



AGENDA REPORT

Meeting Date: April 1, 2014

Item Number: F-1

To: Honorable Mayor & City Council

From: Jonathan Lait, AICP, Assistant Director of Community Development
Ryan Gohlich, Senior Planner

Subject: REQUEST FOR COUNCIL APPROVAL OF LUXURY AUTOMOBILE
SALES TENANT AT 8767 WILSHIRE BOULEVARD

Attachments:

1. City Council Resolution No. 14-R-12697
2. Settlement Agreement

RECOMMENDATION

Staff recommends that the City Council review the applicant's request and make a determination as to whether Acura should be approved as a luxury automobile sales use for the building at 8767 Wilshire Boulevard.

BACKGROUND

Pursuant to the City Council's recent approvals regarding allowed land uses within the commercial building located at 8767 Wilshire Boulevard, a luxury automobile sales showroom may be permitted as a ground-floor tenant within the building, but only after the specific tenant has been approved by the City Council. The applicant is currently in discussions with a potential automotive tenant, and is therefore seeking City Council approval to allow Acura as a luxury automobile sales tenant. Based on traffic generation data available from the Institute of Transportation Engineers (7th Edition), Acura is anticipated to generate approximately 517 average daily vehicle trips, which is below the approximately 666 vehicle trips that would be generated by ground-floor retail, as was considered as a worst-case scenario when the City Council most recently reviewed the project. Accordingly, the specific tenant would not exceed the traffic generation rates previously studied, and would therefore not result in a significant

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impact under CEQA. If approved, the tenant would be subject to all applicable conditions of approval set forth in the attached City Council resolution.

RECOMMENDED ACTION

Staff recommends that the City Council review the applicant's request and make a determination as to whether Acura should be approved as a luxury automobile sales use for the building at 8767 Wilshire Boulevard.

Susan Healy Keene, AICP
Director of Community Development


Approved By

Attachment 1

RESOLUTION NO. 14-R-12967

A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A DEVELOPMENT PLAN REVIEW, PLANNED DEVELOPMENT PERMIT, AND CONDITIONAL USE PERMIT ASSOCIATED WITH MODIFICATIONS TO CONDITIONS OF APPROVAL AND THE TYPES OF LAND USES ALLOWED WITHIN A PREVIOUSLY APPROVED COMMERCIAL BUILDING ON THE PROPERTY LOCATED AT 8767 WILSHIRE BOULEVARD

The City Council of the City of Beverly Hills hereby finds, resolves, and determines as follows:

Section 1. Representatives on behalf of 8767 Wilshire Boulevard, L.P. (collectively the "Applicant"), have submitted an application for a Development Plan Review, Planned Development Permit, and Conditional Use Permit associated with the establishment of medical offices, expanded restaurant uses, and an automobile sales showroom within the property located at 8767 Wilshire Boulevard (the "Project").

Section 2. Development of a commercial building at the Project site was previously approved by the Planning Commission on September 14, 2006 pursuant to Planning Commission Resolution No. 1442. The Planning Commission's approval included a variance for additional building height, and authorized general office, retail, and restaurant uses, and specifically prohibited medical uses among others. The Planning Commission's approval of the commercial building was appealed to the City Council. The appeal was denied by the City Council, which upheld the Planning Commission's approval of the general office and retail

building (City Council Resolution No. 07-R-12273). Construction of the general office building commenced in 2009.

Shortly after the start of construction on the subject commercial building in 2009, the applicant requested an amendment to the original project approvals to allow medical uses to occupy 54,900 square feet or 73% of the building. Upon reviewing the request, the Planning Commission determined that it could not make all required findings in support of the proposed medical offices, and denied the request (Planning Commission Resolution No. 1561). Subsequent to the Planning Commission's denial, the applicant filed an appeal of the decision so that the matter could be heard by the City Council. The City Council heard the appeal, and adopted a resolution denying the appeal on February 16, 2010 (City Council Resolution No. 10-R-12736).

Upon exhausting its administrative remedies through the amendment and appeal process regarding medical uses, the applicant initiated litigation against the City relating to the prohibition of medical uses within the subject commercial building. The litigation is ongoing and is currently pending review by the Court of Appeal; however, the applicant concurrently pursued a settlement agreement with the City, with the goal of ending the litigation. On October 22, 2013 the City Council unanimously authorized a settlement agreement between the City and applicant. The settlement agreement did not grant any entitlement approvals to the applicant, but, among other things set forth a process for requesting certain amendments through public hearings. Additionally, the settlement agreement set forth a timeline for the applicant to terminate litigation in the event that project approvals are granted in a form generally consistent with the project description set forth in the settlement agreement.

