



AGENDA REPORT

Meeting Date: September 11, 2012
Item Number: G-5
To: Honorable Mayor & City Council
From: City Attorney
Subject: AN ORDINANCE OF THE CITY OF BEVERLY HILLS APPROVING THE FIRST AMENDMENT TO A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND 9200 WILSHIRE, LLC FOR CONSTRUCTION OF A MIXED-USE RESIDENTIAL AND COMMERCIAL DEVELOPMENT AT 9200 WILSHIRE BOULEVARD
Attachments: 1. Ordinance

RECOMMENDATION

It is recommended that the proposed ordinance be adopted.

INTRODUCTION

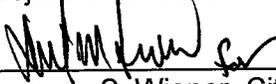
This ordinance will allow the expiration date of the existing development agreement to be aligned with expiration of the project's existing vesting tentative map, and will allow for up to three, one-year extensions beyond the expiration date of the vesting tentative map.

DISCUSSION

At the City Council meeting of August 23, 2012, the City Council conducted a first reading of this ordinance.

FISCAL IMPACT

Approval of the amendment will ensure that the City would receive the public benefits associated with the Development Agreement in the event that the project is constructed; and although not directly tied to the Development Agreement, the City would also receive development fees and taxes in the event the project is constructed.



Laurence S. Wiener, City Attorney

Attachment 1

ORDINANCE NO. 12-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS APPROVING THE FIRST AMENDMENT TO A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND 9200 WILSHIRE, LLC FOR CONSTRUCTION OF A MIXED-USE RESIDENTIAL AND COMMERCIAL DEVELOPMENT AT 9200 WILSHIRE BOULEVARD

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

Section 1. The City of Beverly Hills (“City”) and 9200 Wilshire, LLC entered into that certain development agreement (the “Development Agreement” herein), recorded as instrument No. 20072346280 on October 15, 2007, in connection with the construction of a mixed-use development generally consisting of condominium units and ground floor commercial space in a six-story, 60-foot tall structure with subterranean parking to be located at 9200 Wilshire Boulevard (the “Project”). New Pacific Realty (“Developer”) is the successor interest to 9200 Wilshire, LLC’s rights and obligations under the Development Agreement.

Section 2. Developer has requested an amendment (the “First Amendment”) to the Development Agreement to synchronize expiration of the Development Agreement and the related vesting tentative tract map. The First Amendment to the Development Agreement is attached hereto as Exhibit A, and is hereby incorporated herein.

Section 3. The First Amendment 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 previously prepared and certified an Environmental Impact Report for the 9200 Wilshire Project, and this

Environmental Impact Report remains valid in assessing the environmental impacts associated with the First Amendment. There have been no changes in circumstances, new information, or changes in the project that warrant further CEQA analysis. All previously identified mitigation measures remain in full force and effect. No changes to the CEQA findings adopted in conjunction with the Project and the Development Agreement are made necessary by the First Amendment and those findings are hereby reaffirmed.

Section 4. On August 2, 2012, the Planning Commission conducted a duly noticed public hearing to consider the First Amendment.

Section 5. On August 23, 2012 the City Council conducted a duly noticed public hearing to consider the First Amendment.

Section 6. The City Council hereby approves the First Amendment, as set forth in Exhibit A, and authorizes the Mayor to execute the Development Agreement on behalf of the City.

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

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

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

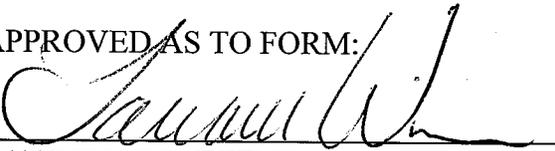
Adopted:
Effective:

WILLIAM W. BRIEN, MD
Mayor of the City of Beverly Hills,
California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

JEFFREY KOLIN
City Manager


SUSAN HEALY KEENE
Director of Community Development

EXHIBIT A

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

REQUESTED BY
AND WHEN RECORDED
MAIL TO:

City Clerk
City of Beverly Hills
Attn: City Attorney's Office
445 N. Rexford Drive
Beverly Hills, California 90210

Space Above This Line for Recorder's Use

Recording Fee: Exempt pursuant to
California Govt. Code
Section 27383

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF BEVERLY HILLS
AND NEW PACIFIC REALTY (A SUCCESSOR IN INTEREST)
RELATING TO THE PROPERTY AT 9200 WILSHIRE
BOULEVARD, BEVERLY HILLS, CALIFORNIA**

