development. The Director's review shall include a determination that the proposed tenant's projected trip generations are substantially similar to the trip generation estimates for commercial uses analyzed in the Kaku Traffic Study and that the proposed use is compatible with the other uses in the Project and the vicinity.
36. No alcohol sales shall be permitted in conjunction with any commercial use at the project site.
37. All balcony guardrails shall be designed to screen views of the balconies from the public rights-of-way or adjacent properties. No storage or hanging of laundry shall be permitted on the balconies at any time.
38. Prior to the issuance of building permits for the Project, the Applicant shall submit documentation satisfactory to the Director of Building & Safety that the proposed renovations comply with the provisions of Sections 10-3.4100 and 10-3.4101 of Article 41, Chapter 3, Title 10 of the Beverly Hills Municipal Code.

39. A cash deposit of \$5,000 shall be deposited with the City to ensure compliance with the conditions of this Resolution regarding construction activities. Such deposit shall be returned to Applicant upon completion of all construction activities and in the event that no more than two violations of such conditions or the Beverly Hills Municipal Code occur. In the event that three or more such violations occur, the City may: (a) retain the deposit to cover costs of enforcement; (b) notify the Applicant that the Applicant may request a hearing before the City within ten days of the notice; and (c) issue a stop work notice until such time that an additional deposit of \$10,000 is deposited with the City to cover the costs associated with subsequent violations. Work shall not resume for a minimum of two days after the day that the additional deposit is received by the City. If the Applicant timely requests a hearing, said deposit will not be forfeited until after such time that the Applicant has been provided an opportunity to appear and offer evidence to the City, and the City determines that substantial evidence supports forfeiture. Any subsequent violation will trigger forfeiture of the additional deposit, the issuance of a stop work notice, and the deposit of an additional \$10,000, pursuant to the procedure set forth herein above. All amounts deposited with the City shall be deposited in an interest bearing account. The Applicant shall be reimbursed all interest accruing on monies deposited. The requirements of this condition are in addition to any other remedy that the City may have in law or equity and shall not be the sole remedy of the City in the event of a violation of the conditions of this Resolution or the Beverly Hills Municipal Code.
40. Within three working days after approval of this Resolution, the Applicant shall remit to the City a cashier's check, payable to the County Clerk, in the amount of \$25.00 for a documentary handling fee in connection with Fish and Game Code requirements. If the Department of Fish and Game determines that this Planned Development is not exempt from a filing fee imposed pursuant to Fish and Game Code Section 711.4, then the Applicant shall also pay to the Department such fee and any fine which the Department determines to be owed.
41. These conditions shall run with the land and shall remain in full force for the duration of the life of the Planned Development.
42. The approval of the Planned Development to allow an adaptive re-use, mixed-use project with commercial and residential uses (the "permit") shall not become effective until the owner of the project site records a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of this resolution as an exhibit.

The Applicant shall deliver the executed covenant to the Department of Planning and Community Development within 60 days of the City Council decision. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this

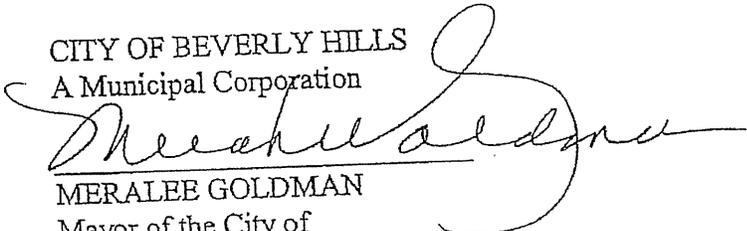
resolution approving the discretionary approvals shall be null and void and of no further effect. Notwithstanding the foregoing, the Director of Planning and Community Development may, upon a request by the Applicant, grant a waiver from the 60-day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that would affect the discretionary approvals.

43. The City reserves the right to make modifications and/or impose additional conditions which may become necessary to enable implementation of the specific conditions set forth in this Resolution and the Applicant shall comply with all such modified or additional conditions.

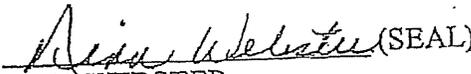
Section 9. The City Clerk shall certify to the adoption of this Resolution, and shall cause this Resolution and her certification to be entered in the Book of Resolutions of the Council of this City.

Adopted: February 4, 2003

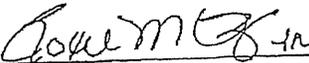
CITY OF BEVERLY HILLS  
A Municipal Corporation

  
MERALEE GOLDMAN  
Mayor of the City of  
Beverly Hills, California

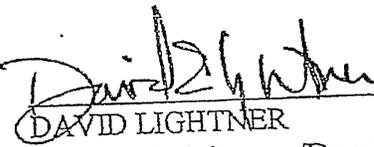
ATTEST:

  
NINA WEBSTER (SEAL)  
City Clerk

APPROVED AS TO FORM:

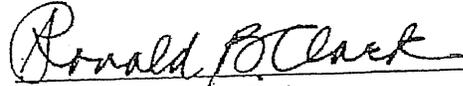
  
ROBERT H. PITTMAN  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
DAVID LIGHTNER  
Deputy City Manager/Development



MAHDI ALUZRI  
Director of Planning & Community  
Development



RONALD B. CLARK  
Director of Building & Safety



DAVID D. GUSTAVSON  
Director of Civil Engineering

*EXHIBIT A*  
*STANDARD CONDITIONS LIST*

CITY OF BEVERLY HILLS  
STANDARD CONDITIONS LIST  
FOR THE PLANNING COMMISSION

September 6, 2002

ENGINEERING, UTILITIES AND RECREATION & PARKS:

1. The applicant shall remove and replace all defective sidewalk surrounding the existing and proposed buildings.
2. The applicant shall remove and replace all defective curb and gutter surrounding the existing and proposed buildings.
3. The applicant shall comply with all applicable statutes, ordinances and regulations concerning the conversion of residential rental units into condominiums, including, but not limited to, the requirement that the applicant pay the City of Beverly Hills the condominium conversion tax of \$5,638.80, if a certificate of occupancy is issued prior to approval of the final subdivision map by the City Council. (The tax figure is adjusted annually.)
4. The applicant shall remove all unused landings and driveway approaches. These parkway areas, if any, shall be landscaped and maintained by the adjacent property owner. This landscape material cannot exceed six to eight inches in height and cannot be planted against the street trees. Care shall be taken to not damage or remove the tree existing tree roots within the parkway area. Remove and replace all defective alley and driveway approaches surrounding the existing and proposed buildings.
5. The applicant shall protect all existing street trees adjacent to the subject site during construction of the proposed project. Every effort shall be made to retain mature street trees. No street trees, including those street trees designated on the preliminary plans, shall be removed and/or relocated unless written approval from the Recreation and Parks Department and the City Engineer is obtained. (See attached Trees and Construction document.)

Removal and/or replacement of any street trees shall not commence until the applicant has provided the City with an improvement security to ensure the establishment of any relocated or replaced street trees. The security amount will be determined by the Director of Recreation and Parks, and shall be in a form approved by the City Engineer and the City Attorney.

Standard Conditions List  
For the Planning Commission  
September 6, 2002

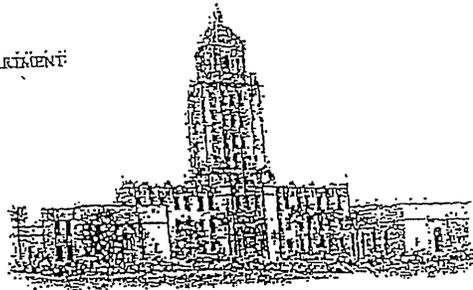
6. The applicant shall provide that all roof and/or surface drains discharge to the street. All curb drains installed shall be angled at 45 degrees to the curb face in the direction of the normal street drainage flow. The applicant shall provide that all groundwater discharges to a storm drain. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Connection to a storm drain shall be accomplished in the manner approved by the City Engineer and the Los Angeles County Department of Public Works. No concentrated discharges onto the alley surfaces will be permitted.
7. The applicant shall provide for all utility facilities, including electrical transformers required for service to the proposed structure(s), to be installed on the subject site. No such installations will be allowed in any City right-of-way.
8. The applicant shall underground, if necessary, the utilities in adjacent streets and alleys per requirements of the Utility Company and the City.
9. The applicant shall make connection to the City's sanitary sewer system through the existing connections available to the subject site unless otherwise approved by the City Engineer and shall pay the applicable sewer connection fee.
10. The applicant shall make connection to the City's water system through the existing water service connection unless otherwise approved by the City Engineer. The size, type and location of the water service meter installation will also require approval from the City Engineer.
11. The applicant shall provide to the Engineering Office the proposed demolition/construction staging for this project to determine the amount, appropriate routes and time of day of heavy hauling truck traffic necessary for demolition, deliveries, etc., to the subject site.
12. The applicant shall obtain the appropriate permits from the Civil Engineering Department for the placement of construction canopies, fences, etc., and construction of any improvements in the public right-of-way, and for use of the public right-of-way for staging and/or hauling certain equipment and materials related to the project.
13. The applicant shall remove and reconstruct any existing improvements in the public right-of-way damaged during construction operations performed under any permits issued by the City.

Standard Conditions List  
For the Planning Commission  
September 6, 2002

14. During construction all items in the Erosion, Sediment, Chemical and Waste Control section of the general construction notes shall be followed.
15. Condensate from HVAC and refrigeration equipment shall drain to the sanitary sewer, not curb drains.
16. Water discharged from a loading dock area must go through an interceptor/clarifier prior to discharging to the storm drain system. A loading dock is not to be confused with a loading zone or designated parking space for loading and unloading.
17. Organic residuals from daily operations and water used to wash trash rooms cannot be discharged to the alley. Examples are grocery stores, mini markets and food services.
18. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Examples of ground water discharges are; rising ground water and garage sumps.
19. Storm water runoff from automobiles going into a parking garage shall be discharged through a clarifier before discharging into the storm drain system. In-lieu of discharging runoff through a clarifier, parking lots can be cleaned every two weeks with emphasis on removing grease and oil residuals which drip from vehicles. Maintain records of cleaning activities for verification by a City inspector.
20. After completion of architectural review of a new or modified commercial structure, and prior to issuance of the certificate of occupancy, the applicant is required to comply with the Public Art Ordinance. An application is required to be submitted to the Fine Art Commission for review and approval of any proposed art piece or, as an alternative, the applicant may choose to pay an in-lieu art fee.

RECREATION AND PARKS DEPARTMENT  
455 N. Rexford Drive  
Beverly Hills, CA 90210-4817  
(310) 285-2536  
FAX: (310) 385-0840

STEVE MILLER, DIRECTOR



## CITY OF BEVERLY HILLS

### Trees and Construction

The City of Beverly Hills and its Residents hold our urban forest in high regard. We appreciate your regard for our City trees as you contemplate your project. We look forward to reviewing your mitigation plan as it relates to City trees that may be impacted by the proposed activities included in this project.

The applicant should identify any City and/or protected tree or trees within the proposed area of construction, and/or like tree or trees in close proximity to the construction site, that may be impacted. The location of these trees should be noted on the initial plan submittal. A plan that works to alleviate, or minimize, the potential that the health and vigor of a City and/or protected tree or trees will be affected during the construction process (a mitigation plan) should accompany the original plan submittal.

A mitigation plan should focus on retaining and protecting an existing City and/or protected tree or trees. This plan should include a valuation of the tree or trees that may be impacted by the proposed project. If more than one tree is involved, each tree should be valued in a separate treatment. This valuation should be performed by an International Society of Arboriculture (ISA) Certified Arborist using the standard valuation method recognized by the ISA.

Elements of the mitigation plan should include:

1. Definition of what can be done to avoid any impact on the tree or trees, as well as what steps will be taken to protect the tree or trees that may be impacted by construction activities, for the duration of the project.
2. If the well being of the tree or trees is suspected to be impacted or deemed unavoidable; a proposal to box, maintain and re-install the tree or trees after construction activities have been completed should be submitted. Any proposal for the boxing, care and re-installation of any tree or trees should include a resume of experience specific to tree moving from the firm submitting the plan. This proposal should include a contingency plan to replace the tree(s) with the installation of a forty-eight (48) inch box size should the tree or trees decline within twenty four (24) months after the time the tree or trees are re-installed into the site.
3. An offer of bond that is consistent with the value of the tree or trees based upon the previously described valuation of the tree or trees by an ISA Certified Arborist.
4. The ISA certification number and contact information for the ISA Certified Arborist assisting with the project mitigation plan.