Section 3. The Project elements outlined in the settlement agreement and requested by the Applicant include the following:

- Medical Office Space: Allow up to 33,802 square feet of medical office space to be located within the building (45% of the building's floor area), but not on the ground floor.
- Vehicle Sales: Allow a luxury vehicle sales showroom (no service) on the building's ground floor (up to 15,520 square feet). The specific tenant would be subject to review and approval by the City Council.
- Expanded Restaurant Space: Allow up to 7,010 square feet of restaurant space (4,206 square feet of dining and bar area plus 2,804 square feet of back-of-house areas), subject to City Council review and approval of a specific tenant.
- Pharmacy Use: Allow a pharmacy use to occur on any floor except for the ground floor.
- Public Parking: Establish provisions and rates for public parking spaces. The existing entitlements require the Applicant to provide 51 parking spaces for use by the public. The public parking spaces were intended to provide needed parking for surrounding developments and to limit commercial parking intrusion into surrounding residential neighborhoods. The current project proposal leaves open the possibility of utilizing the 51 public spaces to accommodate a restaurant expansion as identified above (subject to City Council approval). Further, the Applicant proposes to make 230 self-parking spaces available to the public at discounted rates on

weekdays after 6:00 PM and on weekends throughout the day. The rates will vary depending on the time of day, but will generally be comparable to rates charged at City-owned facilities.

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 environmental regulations of the City. A Mitigated Negative Declaration (MND) was previously adopted by the City Council on January 30, 2007 for the existing commercial building on the subject site. Pursuant to Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, a lead agency (the City of Beverly Hills in this case) may prepare an addendum to a previously adopted MND if some changes or additions to the MND are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent MND have occurred. Pursuant to CEQA Guidelines Section 15162, no subsequent MND or Environmental Impact Report shall be prepared for the Project unless, on the basis of substantial evidence in the light of the whole record, one or more of the following is determined:

- (1) Substantial changes are proposed in the project that will require major revisions of the previous MND due to the involvement of new, significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous MND due to the involvement of new significant environmental effects or a substantial

increase in the severity of previously identified significant effects; or

- (3) New information of substantial importance identifies one or more significant effects not discussed in the previous MND, significant effects previously examined will be substantially more severe than shown in the previous MND, mitigation measures or alternatives previously found not to be feasible or not analyzed in the MND would be feasible and would substantially reduce one or more significant effects but the project proponents decline to adopt of the measure or alternative.

The above criteria have been assessed in accordance with the State CEQA Guidelines, and the Project, in the independent judgment of the City Council, has been determined to be eligible for an addendum to the previously adopted MND because it does not result in any new or substantially increased environmental impacts. Therefore, an addendum to the MND has been prepared and is incorporated herein by reference.

The City Council has considered the MND and addendum, finds that the Project will not have any significant impacts on the environment, as mitigated, and hereby adopts the addendum.

Section 5. Notice of the Project and public hearing was mailed on November 8, 2013 to all property owners within a 300-foot radius of the Project site and all residential occupants within a 500-foot radius of the Project site. Notice was also published in two newspapers of local circulation, the *Beverly Hills Courier* and the *Beverly Hills Weekly*. On November 21, 2013 the Planning Commission considered the application at a duly noticed public hearing. Evidence, both written and oral, was presented at the meeting. At the conclusion of the

hearing and deliberations, the Planning Commission adopted Resolution No. 1700 denying the requested entitlements.

Section 6. On December 17, 2013, the City Council called the Project for Council review. Thereafter on January 7, 2014 and January 21, 2014, the City Council conducted a de novo hearing of this matter.

Section 7. On February 4, 2014, the City Council introduced an ordinance to apply the Medical Use Overlay Zone to the subject property.