Amendment of Section 5 of the Development Agreement Related to Term of Agreement

FIRST AMENDMENT TO DEVELOPMENT AGREEMENT

This First Amendment to the Development Agreement (this "Amendment") is entered into as of the ____ day of _____, 2012, by and between the CITY OF BEVERLY HILLS, a municipal corporation (the "City"), and NEW PACIFIC RELATY, a _____, (the "Developer"), and is an amendment to a Development Agreement between the City and Developer's predecessor in interest, 9200 Wilshire LLC, dated October 12, 2007.

RECITALS

A. Pursuant to California Government Code Sections 65864-65869.5, the City and the Developer's predecessor in interest, 9200 Wilshire LLC entered into a Development Agreement (the "Agreement"), effective October 18, 2007 to provide greater certainty and predictability in relations between the City and the 9200 Wilshire LLC with respect to a development project on property located at 9200 Wilshire Boulevard, Beverly Hills, California, as more fully described in Exhibit A, attached hereto, and incorporated herein by reference. The Agreement was recorded as Instrument No. 20072346280 on October 15, 2007, in the Office of the Los Angeles County Recorder.

B. After recordation of the Agreement, New Pacific Realty acquired the rights to the property that is the subject of the Agreement, and, as a successor in interest, has the rights afforded the Developer under the Agreement.

C. The parties now desire to amend the term of the Agreement from a term of five (5) years, to be the same term as the related vesting tentative tract map remains valid.

D. On August 2, 2012, following a duly noticed public hearing, the Planning Commission adopted Resolution No. _____, recommending that the City Council approve this First Amendment.

E. At a duly noted public hearing on August 23, 2012, the City Council considered the information in the previously adopted CEQA documentation for the project, reaffirmed findings as required by CEQA, and approved this First Amendment.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

1. This First Amendment shall be effective when City Ordinance No. _____ that approves this First Amendment is effective.

2. Section 5 of the Agreement is hereby amended to read as follows:

"5. Term of Agreement and Tract Map. The initial term of this Agreement shall commence on the Agreement Effective Date, and shall continue until the expiration of the related Vesting Tentative Map No. 63078 or approval and recordation of a final subdivision map for the project. Additionally, if a final subdivision map for the Project is approved by the City, then the term of this Agreement shall be extended until the expiration of the vested rights that accompany the vesting tentative tract map for the Project. In addition to the above, at any time, the term may be extended by Developer one year or more provided that the total extension period does not exceed three years. An extension by

Developer pursuant to the prior sentence shall be effective upon written request of Developer provided to the City at least ten (10) days before the expiration of the term (including any previous extension) and a concurrent payment to the City of the following amounts: for the first year of extension, Developer shall pay one hundred fifteen thousand dollars (\$115,000), for the second year of extension, Developer shall pay one hundred seventy two thousand dollars (\$172,000) and for the third year of extension, Developer shall pay two hundred thirty dollars (\$230,000). Notwithstanding the term set forth above, the obligation to pay the Environmental Mitigation and Sustainability Fee shall continue indefinitely as provided in Section 10(f).”

3. No Other Changes. Except as expressly amended by this First Amendment, the Agreement shall remain in full force and effect as written.

4. Recordation of Amendment. No later than ten (10) days after the Effective Date of this First Amendment, the City Clerk shall record an executed original of this First Amendment in the Official Records of the County of Los Angeles.

IN WITNESS WHEREOF, the Developer and City have executed this First Amendment as of the date first hereinabove written.

CITY OF BEVERLY HILLS

By: _____
WILLIAM W. BRIEN, MD
Mayor of the City of Beverly Hills,
California

Attest:

City Clerk

Approved as to Form

By: LAURENCE S. WIENER
City Attorney

NEW PACIFIC REALTY, a

By: _____

Its _____

Exhibit A to First Amendment of 9200 Wilshire Development Agreement

Property Description:

Lots 1110, 1111, 1112, 1113, and 1114 of Tract 6380, in the City of Beverly Hills, as per map recorded in book 69 pages 11 through 20 inclusive of Maps, in the Office of the County Recorder of Los Angeles County.

Also known as Assessors Parcels Numbers: 4331-018-023, 4331-018-024, and 4331-018-025