To access a listing of ISA Certified Arborists in your area, visit:  
<http://www.isa-arbor.com/arborists/arbsearch.html>

To learn more about the valuation of trees, visit:  
<http://www2.champaign.isa-arbor.com/consumer/values.html>

Contact the Department of Recreation and Parks Urban Forest Supervisor at (310) 550-4638 or at [kopfzgraf@ci.beverly-hills.ca.us](mailto:kopfzgraf@ci.beverly-hills.ca.us) if you are in need of further assistance.

EXH. B

RECEIVED

NOV 25 2003

DEPT. 86

**FILED**  
LOS ANGELES SUPERIOR COURT

RM NOV 25 2003

FO

JOHN A. CLARKE, CLERK

*R. Martin*

BY R. MARTIN, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

S.O.N.I. (SAVE OUR  
NEIGHBORHOOD'S INTEGRITY) -  
THE WILSHIRE, STANLEY, LA  
CIENEGA AREA HOMEOWNERS  
ASSOCIATION, a non-profit  
California corporation,

Petitioner,

v.

THE CITY OF BEVERLY HILLS, a  
municipal corporation, THE CITY  
COUNCIL OF THE CITY OF  
BEVERLY HILLS, and DOES 1  
through 20, inclusive,

Respondents.

8601 WILSHIRE ASSOCIATES LLC,

Real Party In  
Interest.

Case No. BS 081500

JUDGMENT PURSUANT TO  
STIPULATION

Dept. 86 (Hon. David Yaffe)

1 The Court having been advised that the parties have settled this action and having  
2 been presented the parties' Stipulation for Entry of Judgment to carry out the terms of said  
3 settlement, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

4 1. Petitioner S.O.N.I. (Save Our Neighborhood's Integrity) – The Wilshire,  
5 Stanley, La Cienega Area Homeowners Association ("S.O.N.I.") shall recover no relief  
6 against Respondents City of Beverly Hills and City Council of City of Beverly Hills.

7 2. Petitioner S.O.N.I. shall recover against Real Party-In-Interest 8601 Wilshire  
8 Associates LLC ("8601") as follows. The project of Real Party-In-Interest 8601 at issue  
9 in this action -- the conversion of a building at 8601 Wilshire Boulevard, Beverly Hills,  
10 California, from office and commercial use to residential use (the "Project") – shall be  
11 modified and constrained as follows:

12 A. All leases for units in the Project shall include the restriction that  
13 permanent occupancy of one bedroom units in the Project shall be restricted to no  
14 more than two persons, and permanent occupancy of two bedroom units shall be  
15 restricted to no more than four persons. These restrictions shall not apply to  
16 children of three years of age or younger. "Permanent occupancy" shall be  
17 defined to mean habitation in excess of 45 days. 8601 shall take reasonable steps  
18 to monitor and enforce compliance with this restriction, including through eviction  
19 of tenants found to be in violation.

20 B. All leases for units in the Project shall include the restriction that dogs  
21 will not be allowed as pets in any unit, and 8601 shall enforce this restriction. This  
22 restriction does not apply to seeing eye dogs or other dogs trained and intended for  
23 service to occupants for health reasons.

24 C. All leases for units in the Project shall include the restriction that cars  
25 exiting the parking garage shall do so only by right turn (i.e., south) on Stanley  
26 Drive, and 8601 shall enforce this restriction by appropriate signage which shall be  
27 clearly visible to drivers and vehicles exiting the parking structure exits, and also  
28 by pavement striping or marking. Each lease to be used by 8601 in leasing units in

1 the Project shall contain language enforcing the restrictions referenced in Sections  
2 2(A), 2(B), and 2(C) herein.

3 D. During the asbestos removal phase of construction on the Project, the  
4 structures undergoing asbestos removal shall be "tented" to prevent the escape of  
5 dust or airborne contaminants into the surrounding neighborhood. Air quality  
6 testing and sampling shall be performed inside and immediately outside of the  
7 buildings before asbestos removal begins, and once again before the tenting is  
8 removed from the structures to ensure safe conditions for the surrounding  
9 neighborhood prior to the tenting being removed. Additionally, the company  
10 performing the asbestos removal shall be monitored and supervised by a second  
11 company retained to ensure safe and legally compliant asbestos removal  
12 procedures and activities.

13 E. During all phases of construction on the Project, trucks, vehicles,  
14 machinery and equipment used in connection with the construction (other than  
15 personal vehicles of the workers) shall not use, traverse, or be parked on Stanley  
16 Drive north of the Project.

17 F. The Project shall not include open balconies except on the Wilshire  
18 Boulevard side of the building. All balconies previously approved by the City on  
19 the north and east facades of the building shall be eliminated and shall be replaced  
20 by fully enclosed windows or bay windows which do not open in any manner;  
21 provided, however, that operable transom windows not more than twelve (12)  
22 inches in height and opening at the top not more than four (4) inches may be  
23 located on the north and east facades as more particularly set forth in the  
24 Settlement Agreement dated as of October 30, 2003 by and between S.O.N.I. and  
25 8601 Wilshire Associates LLC. There shall be no open balconies or balcony-like  
26 structures permitted at any time on the north and east facades of the building.  
27 Additional open space for the tenants shall be provided on the roof of the garage.  
28 The open or outdoor space on the rooftop parking area will be strictly limited to

1 low intensity and low noise uses such as lounges and chairs. No parties, sports  
 2 activities, barbecues or the like shall be allowed, nor shall music or amplified  
 3 noise of any type be permitted.

4 G. The Project shall include a Loading Zone on Stanley Drive replacing  
 5 two presently metered spaces on the west side of the street adjacent to the Project.  
 6 The Loading Zone may have signage which allows for non-loading vehicular  
 7 parking during off-loading zone hours.

8 H. These modifications shall remain in full force for the duration of the  
 9 life of the Project. In the event that the Project is subsequently modified to permit  
 10 conversion of some or all of the currently contemplated and approved rental units  
 11 to condominium or similar equity ownership (which conversion is not hereby  
 12 sanctioned by this Judgment and each party reserves all of its rights with respect  
 13 thereto) all of the provisions of this Judgment shall apply to said modified Project  
 14 and the use restrictions contemplated by Sections 2(A), 2(B) and 2(C) above to be  
 15 included in the leases for the rental units, and the restriction on balconies  
 16 contained in Section 2(F) above, shall be included as conditions, covenants and  
 17 restrictions (or similar deed restrictions) for the converted units to the full extent  
 18 allowed by law. These restrictions are for the benefit not only of the tenants of  
 19 8601 Wilshire but also of the surrounding community and are intended to enhance  
 20 the property values and the quality of life of both. Accordingly, these restrictions  
 21 shall be placed in the original master declaration of common use; and, per Civil  
 22 Code Section 1355(b), the master declaration on these points shall provide that the  
 23 master declaration is not amendable either by the owners of the units or by the  
 24 board of directors of their association.

25 3. Petitioner S.O.N.I. shall receive from Real Party-In-Interest the sum of  
 26 \$229,000 as compensation for costs and fees incurred in connection with this action and  
 27 during the administrative processing of the Project by Respondent City of Beverly Hills.  
 28 Respondent shall have no obligation for payment of these sums. Except as provided in

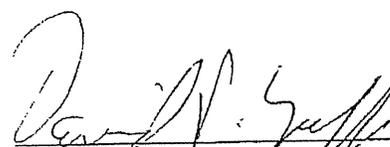
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this paragraph, all parties shall bear their own attorneys' fees and costs incurred in this action.

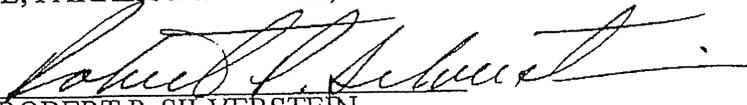
4. Except as provided above, Petitioner S.O.N.I. shall receive no relief by reason of its Petition or First Amended Petition herein, or by reason of any of the causes of action set forth therein. For itself and for its members, Petitioner S.O.N.I. waives and withdraws all objections to the Project, including without limitation the objections set forth in the pleadings herein, the objections raised during the administrative process, and any objection pursuant to Beverly Hills Municipal Code Section 10-3.4100.

5. This judgment is final and disposes of this action in its entirety. Pursuant to Code of Civil Procedure Section 664.6, the Court shall, however, retain jurisdiction of the action as may be necessary to enforce the terms of this judgment and the terms of the parties' settlement agreement.

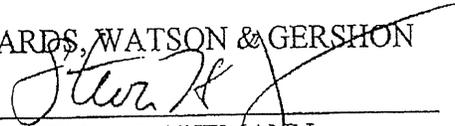
Dated: NOV 25 2003

  
\_\_\_\_\_  
Judge of the Superior Court  
David P. Yaffe

APPROVED AS TO FORM:  
HILL, FARRER & BURRILL, LLP

By:   
\_\_\_\_\_  
ROBERT P. SILVERSTEIN  
Attorneys for Petitioner S.O.N.I.

O'MELVENY & MYERS, LLP  
By:   
\_\_\_\_\_  
MITCHELL B. MENZER  
Attorneys for Real Party In Interest  
8601 Wilshire Associates LLC

RICHARDS, WATSON & GERSHON  
By:   
\_\_\_\_\_  
STEVEN H. KAUFMANN  
Attorneys for Respondents The City  
of Beverly Hills and The Beverly Hills  
City Counsel

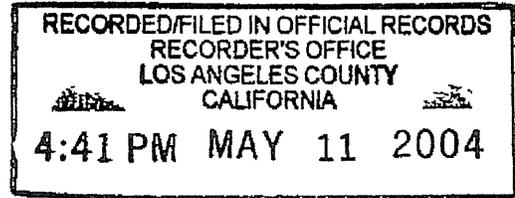
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EXH. C

**2. Covenant Containing  
Restrictions Affecting  
Real Property  
Agreement No-21-03**

This page is part of your document - DO NOT DISCARD

04 1193758



TITLE(S) :

COVENANT



FEE

D.T.T

FREE UU  
- 8955

CODE  
20

CODE  
19

CODE  
9

Assessor's Identification Number (AIN)

To be completed by Examiner OR Title Company in black ink.

Number of AIN's Shown

THIS FORM NOT TO BE DUPLICATED

2

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO

City of Beverly Hills  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attention: City Clerk

Assessor's Parcel No · 4334-014-045

*Exempt from recording fees pursuant to Government Code §6103*  
(Space above line for Recorder's use only)

**COVENANT CONTAINING RESTRICTIONS  
AFFECTING REAL PROPERTY**

**AGREEMENT NO.**  
**21-03**

THIS COVENANT AND AGREEMENT (this "Covenant") is made and entered into as of the 4th day of February, 2003, by 8601 Wilshire Associates LLC (the "Owner") in favor of the City of Beverly Hills, a municipal corporation (the "City").

RECITALS

A Owner is the record owner of that certain real property (the "Property") commonly known as 8601 Wilshire Boulevard, in the City of Beverly Hills, County of Los Angeles, State of California, 90210, identified by Los Angeles County Assessor's Parcel Number 4334-014-045 and more particularly and legally described in Exhibit "A" attached hereto and incorporated herein by this reference.

B Owner has submitted applications to City for a Zoning Amendment and a Planned Development (collectively the "Applications") to convert the existing eleven-story office building at the Property into 37 residential rental units (apartments) with approximately 650 square-feet of ground floor retail and 114 on-site parking spaces

C. During the public hearing on the Applications, Owner voluntarily stated on the record that it would record a covenant prohibiting the conversion of the 37 rental units (the "Residential Units") to condominiums. In reliance on this representation, the City found that conversion of the existing building to 37 residential apartment units would expand the City's rental housing stock and approved the Applications.

NOW, THEREFORE, in consideration of the foregoing, the Owner, on behalf of itself, its representatives, its successors and assigns and every successor in interest to the Property does hereby agree and covenant, for the benefit of the City of Beverly Hills, as follows:

3

AGREEMENT

1 Incorporation of Recitals. The Recitals set forth above are hereby incorporated by reference herein and made a part hereof

2 Nature of Covenants, Reservation and Restrictions The Owner hereby subjects the Property to the covenants, reservations and restrictions set forth in this Agreement. The Owner, and its successors and assigns shall devote the Residential Units only to the uses specified in this Agreement. Each and every contract, deed or other instrument hereafter executed covering or conveying the Owner's interest in the Property, or any portion thereof, and encumbrances of the Property, shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such lease, assignment, contract, deed or other instruments. The Owner covenants by and for itself, its representatives, its successors and assigns and every successor in interest to the Property or any part thereof, and agrees that Owner shall comply in all respects with the terms, provisions, and obligations of the Owner set forth in this Agreement

3 Conversion Prohibited The Owner covenants and agrees for itself, its successors, assignees, and every successor in interest to the Property or any part thereof that the thirty-seven (37) Residential Units approved by the City pursuant to Resolution No 03-R-11280, as modified by Resolution No. 03-R-11517, and the Property shall be restricted as provided in this Section 3 in perpetuity. All of the Residential Units, shall be exclusively used as residential rental units and neither Owner nor its successors, assignees, and every successor in interest to the Property or any part thereof shall hereafter submit an application for or otherwise attempt to convert the Residential Units to Condominium or Stock Cooperative ownership.

4. Covenant Runs with Land. It is the intention of the parties hereto that this Covenant shall constitute a servitude against the Property and a covenant which runs with the land, enforceable by and for the benefit of the City of Beverly Hills. This Covenant shall be jointly and severally binding upon the Owner and its heirs, representatives, successors and assigns. This Covenant shall be duly recorded in the Official Records of the Los Angeles County Recorder.

5. Breach If Owner shall in any manner violate the terms this Covenant, City shall have all remedies available to it at law or in equity, including but not limited to a right to an injunction requiring Owner to remove the Improvements and return the Property to code compliant condition

6 Indemnity The Owner agrees to defend, indemnify and hold harmless City and members of its City Council, boards and commissions, officers, agents, and employees (hereinafter, collectively "City parties") from and against all loss, damage, cost, expense, liability, claims, demands, suits, attorneys' fees and judgments arising from or in any manner connected to the Owner's possession, occupancy, use, construction or demolition of the Property and/or the Improvements or arising from or in any manner connected to the condition of the Property and the Improvements. Without limiting the generality of the foregoing, the Owner agrees that no City party shall be liable for any injury to the Owner's Property or the Improvements, or for damage to other property of the Owner, Owners's agents, contractors, invitees, or guests, or any other person in, on or about the Property or any immediately

adjacent property, or personal injury or death of the Owner, its agents, employees, contractors, invitees, and guests or any adjacent property owner/occupant, its agents, employees, contractors, invitees, and guests. The Owner shall further indemnify and hold harmless City from and against any and all claims arising (i) from any breach or default in the performance of any obligations on the part of the Owner to be performed under the terms of this Covenant, or (ii) from any negligence or other wrongful conduct of the Owner. In the event any action or proceeding is brought against City by reason of such claim, the Owner, upon notice from City, shall defend such action or proceeding at the Owner's expense, by legal counsel satisfactory to City

4

7 Successors and Assigns This Covenant and each and every term, condition, restriction, and exhibit contained herein is intended for the benefit of the public and shall bind Owner, its successors and assigns, and each and all of them, and shall and is intended to run with the land, and shall be a burden upon the Property

8 Waiver The waiver by City of any breach by Owner of any term, covenant, restriction or condition herein contained shall not be deemed to be a waiver of such term, covenant, restriction or condition or any subsequent breach of the same or any other term, covenant, restriction or condition herein contained.

9. Attorneys' Fees. In any action brought to declare the rights granted herein or to enforce or to interpret any of the terms of this Covenant, the prevailing party shall be entitled to recover from the losing party all of the prevailing party's costs of suit, including but not limited to an award of reasonable attorney's fees in an amount determined by the court.

10. Entire Agreement. This Covenant constitutes the entire agreement between the parties with respect to the subject matter hereof. Each party to this Covenant acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statement or promise not contained in this Covenant shall not be valid or binding

11 Captions. The captions used in this Covenant are for convenience only and therefore do not constitute a part of this Covenant and do not amplify or limit the meaning of the provisions of this Covenant.

12 Amendment. This Covenant may not be release, amended or modified without the written consent of the City Council of the City of Beverly Hills and any such release, amendment or modification will not be effective until an instrument memorializing the same is executed and acknowledged by both City and Owner or their respective successors in interest and recorded in the Official Records of the Los Angeles County Recorder's Office

13. Severability. Any provision of this Covenant adjudicated by a court of competent jurisdiction to be invalid or unenforceable for any reason shall be ineffective to the extent that such prohibition or invalidity shall not invalidate or otherwise render invalid or unenforceable any remaining provisions of this Covenant

14. Time is of the Essence Time is of the essence of each provision of this Covenant

5

15 Governing Law. This Covenant shall be construed in accordance with the laws of the State of California.

16. Mortgagee Protection. No breach or violation of the provisions of this Covenant shall defeat or render invalid the lien of any mortgage, deed of trust or similar instrument securing a loan made in good faith and for value with respect to the Property. The provisions of this Covenant shall otherwise bind and benefit the subsequent owner of the Property whose title is acquired by judicial or non-judicial foreclosure, deed in lieu of foreclosure, or otherwise, provided, however, that any such subsequent owner shall have a reasonable time, not to exceed thirty (30) days after written receipt of notice of violation, to cure any violation under this Covenant that is reasonably capable of being cured.

17 Consent of City. Neither City's execution of this Covenant nor any consent or approval given by City pursuant to this Covenant shall waive, abridge, impair or otherwise affect, City's powers and duties as a governmental body

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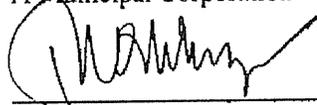
SIGNATURES BEGIN ON NEXT PAGE

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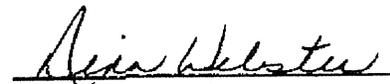
IN WITNESS WHEREOF, the parties hereto have executed this Covenant as of the date first above written

CITY OF BEVERLY HILLS  
A Municipal Corporation



THOMAS S. LEVYN,  
Mayor of the City of Beverly Hills

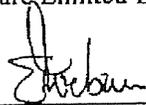
ATTEST:

 (SEAL)  
NINA WEBSTER  
City Clerk

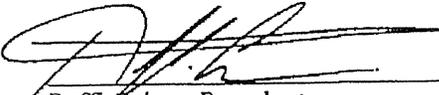
OWNER:  
8601 WILSHIRE ASSOCIATES, LLC  
a Delaware Limited Liability Company

By: GALAXY SOUTHBROOK HOLDINGS, LLC  
a Delaware Limited Liability Company, Its Member

By: Social Property Management, LLC  
a Delaware Limited Liability Company, Its Manager

By   
Name Elliot Joelson, President

By: Galaxy Commercial Holding, LLC  
a Delaware Limited Liability Company, Its Manager

By   
Name Raffi Cohen, President

APPROVED AS TO FORM

  
ROBERT H. PITTMAN  
Assistant City Attorney

APPROVED AS TO CONTENT

  
MARK SCOTT  
City Manager

  
MAHDI ALUZRI  
Director of Planning and Community Development

EXHIBIT A

7

LEGAL DESCRIPTION OF PROPERTY

That certain real property situated in the City of Beverly Hills,  
County of Los Angeles, State of California described as follows.

LOTS 200 AND 201 OF TRACT NO 4988, IN THE CITY OF  
BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF  
CALIFORNIA, AS PER MAP RECORDED IN BOOK 54, PAGES  
98 AND 99 OF MAPS IN THE OFFICE OF THE COUNTY  
RECORDER OF SAID COUNTY

STATE OF CALIFORNIA )  
COUNTY OF Los Angeles )

8

On 1-9, 2004, before me, Ivette Perez, a Notary Public in and for said State, personally appeared Raffi Cohen, personally known to me (or proved to me on the basis of satisfactory evidence) 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

Signature

[Signature] (Seal)



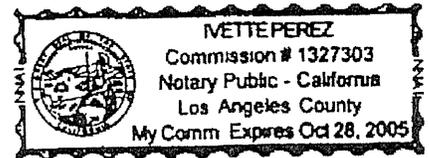
STATE OF CALIFORNIA )  
COUNTY OF Los Angeles )

On 1-9, 2004, before me, Ivette Perez, a Notary Public in and for said State, personally appeared Elliot Joelson, personally known to me (or proved to me on the basis of satisfactory evidence) 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.

Signature

[Signature] (Seal)



04 1193758

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

9

State of California }  
County of Los Angeles } SS

On Marc 24, 2004, before me, Patricia E. Ogden, notary,  
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Thomas S. Levyn,  
Name(s) of Signer(s)

personally known to me  
 proved to me on the basis of satisfactory evidence

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

Patricia E. Ogden  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document*

**Description of Attached Document**

Title or Type of Document Covenant Containing Restrictions Affecting Real Property

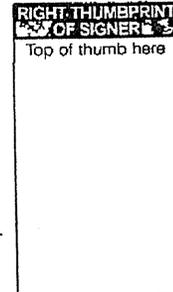
Document Date 2/4/2003 Number of Pages 6

Signer(s) Other Than Named Above Elliot Joelson ad Raffi Cohen

**Capacity(ies) Claimed by Signer**

- Signer's Name \_\_\_\_\_
- Individual
- Corporate Officer — Title(s) \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other. \_\_\_\_\_

Signer Is Representing \_\_\_\_\_



04 1193758

**3. Resolution No-03-R-  
11280 & Resolution  
No.03-R-11517**

## RESOLUTION NO 03-R-11517

RESOLUTION OF THE COUNCIL OF THE CITY OF  
BEVERLY HILLS CONDITIONALLY APPROVING AN  
AMENDMENT TO AN APPROVED PLANNED  
DEVELOPMENT FOR AN ADAPTIVE RE-USE PROJECT AT  
8601 WILSHIRE BOULEVARD

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS DOES RESOLVE  
AS FOLLOWS

Section 1 8601 Wilshire Associates, LLC (hereinafter the "Applicant") has applied for approval of a Zoning Code amendment to amend the Adaptive Re-use Planned Development Overlay Zone (C-3(AR)) and regulations related thereto (the "Zoning Amendment") and approval of a modification to a previously approved Planned Development to renovate and convert an existing legally nonconforming office building into 37 residential rental units (apartments) with approximately 650 square-feet of ground floor retail and 114 on-site parking spaces (the "Planned Development") for property generally located at 8601 Wilshire Boulevard (the "project site") The Zoning Amendment and the Planned Development are collectively referred to herein as the "Project "

On February 4, 2003, the City Council adopted Ordinance No 03-O-2422 establishing the Adaptive Re-use Planned Development Overly Zone (C-3(AR)) and Resolution No 03-R-11280 approving a planned development to convert the existing 11-story office building at the project site into 37 rental units with ground floor retail of approximately 650 square-feet and 114 on-site parking spaces The adjoining residential neighborhood subsequently

filed a lawsuit naming both the Applicant and the City challenging the Council's decision (the "Action") The Applicant and the neighbors have agreed to compromise their respective claims. enter a written settlement resolving the Action, and dismiss the Action in its entirety The settlement agreement requires, among other things, that the Applicant make several changes to the design of the Planned Development In furtherance of the Settlement Agreement, the Applicant has submitted the instant applications

The Applicant seeks approval for the following proposed amendments to the Planned Development

- (1) Deletion of the balconies on the northerly and easterly (Stanley Drive) sides of the building and conversion of this area to interior living space,
- (2) Replacement of the balconies on the northerly and easterly sides of the building with fixed windows,
- (3) Increase of the gross building square footage by 2,228 square-feet to a total of 44,550 square-feet, and
- (4) Conversion of a portion of the roof of the garage structure to outdoor living space to replace the area lost by removal of the balconies

Concurrently, the Applicant seeks approval for a proposed Zoning Code Amendment to amend the C-3(AR) zone to allow an increase in the usable floor area for the apartment units

Section 2 The Planning Commission conducted a duly noticed public hearing on September 24, 2003, at which time it received oral and documentary evidence relative to the

addendum to the Negative Declaration and the applications for the Zoning Amendment and the proposed amendments to the Planned Development. On September 24, 2003, the Planning Commission adopted Planning Commission Resolution No. 1299 recommending that the City Council adopt the proposed Zoning Code amendment amending the Adaptive Reuse Planned Development Overlay Zone (C-3(AR)) and conditionally approve the proposed amendments to the Planned Development for an adaptive re-use project at 8601 Wilshire Boulevard.

Section 3 On October 21, 2003, the City Council held a duly noticed public hearing to consider the application for proposed amendments to a previously approved planned development to convert the existing legally nonconforming office building at 8601 Wilshire Boulevard to 37 residential rental units with ground floor retail. At said hearing, the City Council also considered the concurrent request by the Applicant for a Zoning Code amendment to amend the Adaptive Reuse Planned Development Overlay Zone. Evidence, both written and oral, including the staff report, supporting documentation and the record of the proceedings before the Planning Commission on the dates set forth in Section 2, was presented at said hearing. At the conclusion of the public hearing the City Council waived full reading and introduced Ordinance No. 03-O-2434 amending the C-3(AR) Zone and directed staff to prepare a resolution approving the Project subject to certain conditions.

Section 4 The Project has previously 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, and the City adopted a Negative Declaration for the Project. The City has reviewed the proposed changes to the Project and has prepared an addendum to the Negative Declaration. Based on the initial study, the previously adopted negative declaration, the environmental checklist form for previously assessed environmental projects, the addendum to the negative declaration, the comments received thereon, and the record before the City Council, the City Council hereby finds that the Project, as modified, does not require the preparation of a subsequent negative declaration or a supplement to the previously adopted negative declaration because the modified Project will merely make minor changes to the architectural design and layout of the Planned Development and will not introduce new significant environmental effects or substantially increase the severity of the effects that previously were identified and analyzed in the adopted negative declaration. Furthermore, there are no changed circumstances or new information, which was not known at the time the negative declaration was adopted that would require the preparation of a subsequent negative declaration or major revisions to the previously adopted negative declaration pursuant to CEQA Guidelines Section 15162. Therefore, the original negative declaration, as modified by the addendum, continues to represent the independent judgment of the City Council and the City, and there is no substantial evidence that the approval of the Project, as modified, may have any significant environmental impact. The documents and other material which constitute the record on which this decision is based are located in the Department of Planning and Community Development and are in the custody of the Director of Planning and Community Development.

Section 5 In reviewing the application to amend the Planned Development, the City Council considered the following in accordance with the provisions of Section 10-3 1966 of the Municipal Code

(1) Whether the Planned Development is consistent with the General Plan and any specific plans adopted for the area,

(2) Whether the Planned Development will adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area,

(3) Whether the Planned Development will ensure the efficient use of existing resources and provide additional housing opportunities,

(4) Whether the Planned Development will create any significant, adverse traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will minimize impediments to vehicular circulation and pedestrian safety,

(5) Whether the Planned Development will encourage development of pedestrian friendly environments by allowing the conversion of impersonal, underutilized commercial buildings to residential uses while preserving a street-level presence that holds the interest of pedestrians and attracting additional neighborhood commercial uses, and

(6) Whether the Planned Development will promote the public health, safety or general welfare

Section 6 Based upon the evidence presented, including the staff report and oral testimony, the City Council hereby finds as follows with respect to the Planned Development

6.1 As conditioned under Resolution No. 03-R-11280, the Planned Development, as modified, is consistent with and implements the City's General Plan. The Planned Development conforms to the land use designations for the project site. The City Council further finds that, except as set forth in Section 6.6 below, no additional conditions are necessary to ensure that the Planned Development, as modified, is consistent with the General Plan. The City Council finds that it can continue to make each of the findings set forth in Resolution No. 03-R-11280 in an affirmative manner and hereby re-adopts those findings and amends the Planned Development, subject to the conditions set forth below.

6.2 As conditioned by Resolution No. 03-R-11280, the Planned Development, as modified, is compatible with existing and anticipated development in the vicinity and promotes harmonious development of the area. The City Council finds that it can continue to make each of the findings set forth in Resolution No. 03-R-11280 in an affirmative manner and hereby re-adopts those findings and amends the Planned Development, subject to the conditions set forth below.

6.3 As conditioned, the Planned Development, as modified, will ensure the efficient use of existing resources and provide additional housing opportunities. The City Council finds that it can continue to make each of the findings set forth in Resolution No. 03-R-11280 in an affirmative manner and hereby re-adopts those findings and amends the Planned Development, subject to the conditions set forth below. However, as discussed more fully in subsection 6.6 below, the City Council finds that the replacement of the balconies on the northerly and easterly sides of the building with fixed (inoperable) windows does not provide a livable housing opportunity nor represent good planning and, accordingly, the City Council's

findings set forth in this resolution are based upon the modifying the proposed amendments as described in subsection 6.6

6.4 As conditioned, the Planned Development, as modified, will not create adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, pedestrian safety hazards, and significant parking will be provided to satisfy the parking demand generated by the proposed use. A supplemental report prepared by Kaku Associates analyzed the impacts associated with the proposed modifications to the Planned Development and concluded the Planned Development, as modified, would not alter the conclusions set forth in the previous Traffic Study prepared by Kaku and Associates for the Planned Development, which demonstrated that the Planned Development will not have any significant adverse traffic impacts on adjacent streets or roadways. The City Council finds that it can continue to make each of the findings set forth in Resolution No. 03-R-11280 in an affirmative manner and hereby re-adopts those findings and amends the Planned Development, subject to the conditions set forth below.

6.5 The Planned Development, as modified, will encourage development of pedestrian friendly environments by allowing the conversion of an impersonal, underutilized commercial building to residential uses while preserving a street-level commercial presence that holds the interest of pedestrians and attracts additional neighborhood commercial uses. The City Council finds that it can continue to make each of the findings set forth in Resolution No. 03-R-11280 in an affirmative manner and hereby re-adopts those findings and amends the Planned Development, subject to the conditions set forth below.

6.6 As conditioned, the Planned Development will promote the public health, safety or general welfare. The Planned Development provides a good transition use between the

commercial uses along Wilshire Boulevard and the single-family residential neighborhood to the north and introduces a buffer to shield the adjacent residential neighborhood from the intrusive effects of the higher intensity commercial uses along Wilshire Boulevard. The Planned Development will have similar privacy impacts on adjacent residential development as the existing office uses and the Planned Development will be specifically conditioned to require design features to minimize any intrusion into the privacy of adjacent neighborhoods to the greatest extent feasible. The City Council finds, however, that the replacement of the balconies on the northerly and easterly sides of the building with fixed (inoperable) windows does not promote the public health, safety or general welfare. Although the City Council concurs with the elimination of the balconies to minimize any intrusive impacts from the project on the adjacent neighborhood, the City Council finds that the lack of operable windows in the proposed project would create undesirable and less sustainable living environments. Further, the City Council notes that the Noise Study prepared by Vencklasen Associates for the Planned Development demonstrates that the proposed Project with balconies would have no adverse noise impacts on adjacent residents. Thus, the replacement of these balconies with transom windows that allow natural ventilation to enter the proposed units would have minimal, if any, noise impacts on adjacent neighbors. Accordingly, the City Council is conditioning this resolution to require that the balconies on the northerly and easterly sides of the building be replaced with operable windows. As modified by this resolution and as conditioned by Resolution No. 03-R-11280, the Planned Development will promote the public health, safety or general welfare. The City Council finds that it can continue to make each of the findings set forth in Resolution No. 03-R-11280 in an affirmative manner and hereby re-adopts those findings.

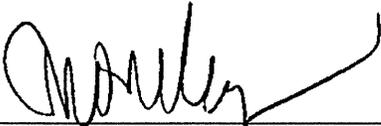
Section 7 Based upon the evidence presented, including the staff report, technical studies, and oral and written testimony, and the authority provided by the California Environmental Quality Act, the City Council hereby finds that there is no substantial evidence of a significant environmental impact and hereby readopts the Negative Declaration, as amended by the addendum to the Negative Declaration for the Project discussed in Section 4 of this Resolution

Section 8 Based upon the evidence presented, the City Council hereby conditionally approves the Planned Development subject to the following conditions

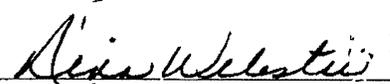
- 1 Except as specifically modified by this Resolution, all other conditions of Resolution No 03-R-11280 shall remain in full force and effect
- 2 Except as otherwise provided by these conditions, the Planned Development shall be constructed and operated in substantial compliance with the plans submitted to and approved by the City Council at its meeting of October 21, 2003
- 3 The outdoor living areas on the roof of the parking structure and the roof top of the residential tower shall comply with all applicable federal, state and local regulations, if any, with regard to accessibility, including but not limited to the provisions of Title III of the Americans With Disabilities Act (42 U S C §12181 *et seq* and implementing regulations at 28 C F R Part 36), Title 24 of the California Building Code, and the California Fair Housing and Employment Act (Cal Gov Code § 12900 *et seq* )
- 4 The balconies on the northerly and easterly sides of the building shall be replaced with operable windows The windows shall be capable of allowing natural ventilation to flow into each of the units but shall be of an awning or transom style
- 5 Prior to the issuance of building permits, the plans for the Planned Development shall be modified to comply with all applicable building, earthquake, engineering, and other standard codes

Section 9 The City Clerk shall certify to the adoption of this Resolution, and shall cause this Resolution and her certification to be entered in the Book of Resolutions of the Council of this City

Adopted November 5, 2003

  
\_\_\_\_\_  
THOMAS S. LEVYN  
Mayor of the City of Beverly Hills,  
California

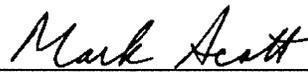
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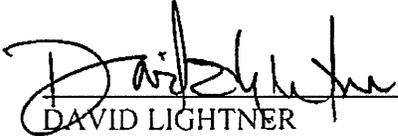
  
\_\_\_\_\_  
NINA WEBSTER (SEAL)  
City Clerk

APPROVED AS TO FORM

  
\_\_\_\_\_  
ROBERT H. PITTMAN  
Assistant City Attorney

APPROVED AS TO CONTENT

  
\_\_\_\_\_  
MARK SCOTT  
City Manager

  
\_\_\_\_\_  
DAVID LIGHTNER  
Deputy City Manager/Development

  
\_\_\_\_\_  
MAHDI ALUZRI  
Director of Planning & Community  
Development

## RESOLUTION NO 03-R -11280

RESOLUTION OF THE COUNCIL OF THE CITY OF  
BEVERLY HILLS CONDITIONALLY APPROVING A  
PLANNED DEVELOPMENT FOR AN ADAPTIVE RE-USE  
PROJECT AT 8601 WILSHIRE BOULEVARD

The City Council of the City of Beverly Hills does resolve as follows

Section 1 Lee Silver of Ervin, Cohen & Jessup LLP on behalf of 8601 Wilshire Associates LLC (hereinafter the "Applicant") has applied for approval of a Planned Development to renovate and convert an existing legally nonconforming office building into 37 residential rental units (apartments) with approximately 650 square-feet of ground floor retail and 114 on-site parking spaces (the "Planned Development") for property generally located at 8601 Wilshire Boulevard (the "project site") The Planned Development is sometimes referred to herein as the "Project "

The project site is located in a Commercial C-3 zone at the northwest corner of Wilshire Boulevard and Stanley Drive The property is currently developed with an eleven-story, legally nonconforming office building constructed in 1971 The existing building includes an 11-story office tower located along the Wilshire frontage setback approximately 80 feet from the northerly property line, which abuts a single-family residence There is a three-level, above grade parking structure with rooftop parking located within the 80-foot setback and one subterranean parking level

Adjacent development consists of a mix of commercial and residential uses Development east and west of the project site along Wilshire Boulevard development is

comprised of commercial uses. To the south, across Wilshire Boulevard, are commercial structures that vary in height and density. South of the Wilshire Boulevard frontage, development primarily consists of Single Family Residential (R-1). Development east of La Cienega consists of Multiple Family Residential (R-4) south of Wilshire Boulevard, while development between Robertson and La Cienega is comprised of Single Family Residential (R-1).

The Applicant proposes to convert the existing office building into 37 rental units with ground floor retail of approximately 650 square-feet and 114 on-site parking spaces. The proposed apartment units would average 855 square feet in size and would include 29 one-bedroom units and eight two-bedroom units, with individual unit sizes ranging from a minimum of 670 square feet to a maximum of 1,175 square feet. The Applicant proposes to utilize approximately one-half of the rooftop area as an open patio. The combination of the rooftop patio and the balconies in the individual units will provide a total of 7,495 square feet of outdoor living space, slightly more than the 7,400 square feet of outdoor living space required by the Beverly Hills Municipal Code.

As part of the project, the Applicant is concurrently requesting a Zoning Code amendment to establish an adaptive re-use planned development overlay zone over the project site to be known as the C-3(A) Zone (proposed Article 19.6 of the Beverly Hills Municipal Code). The proposed Zoning Amendment would permit the conversion of the existing office building to residential uses. Approval of the Project will require the City Council to adopt the Zoning Amendment and approve the Planned Development.

Section 2 The Planning Commission conducted duly noticed public hearings on September 25, October 23, November 20, and December 12, 2002, at which times it received oral and documentary evidence relative to the Negative Declaration and the applications for the Zoning Amendment and the Planned Development. On December 12, 2002, the Planning Commission adopted Planning Commission Resolution No. 1264 recommending that the City Council adopt the proposed Zoning Code amendment establishing an adaptive reuse planned development overlay zone and approve the Planned Development for an adaptive re-use project at 8601 Wilshire Boulevard.

Section 3 On January 7, 2003, the City Council held a duly noticed public hearing to consider the application for a planned development to convert the existing legally nonconforming office building at 8601 Wilshire Boulevard to 37 residential rental units with ground floor retail. At said hearing, the City Council also considered concurrent requests by the Applicant for a Zoning Code amendment to establish an adaptive reuse planned development overlay zone. Evidence, both written and oral, including the staff report, supporting documentation and the record of the proceedings before the Planning Commission on the dates set forth in Section 2, was presented at said hearing. At the conclusion of the public hearing the City Council waived full reading and introduced Ordinance No. 03-O-2422 establishing the C-3(AR) Zone, an adaptive reuse planned development overlay zone and regulations pertaining thereto, and directed staff to prepare a resolution approving the Project subject to certain conditions.

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 and supporting technical studies, determined that there was no substantial evidence that approval of the Project may have significant environmental impact. Accordingly, the City prepared a negative declaration in accordance with Section 15070 of the State CEQA Guidelines. Pursuant to Section 15074(b) of said Guidelines, the City Council independently reviewed and considered the contents of the initial study and the negative declaration prior to deciding whether to approve the Project. Based on the initial study, the negative declaration, the comments received thereon, and the record before the City Council, the City Council hereby finds that the negative declaration prepared for the Project represents the independent judgment of the City and that there is no substantial evidence that the approval of the Project may have any significant environmental impact. The documents and other material which constitute the record on which this decision is based are located in the Department of Planning and Community Development and are in the custody of the Director of Planning and Community Development.

Section 5 In reviewing the Planned Development application, the City Council considered the following in accordance with the provisions of Section 10-3 1966 of the proposed Zoning Amendment

(1) Whether the Planned Development is consistent with the General Plan and any specific plans adopted for the area,

(2) Whether the Planned Development will adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area,

(3) Whether the Planned Development will ensure the efficient use of existing resources and provide additional housing opportunities,

(4) Whether the Planned Development will create any significant, adverse traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will minimize impediments to vehicular circulation and pedestrian safety,

(5) Whether the Planned Development will encourage development of pedestrian friendly environments by allowing the conversion of impersonal, underutilized commercial buildings to residential uses while preserving a street-level presence that holds the interest of pedestrians and attracting additional neighborhood commercial uses, and

(6) Whether the Planned Development will promote the public health, safety or general welfare

Section 6 Based upon the evidence presented, including the staff report and oral testimony, the City Council hereby finds as follows with respect to the Planned Development

6.1 The Planned Development is consistent with and implements the City's General Plan and conforms to the land use designations for the project site. The General Plan Land Use Element designates the project site Low Density Commercial, which permits mixed-use developments. Ordinance No. 03-O-2422 referenced above establishes development

standards to authorize the introduction of mixed land uses at the project site. The Planned Development will renovate an existing legally, nonconforming building and help rejuvenate the east Wilshire area. Additionally, the Planned Development will advance several of the primary goals and objectives set forth in the General Plan. Specifically, the Planned Development furthers the following General Plan goals:

(a) The Land Use Element sets the following goal with respect to development along Wilshire Boulevard east of the Business Triangle: *“Areas of limited development potential. There are areas of the community which consist predominantly of strip commercial uses. These areas are located outside the Business Triangle and are characterized by varying degrees of vitality and obsolescence. The role of these strip commercial uses with regard to the community's long-term objectives and with respect to their surroundings needs to be more adequately defined. Depending upon the specific location, it may be appropriate for commercial development to be concentrated and encouraged in certain parts of these areas and discouraged from others. The area of primary concern is along Wilshire Boulevard east of the Business Triangle.”*

The project site is located in one of the areas identified in the General Plan where commercial development should potentially be discouraged. Implementation of the Planned Development will replace the existing general commercial uses at the project site with residential uses and neighborhood commercial uses. The existing nonconforming structure is currently underutilized, but existing entitlements for the building would allow 26,509 square feet of general commercial uses and 10,450 square feet of medical office uses. These uses are higher intensity than the residential uses and limited commercial use proposed by the Planned

Development and less compatible with the adjacent single-family residential neighborhoods to the north and south of the project site. The Planned Development provides a good transition use between the commercial uses along Wilshire Boulevard and the single-family residential neighborhood to the north and introduces a buffer to shield the adjacent residential neighborhood from the intrusive effects of the higher intensity commercial uses along Wilshire Boulevard. As discussed more fully below, the Planned Development will result in lower overall traffic and will encourage the growth of additional neighborhood commercial, which will improve the pedestrian appeal of the east Wilshire area.

(b) The Land Use Element also sets the following goal with respect to mixed-use projects: *“The feasibility of allowing mixed commercial/residential uses should be analyzed in order to expand the variety of housing types available and, in certain areas, to improve commercial/residential transitions.”*

The Planned Development provides an opportunity to construct a quality mixed-use development that would not otherwise be encouraged by the underlying zone. Ordinance No. 03-O-2422 establishes development standards which will ensure that the conversion of the existing building is accomplished in a manner that is compatible with surrounding development. Subject to these standards, the Planned Development introduces mixed uses to the east Wilshire area, an identified goal of both the Land Use Element and the Housing Element. Further, the Planned Development provides additional housing, an identified goal of the Housing Element. The Planned Development provides sufficient floor area to allow the applicant to construct residential rental units that include high quality amenities and high quality architectural design commensurate with the City's established standards and the character

of the nearby residential neighborhoods. Moreover, the Planned Development provides an opportunity for the City to improve the pedestrian appeal of the east Wilshire area. The design of the Planned Development will include a commercial retail presence along the Wilshire Boulevard frontage that will contribute to the urban design amenities that serve as a visual and pedestrian link between other commercial areas along Wilshire Boulevard. In addition, the Planned Development will replace the existing impersonal commercial office use with residential and neighborhood commercial retail, which will benefit all adjacent residents and will in turn help attract other neighborhood commercial uses to the area.

(c) The Land Use Element of the General Plan sets forth the following goal: *Transitional conflicts resulting from the juxtaposition of commercial and residential uses should be mitigated through a program which would provide adequate buffers between conflicting uses.*

The Planned Development, as revised and recommended, will further this goal by providing a buffer between the residential uses situated north of the project site and the more intense commercial uses along Wilshire Boulevard. The design of the Planned Development incorporates features, including sound barriers, noise-reducing coatings, and visual screens, to preserve the privacy of and reduce potential impacts to nearby residents, thereby shielding surrounding development north of the project site from the intrusive effects of the commercial uses along Wilshire Boulevard. Moreover, the predominantly residential nature of the proposed use is more comparable in intensity and harmonious with nearby residential development. Implementation of the Planned Development will remove the possibility for other

potentially more intrusive development on the site and will help preserve the existing character of the neighborhood to the maximum extent feasible

(d) The Housing Element sets forth a goal to seek opportunities to expand rental housing affordable to lower income households. Although the Planned Development, by itself, would not specifically advance this goal, the Planned Development is consistent with Beverly Hills Ordinance No. 82-O-1839 which was adopted to implement this goal. Moreover, implementation of the Planned Development adds 37 units to the City's rental housing stock (representing one of the first increases in rental housing in almost two decades) and helps the City meet its share of the regional housing needs by providing 37 market rate housing units. The Applicant has voluntarily stated on the record that it will record a covenant prohibiting the conversion of the 37 rental units to condominiums. Based on this representation, the City Council finds that implementation of the Planned Development will advance the City's goal to expand its rental housing stock.

(e) The Housing Element also sets forth a goal to "*Maintain the general scale and character of the City through directed revitalization*." The Planned Development will further this goal by converting an existing building from commercial uses to 37 residential units with limited commercial components. This conversion will result in a development that is more comparable in intensity and harmonious with nearby residential development and a reduction in the traffic and noise impacts associated with the existing entitlements for the project site. The Planned Development's parking, modern features and design will be consistent with the character and quality of life generally associated with the City and the surrounding neighborhood. Moreover, the Planned Development will be expressly conditioned to require residential tenants

to sign minimum one-year leases which will ensure that the operation of the Planned Development will not adversely impact the stability of the adjacent single-family residential neighborhood. Implementation of the Project allows the City to revitalize the east Wilshire area by introducing a more compatible use at the project site while preserving existing resources and the general scale and character of the area.

(f) The Housing Element further sets forth a goal to “*expand the variety of housing product on a limited basis beyond single family detached, rental apartment and condominium units*” and sets forth the following objective to implement this goal “*Develop standards for mixed residential-commercial structures, with and without low income housing components, including additional height, in areas currently zoned for commercial use and consider appropriateness of various areas*”

The Planned Development and Zoning Amendment will further this goal and objective by creating an adaptive re-use overlay zone (the C-3(AR) Zone) and providing a mixed commercial/residential development that would not otherwise be provided in the City. Implementation of the Planned Development expands the housing opportunities available in the City and helps the City fulfill its obligations under the Housing Element and State housing law.

6.2 As conditioned, the Planned Development is compatible with existing and anticipated development in the vicinity and promotes harmonious development of the area. The Planned Development will help rejuvenate the east Wilshire area by increasing its pedestrian appeal. The Planned Development incorporates many design elements tailored to integrate the Planned Development with both the commercial areas along Wilshire Boulevard and the residential areas north of the project site and is a good transition between the commercial uses on

Wilshire Boulevard and the nearby single-family residences. The Planned Development will not adversely impact property values of surrounding development and will have similar privacy impacts on adjacent residential development as the existing office use. Moreover, approval of the Planned Development will be specifically conditioned to require design features to minimize any intrusion into the privacy of adjacent neighborhoods to the greatest extent feasible. Approval of the Planned Development is further conditioned to require the Applicant to redesign the wall enclosing the upper (rooftop) parking level in a manner to prevent visual access from the rooftop parking area to the street and nearby residences and to provide a sound barrier to minimize any impacts to adjacent residences. The City's existing noise standards will ensure that noise from the use of individual balconies will not disturb the quiet enjoyment of adjacent residents, and a condition prohibiting the use of the rooftop patio area for parties will further mitigate any noise impacts to adjacent neighbors. The annual lease requirement will reduce transient occupancy and help preserve the stability of the adjacent residential neighborhood. Finally, the entire Planned Development, including the Wilshire Boulevard facade, will be reviewed by the Architectural Commission, thus ensuring that the architectural elements of the Planned Development will be compatible with surrounding development.

The Applicant will be required to prepare and submit construction management plans and to conform all construction activities to said plans to minimize construction impacts on adjacent land uses. Said plans will address construction parking and hauling activities to ensure that construction impacts are minimized, consistent with the City's standards. Thus, the Planned Development will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.

6.3 As conditioned, the Planned Development will ensure the efficient use of existing resources and provide additional housing opportunities. The Planned Development will convert an existing building from commercial uses to 37 residential units with limited commercial components. This conversion will result in a development that is more comparable in intensity and harmonious with nearby residential development than the higher intensity medical and office uses authorized by the existing entitlements for the site while preserving a valuable resource, the existing building at the project site. The Planned Development will reduce the traffic and noise impacts associated with those existing entitlements for the project site and will provide additional rental housing, representing one of the first increases in the City's rental housing stock in nearly two decades. As noted previously, the Applicant has voluntarily stated on the record that it will record a covenant prohibiting the conversion of the 37 rental units to condominiums, thus ensuring that implementation of the Planned Development will expand the City's rental housing stock.

6.4 As conditioned, the Planned Development will not create adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards. Moreover, the Planned Development will provide ample parking to satisfy the parking demand generated by the proposed use. The Traffic Study prepared by Kaku and Associates for the Planned Development demonstrates that, with the exception of weekend traffic, the Planned Development will generate less overall traffic than the existing entitlements on the project site. Moreover, the traffic study demonstrates that the incremental increase to weekend traffic on adjacent streets is not significant. The net weekday traffic generated by the Planned Development is estimated to be about 333 less daily trips, including a reduction of 42 trips

during the morning peak hour and a reduction of 47 trips during the afternoon peak hour. On weekends, the Planned Development will result in a net increase of 124 trips on Saturdays and 189 trips on Sundays. However, as noted previously, the traffic study demonstrates that the incremental increase on adjacent streets will be less than significant. Access to the Planned Development will be provided via two driveways on Stanley Drive. The southernmost driveway is designed to exclusively serve the tenants of the Planned Development and entry will be restricted. The northernmost driveway on Stanley Drive will serve as the main entry for visitors. Access through the northern driveway will be restricted and a valet will be on-site to greet visitors between the hours of 7:00 a.m. and 10:00 p.m. In addition, a concierge will be present on-site 24 hours a day to assist visitors who arrive outside of the valet hours. Conditions will be imposed on the Planned Development to reduce parking impacts, including the following: (1) on-site parking will be provided to all commercial and residential tenants of the development, (2) all commercial patrons will be provided one-hour free, validated on-site parking, (3) free on-site parking will be provided to employees of all commercial tenants at all times, (4) free on-site parking will be provided to guests of residential tenants at all times, and (5) a Loading Management Plan and a Parking Management Plan satisfactory to the Directors of Planning and Transportation will be provided. The traffic study demonstrates that the Planned Development's supply of parking is adequate to meet the parking demand generated by the Planned Development. Further, approval of the Planned Development will include a condition requiring that a follow-up traffic study be performed one year after the issuance of final occupancy permits for the Planned Development to verify whether Planned Development's actual traffic generation conforms to the Kaku estimates. If the follow-up study discloses any unanticipated impacts, the

City has expressly reserved jurisdiction to impose any additional conditions necessary to mitigate such impacts

6.5 The Planned Development will encourage development of pedestrian friendly environments by allowing the conversion of an impersonal, underutilized commercial building to residential uses while preserving a street-level commercial presence that holds the interest of pedestrians and attracts additional neighborhood commercial uses. The proposed renovations will soften the commercial building facade and the presence of a neighborhood commercial retail use will be more inviting to pedestrians than the impersonal office uses authorized by the existing entitlements. The Planned Development will help rejuvenate the east Wilshire area and introduction of a new residential use and neighborhood commercial will help attract other neighborhood commercial uses to the area.

6.6 As conditioned, the Planned Development will promote the public health, safety or general welfare. The Planned Development provides a good transition use between the commercial uses along Wilshire Boulevard and the single-family residential neighborhood to the north and introduces a buffer to shield the adjacent residential neighborhood from the intrusive effects of the higher intensity commercial uses along Wilshire Boulevard. The Planned Development will have similar privacy impacts on adjacent residential development as the existing office uses and the Planned Development will be specifically conditioned to require design features to minimize any intrusion into the privacy of adjacent neighborhoods to the greatest extent feasible. The Noise Study prepared by Veneklasen Associates for the Planned Development demonstrates that the proposed Project will have no adverse noise impacts on adjacent residents. The Planned Development will protect the property values of surrounding

development, will provide adequate parking to meet all of the needs generated by the proposed use, and provides adequate outdoor living area for its residents. Finally, the annual lease requirement will reduce transient occupancy and help preserve the stability of the adjacent residential neighborhood, and implementation of the Planned Development will provide additional housing, which benefits the general welfare and advances an identified goal of the City's Housing Element. Furthermore, based on the Applicant's voluntary offer to record a covenant prohibiting the conversion of the 37 rental units to condominiums, the City Council finds that implementation of the Planned Development will expand the City's rental housing stock and help to satisfy the need for rental housing in the City, thereby promoting the public welfare of all residents of the City.

Section 7 As proposed and conditioned, the Planned Development meets the objectives of the C-3(AR) Zone as set forth in Section 6 of this resolution. Therefore, as required by proposed Articles 19.6 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code, the City Council hereby approves the following elements of the planned development, as proposed and conditioned:

7.1 Pursuant to Beverly Hills Municipal Code Section 10-3.1964, the City Council hereby approves the 3,066 square feet of commercial and office uses and 37 residential rental units with 31,661 aggregate square feet for the Planned Development, as proposed and conditioned.

7.2 Pursuant to Beverly Hills Municipal Code Section 10-3 1969, the City Council hereby approves the unoccupied architectural features, rooftop windscreens, and rooftop parking wall enclosure of the Planned Development, as proposed and conditioned

Section 8 Based upon the evidence presented, including the staff report, technical studies, and oral and written testimony, and the authority provided by the California Environmental Quality Act, the City Council hereby adopts the Negative Declaration for the Project discussed in Section 4 of this Resolution

Section 9 Based upon the evidence presented, the City Council hereby conditionally approves the Planned Development subject to the following conditions

- 1 Except as otherwise provided by these conditions, the Planned Development shall be constructed and operated in substantial compliance with the plans submitted to and approved by the City Council at its meeting of January 7, 2003
- 2 This approval of the Planned Development shall not become effective until Ordinance No 03-O-2422 adding Article 19.6 to Chapter 3, Title 10 of the Beverly Hills Municipal Code and establishing the C-3(AR) Zone, an adaptive reuse planned development overlay zone and regulations pertaining thereto, becomes effective
- 3 A comprehensive Parking Management and Operations Plan shall be submitted to the Director of Planning and Community Development for review and approval prior to issuance of occupancy permits for the Planned Development. At a minimum, the plan shall address the utilization of the parking garage by the respective tenants and operators and shall ensure the effective utilization of the tandem parking by (1) specifying how such parking will be restricted to tenants, rather than visitors, and/or (2) if utilized by commercial tenants, requiring the use of tandem parking spaces by employees of the same organization, and/or (3) if utilized by residential tenants, requiring the use of tandem parking spaces by residents of the same unit, and/or (4) providing for an attendant service to move cars, and/or (5) specifying some other method deemed acceptable by the Director of Planning. The plan shall also provide for a 24-hour attendant or concierge seven (7) days a week to ensure that visitors have access to parking provided on the project site

4 The Applicant shall prepare a comprehensive Construction Management Plan and shall submit said plan to the City Engineer and the Directors of Planning and Building & Safety for their review and approval prior to the issuance of any demolition or building permits for the Planned Development. At a minimum, the Construction Management Plan shall address the following (1) construction delivery schedules, (2) truck hauling/construction traffic routing and access, (3) access to and from the site by construction workers, (4) dust control measures, (5) noise mitigation measures, (6) construction site maintenance, (7) construction parking (on street construction parking shall be prohibited), and (8) management of vehicular ingress/egress from/to public rights-of-way (e.g. flagmen, etc). The Construction Management Plan shall demonstrate that any construction impacts to normal traffic flow, on-street parking, or associated with truck access have been reduced to a level consistent with normal construction activity within the City.

The Construction Management Plan shall provide information regarding the anticipated number of workers, the location of construction parking with respect to schedules during the construction period, the arrangements of deliveries, hauling activities, the length of time of operation, designation of construction staging area and other pertinent information regarding construction related traffic. Subject to the approval of the City Engineer, the plan shall designate construction haul routes that avoid the use of residential streets and avoid peak traffic hours. Additionally, the plan shall include a traffic management plan to address any construction related impacts to normal traffic flow in the vicinity of the project site.

The plan shall further demonstrate to the satisfaction of the Directors of Planning and Building & Safety that adequate provisions for parking for construction workers have been made prior to issuance of any construction or demolition permits for the Planned Development. Adequate provisions shall be defined as demonstration that the Applicant has adequate on-site parking available to accommodate all construction related parking or, alternatively, has entered into a contract for the provision of the necessary parking. If the Applicant satisfies the construction parking requirements through the use of off-site parking facilities, such parking shall be located no more than 500 feet from the project site, unless a shuttle service is provided at the project developer's expense, which satisfactorily meet the needs of the parking users. The plan shall prohibit any construction-related parking on nearby residential streets or along Wilshire Boulevard.

5 All heavy hauling and delivery of large construction supplies shall be subject to the issuance of heavy hauling permits issued by the Department of Public Works, Engineering Division. The Applicant shall provide to the City Engineer the proposed demolition/construction staging for this Planned Development to determine the amount, appropriate routes, and time of day of heavy hauling truck traffic necessary for demolition and deliveries to the project site.

- 6 Construction activities on the project site, including the loading or unloading of construction materials or debris, shall be restricted to the hours between 8 00 a m and 6 00 p m Monday through Friday No construction activities of any kind whatsoever shall be permitted on Saturdays and/or Sundays unless otherwise authorized by an after hours construction permit issued pursuant to Section 5-1 206 of the Beverly Hills Municipal Code
- 7 No uses other than those specifically approved in Section 7 of this Resolution shall be permitted as part of this Planned Development This condition shall not be construed to bar the applicant from requesting a modification at a later date to permit additional uses as part of this Planned Development
- 8 The Planned Development shall provide on-site parking for its residential and commercial tenants at all times
- 9 The Planned Development shall provide free, on-site parking to employees of all commercial tenants, including the on-site property management company for the Planned Development, at all times
- 10 The Applicant shall provide free on-site parking for guests of residential tenants at all times In addition, the Applicant shall provide one-hour free parking with validation for all patrons of commercial tenants
- 11 The Applicant shall provide identification signs directing visitors and guests to visitor parking spaces Directional signs and visitor parking space identification shall be designed and installed to the satisfaction of the Director of Planning and Community Development and shall clearly state that such visitor parking is available free of charge to guests and visitors of the Planned Development's tenants
- 12 Prior to the issuance of a certificate of occupancy for the Planned Development, the Applicant shall install a sign and a visual warning device satisfactory to the Director of Planning and Community Development at the entrance to the parking garage to warn drivers entering/exiting the residential and commercial garage of pedestrian cross-traffic The sign shall displaying the message "Yield to Pedestrians" or such similar message approved by the Director The visual warning device shall be designed in a manner to prevent its visibility from the adjacent residential neighborhood
- 13 The Planned Development shall comply with the applicable standard conditions and shall obtain all necessary permits from the Public Works/Engineering Department The Standard Conditions List is attached hereto as Exhibit A and incorporated herein by this reference

- 14 The Planned Development shall comply with all applicable federal, state and local regulations, if any, with regard to accessibility, including but not limited to the provisions of Title III of the Americans With Disabilities Act (42 U S C §12181 *et seq* and implementing regulations at 28 C F R Part 36), Title 24 of the California Building Code, and the California Fair Housing and Employment Act (Cal Gov Code § 17900 *et seq* )
- 15 The use of the rooftop deck area shall be limited to the hours between 9 00 a m and 9 00 p m , daily
- 16 No parties, functions, receptions, or other similar events shall be permitted on the rooftop area at any time
- 17 No entertainment or amplified music of any kind shall be permitted on the rooftop deck area
- 18 The Applicant shall notify all tenants and visitors to refrain from parking in the adjacent single-family residential area and shall post signage, satisfactory to the Director of Planning and Community Development, near the entrance to and inside the parking garage to remind tenants and visitors of this requirement
- 19 The Applicant shall notify all tenants that the Planned Development is located in a commercial zone and is not eligible for inclusion in a Preferential Parking District nor are residents of the Planned Development eligible to participate in preferential parking zones on adjacent residential streets This notice shall be included in the lease agreements for all residential units at the Project site
- 20 City staff shall periodically monitor traffic associated with the Planned Development to ensure that actual traffic levels do not significantly exceed the traffic counts projected in the traffic analysis prepared by Kaku and Associates The City expressly reserves jurisdiction relative to traffic and parking issues One year after the issuance of final occupancy permits for the Planned Development, the City shall require the Applicant to pay for a follow-up traffic study to verify whether the Planned Development's actual traffic generation conforms to the Kaku estimates After reviewing said traffic study, if, in the opinion of the Director of Planning and Community Development, the parking and traffic issues merit review by the Planning Commission, the Director shall schedule a hearing in front of the Planning Commission in accordance with the provisions of Article 38 of Chapter 3 or Title 10 of the Beverly Hills Municipal Code The Planning Commission shall conduct a noticed public hearing regarding the parking and traffic issues and may impose additional conditions as necessary to mitigate any unanticipated traffic and parking impacts caused by the proposed Planned Development in order to protect the integrity of the adjacent R-1 neighborhood The Applicant shall forthwith comply with any additional conditions at its sole expense

- 21 No demolition or material alteration of the existing building other than the removal of asbestos at the project site shall be permitted until the Applicant obtains a building permit to construct the Planned Development and (1) presents evidence satisfactory to the City's Finance Director that the Applicant has obtained sufficient financing to complete construction of the Planned Development, and (2) submits a completion bond satisfactory in form and content to the City Attorney and the Director of Building & Safety in an amount sufficient to return the building to a safe condition in the event construction is commenced but the Planned Development is not completed
- 22 Prior to the issuance of building permits, the Applicant shall submit a revised landscape plan to the Director of Planning and Community Development for review and approval. The Director shall review the plan to ensure that the landscaping preserves the privacy of adjacent properties in the nearby single-family residential neighborhood to the maximum extent feasible. Planting in accordance with the approved landscape plan shall be completed prior to the issuance of occupancy permits for the Planned Development.
- 23 Prior to the issuance of building permits, the Applicant shall submit a sewer flow analysis prepared and signed by a mechanical engineer registered in the state of California to the City Engineer for review and approval. If the City Engineer determines that the Project will require upgrades to the City's existing sewer system, the Applicant shall install such upgrades at its sole expense.
- 24 The Applicant shall provide a concierge on site 24 hours a day, seven (7) days a week. An intercom system satisfactory to the Director of Planning and Community Development shall be provided to facilitate communication between the concierge and residential guests and/or commercial patrons seeking to gain access into the parking garage.
- 25 Each condition set forth in this resolution is a material element of the City's decision to approve the Planned Development. If any condition of approval set forth in this resolution is invalidated or rendered unenforceable by a decision of a court of competent jurisdiction in a matter where the City is a named party, then this entire resolution shall be deemed invalidated and the Project approvals set forth in this resolution shall immediately become null and void and be of no further force and effect.
- 26 Any failure to comply with a condition of this resolution shall be grounds for revocation of the Planned Development approval for the Planned Development. The City Council may revoke the Planned Development approval if the City Council determines that the Applicant has failed to abide by any condition. The City Council shall not make such determination unless and until the Council has conducted a hearing on the revocation and provided the applicant with an opportunity to be heard on the issue of whether the Applicant has failed to comply with the condition and whether revocation is appropriate.

27 The Applicant shall defend, with counsel satisfactory to the City, indemnify and hold harmless the City and its agents, officers and employees from any claim, action or proceeding against the City or its agents, officers or employees, to attack, set aside, void or annul this resolution or one or more of the approvals set forth in this resolution. Alternatively, at the City's election, the City may choose to defend itself from any claim action or proceeding to attack, set aside, void or annul this resolution or one or more of the approvals set forth in this resolution. In that case, the Applicant shall reimburse the City for all of its costs, including attorney fees, arising from such claim, action or proceeding. The obligations set forth in this condition include the obligation to indemnify or reimburse the City for any attorney fees that the City becomes obligated to pay as a result of any claim, action or proceeding within the scope of this condition.

In order to ensure compliance with this condition, within twenty days after notification by the City of the filing of any claim, action or proceeding to attack, set aside, void or annul this resolution or one or more of the approvals set forth in this resolution, the Applicant shall deposit with the City cash or other security in the amount of \$25,000, 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 condition. If the City is required to draw on that cash or security to indemnify or reimburse itself for such costs, the applicant 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 is necessary to secure the obligations of this condition, the Applicant shall provide such additional security within fifteen (15) days of notice from the City Attorney.

The City shall promptly notify the Applicant of any claim, action or proceeding within the scope of this condition and the City shall cooperate fully in the defense of any such claim or action.

28 The Planned Development shall be subject to the review and approval of the Architectural Commission and shall comply with any conditions imposed by the Architectural Commission.

29 Subject to review by the Architectural Commission, the Applicant shall redesign the wall surrounding the upper (rooftop) parking level in a manner to prevent visual access from the rooftop parking area to the street and nearby residences and to provide a sound barrier to minimize any impacts to adjacent residences.

30 The Applicant shall apply an appropriate finish to all floor surfaces in the parking structure to mitigate any potential tire squeals in the garage.

31 In order to ensure that the Applicant pays an equitable share of the cost of mitigating future improvements and programs made necessary by the Planned Development, the

Applicant shall pay any fee, tax, assessment or similar financing mechanism established by the City Council to mitigate impacts created by the conversion of commercial buildings to residential uses. If the amount of such fee, tax, assessment or similar financing mechanism has not been established at the time that the fee, tax, assessment or similar financing mechanism would be due and payable, the Applicant shall pay such fee, tax, assessment or similar financing mechanism within thirty days after the amount of the fee, tax, assessment or similar financing mechanism has been established by resolution of the City Council. If the amount of the fee, tax, assessment or similar financing mechanism has not been established before occupancy of the Planned Development, then the Applicant's obligation to pay such fee, tax, assessment or similar financing mechanism shall expire.

- 32 The Applicant shall require the tenants of all residential units to enter into leases with a term of no less than one year.
- 33 All dwelling units in the Planned Development shall be fitted with double-glazed glass windows to minimize noise impacts to both residents of the Planned Development and residents in the adjacent R-1 neighborhood in accordance with the California Building Code and the requirements of the City's noise ordinance.
- 34 No convenience store shall be permitted as a commercial use in the Planned Development.
- 35 The Applicant shall not lease any ground floor retail/commercial space without the prior review and approval of the proposed tenant by the Director of Planning and Community Development. The Director's review shall include a determination that the proposed tenant's projected trip generations are substantially similar to the trip generation estimates for commercial uses analyzed in the Kaku Traffic Study and that the proposed use is compatible with the other uses in the Project and the vicinity.
- 36 No alcohol sales shall be permitted in conjunction with any commercial use at the project site.
- 37 All balcony guardrails shall be designed to screen views of the balconies from the public rights-of-way or adjacent properties. No storage or hanging of laundry shall be permitted on the balconies at any time.
- 38 Prior to the issuance of building permits for the Project, the Applicant shall submit documentation satisfactory to the Director of Building & Safety that the proposed renovations comply with the provisions of Sections 10-3 4100 and 10-3 4101 of Article 41, Chapter 3, Title 10 of the Beverly Hills Municipal Code.

- 39 A cash deposit of \$5,000 shall be deposited with the City to ensure compliance with the conditions of this Resolution regarding construction activities. Such deposit shall be returned to Applicant upon completion of all construction activities and in the event that no more than two violations of such conditions or the Beverly Hills Municipal Code occur. In the event that three or more such violations occur, the City may (a) retain the deposit to cover costs of enforcement, (b) notify the Applicant that the Applicant may request a hearing before the City within ten days of the notice, and (c) issue a stop work notice until such time that an additional deposit of \$10,000 is deposited with the City to cover the costs associated with subsequent violations. Work shall not resume for a minimum of two days after the day that the additional deposit is received by the City. If the Applicant timely requests a hearing, said deposit will not be forfeited until after such time that the Applicant has been provided an opportunity to appear and offer evidence to the City, and the City determines that substantial evidence supports forfeiture. Any subsequent violation will trigger forfeiture of the additional deposit, the issuance of a stop work notice, and the deposit of an additional \$10,000, pursuant to the procedure set forth herein above. All amounts deposited with the City shall be deposited in an interest bearing account. The Applicant shall be reimbursed all interest accruing on monies deposited. The requirements of this condition are in addition to any other remedy that the City may have in law or equity and shall not be the sole remedy of the City in the event of a violation of the conditions of this Resolution or the Beverly Hills Municipal Code.
- 40 Within three working days after approval of this Resolution, the Applicant shall remit to the City a cashier's check, payable to the County Clerk, in the amount of \$25.00 for a documentary handling fee in connection with Fish and Game Code requirements. If the Department of Fish and Game determines that this Planned Development is not exempt from a filing fee imposed pursuant to Fish and Game Code Section 711.4, then the Applicant shall also pay to the Department such fee and any fine which the Department determines to be owed.
- 41 These conditions shall run with the land and shall remain in full force for the duration of the life of the Planned Development.
- 42 The approval of the Planned Development to allow an adaptive re-use, mixed-use project with commercial and residential uses (the "permit") shall not become effective until the owner of the project site records a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of this resolution as an exhibit.

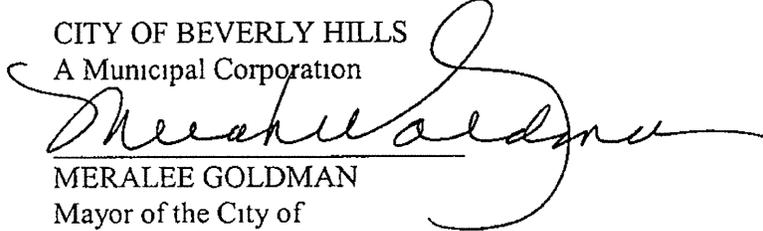
The Applicant shall deliver the executed covenant to the Department of Planning and Community Development **within 60 days** of the City Council decision. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this

resolution approving the discretionary approvals shall be null and void and of no further effect Notwithstanding the foregoing, the Director of Planning and Community Development may, upon a request by the Applicant, grant a waiver from the 60-day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that would affect the discretionary approvals

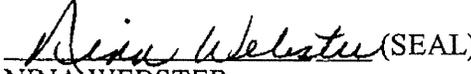
- 43 The City reserves the right to make modifications and/or impose additional conditions which may become necessary to enable implementation of the specific conditions set forth in this Resolution and the Applicant shall comply with all such modified or additional conditions

Section 9 The City Clerk shall certify to the adoption of this Resolution, and shall cause this Resolution and her certification to be entered in the Book of Resolutions of the Council of this City

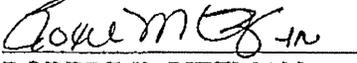
Adopted February 4, 2003

CITY OF BEVERLY HILLS  
A Municipal Corporation  
  
MERALEE GOLDMAN  
Mayor of the City of  
Beverly Hills, California

ATTEST

  
NINA WEBSTER (SEAL)  
City Clerk

APPROVED AS TO FORM

  
ROBERT H. PITTMAN  
Assistant City Attorney

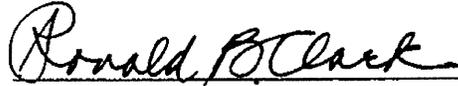
APPROVED AS TO CONTENT

  
DAVID LIGHTNER  
Deputy City Manager/Development



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MAHDI ALUZRI  
Director of Planning & Community  
Development



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RONALD B CLARK  
Director of Building & Safety



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DAVID D GUSTAVSON  
Director of Civil Engineering

*EXHIBIT A*  
*STANDARD CONDITIONS LIST*

CITY OF BEVERLY HILLS  
STANDARD CONDITIONS LIST  
FOR THE PLANNING COMMISSION

September 6, 2002

ENGINEERING, UTILITIES AND RECREATION & PARKS:

1. The applicant shall remove and replace all defective sidewalk surrounding the existing and proposed buildings.
2. The applicant shall remove and replace all defective curb and gutter surrounding the existing and proposed buildings.
3. The applicant shall comply with all applicable statutes, ordinances and regulations concerning the conversion of residential rental units into condominiums, including, but not limited to, the requirement that the applicant pay the City of Beverly Hills the condominium conversion tax of \$5,638.80, if a certificate of occupancy is issued prior to approval of the final subdivision map by the City Council. (The tax figure is adjusted annually.)
4. The applicant shall remove all unused landings and driveway approaches. These parkway areas, if any, shall be landscaped and maintained by the adjacent property owner. This landscape material cannot exceed six to eight inches in height and cannot be planted against the street trees. Care shall be taken to not damage or remove the tree existing tree roots within the parkway area. Remove and replace all defective alley and driveway approaches surrounding the existing and proposed buildings.
5. The applicant shall protect all existing street trees adjacent to the subject site during construction of the proposed project. Every effort shall be made to retain mature street trees. No street trees, including those street trees designated on the preliminary plans, shall be removed and/or relocated unless written approval from the Recreation and Parks Department and the City Engineer is obtained. (See attached Trees and Construction document.)

Removal and/or replacement of any street trees shall not commence until the applicant has provided the City with an improvement security to ensure the establishment of any relocated or replaced street trees. The security amount will be determined by the Director of Recreation and Parks, and shall be in a form approved by the City Engineer and the City Attorney

Standard Conditions List  
For the Planning Commission  
September 6, 2002

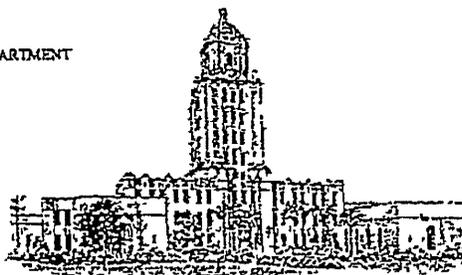
6. The applicant shall provide that all roof and/or surface drains discharge to the street. All curb drains installed shall be angled at 45 degrees to the curb face in the direction of the normal street drainage flow. The applicant shall provide that all groundwater discharges to a storm drain. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Connection to a storm drain shall be accomplished in the manner approved by the City Engineer and the Los Angeles County Department of Public Works. No concentrated discharges onto the alley surfaces will be permitted.
7. The applicant shall provide for all utility facilities, including electrical transformers required for service to the proposed structure(s), to be installed on the subject site. No such installations will be allowed in any City right-of-way.
8. The applicant shall underground, if necessary, the utilities in adjacent streets and alleys per requirements of the Utility Company and the City.
9. The applicant shall make connection to the City's sanitary sewer system through the existing connections available to the subject site unless otherwise approved by the City Engineer and shall pay the applicable sewer connection fee.
10. The applicant shall make connection to the City's water system through the existing water service connection unless otherwise approved by the City Engineer. The size, type and location of the water service meter installation will also require approval from the City Engineer.
11. The applicant shall provide to the Engineering Office the proposed demolition/construction staging for this project to determine the amount, appropriate routes and time of day of heavy hauling truck traffic necessary for demolition, deliveries, etc., to the subject site.
12. The applicant shall obtain the appropriate permits from the Civil Engineering Department for the placement of construction canopies, fences, etc., and construction of any improvements in the public right-of-way, and for use of the public right-of-way for staging and/or hauling certain equipment and materials related to the project
13. The applicant shall remove and reconstruct any existing improvements in the public right-of-way damaged during construction operations performed under any permits issued by the City.

Standard Conditions List  
For the Planning Commission  
September 6, 2002

14. During construction all items in the Erosion, Sediment, Chemical and Waste Control section of the general construction notes shall be followed.
15. Condensate from HVAC and refrigeration equipment shall drain to the sanitary sewer, not curb drains
16. Water discharged from a loading dock area must go through an interceptor/clarifier prior to discharging to the storm drain system. A loading dock is not to be confused with a loading zone or designated parking space for loading and unloading.
17. Organic residuals from daily operations and water used to wash trash rooms cannot be discharged to the alley. Examples are grocery stores, mini markets and food services.
18. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Examples of ground water discharges are, rising ground water and garage sumps.
19. Storm water runoff from automobiles going into a parking garage shall be discharged through a clarifier before discharging into the storm drain system. In-lieu of discharging runoff through a clarifier, parking lots can be cleaned every two weeks with emphasis on removing grease and oil residuals which drip from vehicles. Maintain records of cleaning activities for verification by a City inspector
20. After completion of architectural review of a new or modified commercial structure, and prior to issuance of the certificate of occupancy, the applicant is required to comply with the Public Art Ordinance. An application is required to be submitted to the Fine Art Commission for review and approval of any proposed art piece or, as an alternative, the applicant may choose to pay an in-lieu art fee

RECREATION AND PARKS DEPARTMENT  
 455 N. Rexford Drive  
 Beverly Hills, CA 90210-4817  
 (310) 285-2536  
 FAX: (310) 385-0840

STEVE MILLER, DIRECTOR



## CITY OF BEVERLY HILLS

### Trees and Construction

The City of Beverly Hills and its Residents hold our urban forest in high regard. We appreciate your regard for our City trees as you contemplate your project. We look forward to reviewing your mitigation plan as it relates to City trees that may be impacted by the proposed activities included in this project.

The applicant should identify any City and/or protected tree or trees within the proposed area of construction, and/or like tree or trees in close proximity to the construction site, that may be impacted. The location of these trees should be noted on the initial plan submittal. A plan that works to alleviate, or minimize, the potential that the health and vigor of a City and/or protected tree or trees will be affected during the construction process (a mitigation plan) should accompany the original plan submittal.

A mitigation plan should focus on retaining and protecting an existing City and/or protected tree or trees. This plan should include a valuation of the tree or trees that may be impacted by the proposed project. If more than one tree is involved, each tree should be valued in a separate treatment. This valuation should be performed by an International Society of Arboriculture (ISA) Certified Arborist using the standard valuation method recognized by the ISA.

Elements of the mitigation plan should include:

1. Definition of what can be done to avoid any impact on the tree or trees, as well as what steps will be taken to protect the tree or trees that may be impacted by construction activities, for the duration of the project.
2. If the well being of the tree or trees is suspected to be impacted or deemed unavoidable, a proposal to box, maintain and re-install the tree or trees after construction activities have been completed should be submitted. Any proposal for the boxing, care and re-installation of any tree or trees should include a resume of experience specific to tree moving from the firm submitting the plan. This proposal should include a contingency plan to replace the tree(s) with the installation of a forty-eight (48) inch box size should the tree or trees decline within twenty four (24) months after the time the tree or trees are re-installed into the site.
3. An offer of bond that is consistent with the value of the tree or trees based upon the previously described valuation of the tree or trees by an ISA Certified Arborist.
4. The ISA certification number and contact information for the ISA Certified Arborist assisting with the project mitigation plan.

To access a listing of ISA Certified Arborists in your area, visit  
<http://www.isa-arbor.com/arborists/arbsearch.html>

To learn more about the valuation of trees, visit  
<http://www2.champaign.isa-arbor.com/consumer/values.html>

Contact the Department of Recreation and Parks Urban Forest Supervisor at (310) 550-4638 or at [kpfalzgraf@ci-beverly-hills.ca.us](mailto:kpfalzgraf@ci-beverly-hills.ca.us) if you are in need of further assistance.

## **4. Letters**

LAW OFFICES OF  
**ALAN S. GUTMAN**  
9401 WILSHIRE BOULEVARD, SUITE 575  
BEVERLY HILLS, CALIFORNIA 90212-2918  

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www.gutmanlaw.com

TELEPHONE: 310-385-0700  
FACSIMILE: 310-385-0710

March 19, 2010

Mr. David Reyes  
City of Beverly Hills  
455 North Rexford Drive  
First Floor  
Beverly Hills, CA 90210

*Re: 8601 Wilshire Boulevard - Carlyle/Galaxy Wilshire, LP*

Dear Mr. Reyes:

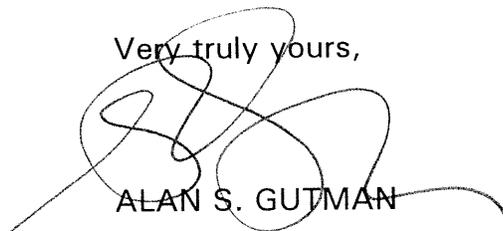
As you are aware, the Application to Amend Covenant of Carlyle/Galaxy Wilshire, LP in reference to the real property at 8601 Wilshire Boulevard, Beverly Hills, California, is set on the City Council Formal Agenda on April 6, 2010, at 7:00 p.m.

I am enclosing original letters and eight copies from former Mayor MeraLee Goldman, Vice-Mayor Thomas S. Levyn, Councilman Les Bronte, Councilwoman Linda Briskman, and Councilman Mark Egerman, all of whom voted on the Resolution which resulted in the Covenant that Carlyle/Galaxy Wilshire, LP wishes to have amended.

Please make sure that copies of the letters are placed in the packet of Mayor Delshad, Vice-Mayor Brucker, Councilman Brien, Councilman Mirisch, and Councilwoman Krasne prior to the meeting on April 6, 2010.

Thank you for your attention to this matter.

Very truly yours,

  
ALAN S. GUTMAN

enc.

cc: Larry Wiener, Esq.

**Honorable Linda Briskman**  
**511 N. Sierra**  
**Beverly Hills, California 90210**  
**(310) 273-6210**

March 19, 2010

Mayor Jimmy Delshad  
Vice Mayor Barry Brucker  
Councilperson Willie Brien  
Councilperson John Mirisch  
Councilperson Nancy Krasne

Re: Carlyle/Galaxy Wilshire, LP - Application to Amend Covenant

Dear Members of the City Council:

I am writing you in reference to the Application to Amend Covenant filed by Carlyle/Galaxy Wilshire, LP to delete the phrase contained in paragraph 3 of the Covenant Containing Restrictions Affecting Real Property between the City and 8601 Wilshire Associates, LLC dated February 4, 2003, and recorded on May 11, 2004, stating:

“ . . . and neither Owner nor its successors, assignees, and every successor in interest to the Property or any part thereof shall hereafter submit an application for or otherwise attempt to convert the Residential Units to Condominium or Stock Cooperative ownership.”

The Covenant was the result of Resolution No. 03-R-11280, adopted by the City Council on February 4, 2003. Pursuant to paragraph 6.1(d) of the Resolution, the Council recognized that the Applicant voluntarily agreed to record a covenant prohibiting the conversion of the 37 rental units to condominiums. I had the honor of serving as a member of the City Council at the time the resolution was adopted. I did not intend, nor did my fellow council members, to prohibit or limit the Applicant or a successor-in-interest from making an application to convert the units into condominiums. Indeed, section 9-7 of the Resolution specifically provides that the applicant may in the future request a modification of the Resolution and Covenant to permit additional uses.

The language in the Covenant quoted above was not authorized by the Council and is not authorized by Resolution No. 03-R-11280.

Very truly yours,



Linda Briskman

**Honorable Thomas S. Levyn**  
**10250 Constellation Blvd., 19<sup>th</sup> Floor**  
**Los Angeles, California 90067**  
**(310) 282-6214**

March 19, 2010

Mayor Jimmy Delshad  
Vice Mayor Barry Brucker  
Councilperson Willie Brien  
Councilperson John Mirisch  
Councilperson Nancy Krasne

Re: Carlyle/Galaxy Wilshire, LP - Application to Amend Covenant

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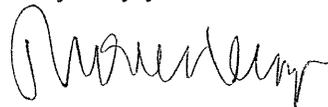
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Very truly yours,



Thomas S. Levyn

**Honorable Mark Egerman**  
**610 N. Oakhurst Drive**  
**Beverly Hills, California 90210**  
**(310) 276-8793**

March 19, 2010

Mayor Jimmy Delshad  
Vice Mayor Barry Brucker  
Councilperson Willie Brien  
Councilperson John Mirisch  
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The language in the Covenant quoted above was not authorized by the Council and is not authorized by Resolution No. 03-R-11280.

Very truly yours,



Mark Egerman

**Honorable Les Bronte**  
**138 North LaPeer Drive**  
**Beverly Hills, California 90211**  
**(310) 652-1429**

March 19, 2010

Mayor Jimmy Delshad  
Vice Mayor Barry Brucker  
Councilperson Willie Brien  
Councilperson John Mirisch  
Councilperson Nancy Krasne

Re: Carlyle/Galaxy Wilshire, LP - Application to Amend Covenant

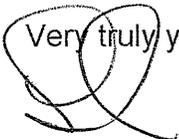
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The language in the Covenant quoted above was not authorized by the Council and is not authorized by Resolution No. 03-R-11280.

Very truly yours,  


Les Bronte

**Honorable MeraLee Goldman**  
**1122 San Ysidro Drive**  
**Beverly Hills, California 90210**  
**(310) 275-7533**

March 19, 2010

Mayor Jimmy Delshad  
Vice Mayor Barry Brucker  
Councilperson Willie Brien  
Councilperson John Mirisch  
Councilperson Nancy Krasne

Re: Carlyle/Galaxy Wilshire, LP - Application to Amend Covenant

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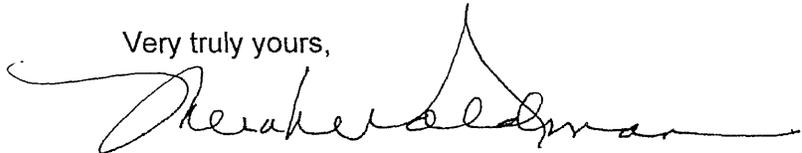
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