Section 8. In reviewing the request for a Planned Development Permit, the City Council considered whether the Project would satisfy the following objectives of the Medical Use Overlay Zone:

1. Medical uses in the particular location are consistent with the elements of the City's general plan and purpose and intent of the Medical Use Overlay Zone;
2. The proposed development and medical use will not result in detrimental impacts to existing or anticipated residential or commercial development in the vicinity of the project with regard to density, height, scale and massing of the streetscape, garden quality of the city, or any combination thereof; unless the reviewing authority finds the development benefits outweigh the detrimental impacts;
3. The proposed development and medical use will promote harmonious development in the area;

4. The proposed development and medical use will not adversely interfere with the use and enjoyment of residential properties in the vicinity of the proposed development;

5. The proposed development and medical use will not result in detrimental impacts to existing or anticipated residential or commercial development in the vicinity of the project with regard to traffic levels, traffic safety, pedestrian-vehicle conflicts, pedestrian safety hazards, parking demand, parking design, loading or manner of operation, unless the reviewing authority finds the development benefits outweigh the detrimental impacts. The development shall provide parking that is designed for ease of use and efficiency, with vehicle ingress and egress and patient drop off and pick up locations that would not adversely impact adjacent properties;

6. The proposed development and medical use will contribute to and enhance the character of the neighborhood and location, will contribute positively to the image of the city, shall not undermine efforts to maintain and foster an appropriate mix of uses in the city including a pedestrian friendly environment in the vicinity of the development;

7. The proposed development and medical use contribute to and enhance the city's economic base and granting the request will leave ample space available for future commercial growth including business headquarters, entertainment businesses, information/technology businesses, retail businesses and other businesses as determined by the city; and

8. A public benefit shall be offered to the city and the public benefit shall, at a minimum, offset any long term impacts to the city that result from allowing a medical use in the city's limited commercial areas.

Section 9. Based on the foregoing, the City Council hereby finds and determines as follows with respect to the objectives of the Medical Use Overlay Zone:

1. The particular location proposed for medical uses is designated for low-density general commercial uses. The Project is consistent with this land use designation, and in particular advances the following General Plan Policies:

- Policy LU 11.6 Parking. Explore opportunities to expand the parking supply in underserved commercial districts and residential neighborhoods which may developed publicly, privately, or by joint public-private partnerships.
- Policy LU 15.1 Economic Vitality and Business Revenue. Sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high-paying jobs.
- Policy CIR 4.1 Parking Provisions. Ensure that adequate parking is provided for existing and future uses while considering shared parking opportunities, Travel Demand Management (TDM) plans, and availability of alternate modes of travel, based on the site's proximity to transit.

In addition to advancing the above policies, the Project is located in an area that is in close proximity to other medical offices and buildings, is located at the intersection of an arterial and collector street capable of accommodating the additional vehicle traffic generated by medical uses, and provides sufficient parking to avoid intrusions into surrounding residential neighborhoods. For these reasons, the Project is consistent with

the elements of the city's general plan and purpose and intent of the Medical Use Overlay Zone;

2. The subject commercial building is already constructed and the Project does not involve any new construction beyond interior tenant improvements. Because the subject building is already constructed, the Project will not result in detrimental impacts to existing or anticipated residential or commercial development in the vicinity of the project with regard to density, height, scale and massing of the streetscape, garden quality of the city, or any combination thereof;

3. The Project will result in up to 45% of the subject building being occupied by medical uses, with the remaining 55% of the building available for other commercial uses, such as general offices, restaurant space, and a showroom for luxury automobiles. Furthermore, medical and pharmacy uses will be prohibited on the ground floor, and pedestrian-oriented uses and design will be required on the ground floor. Because the Project includes a variety of uses that are consistent with development in the vicinity of the Project, and includes provisions to provide reduced-rate parking to the general public, the Project will promote harmonious development in the area;

4. The subject building is already constructed, and the proposed medical uses will be fully contained within the existing building. Although the subject building shares property lines with multi-family residential uses to the northeast, the building has been designed with setbacks from the residential development, is located at the intersection of Wilshire and Robertson Boulevards, which are both commercial streets, and is accessed entirely from the commercial streets. Additionally, the Project includes a sufficient number of parking spaces to prevent intrusion into the adjacent residential neighborhood.

Based on the subject building's design, access, and available parking, the proposed development and medical use will not adversely interfere with the use and enjoyment of residential properties in the vicinity of the proposed development;

5. A traffic study has been prepared and peer reviewed by the City's traffic engineer to assess the traffic impacts that will be generated by the Project. Based on the information contained in the traffic study, the Project will not exceed any of the City's traffic impact thresholds, and the Project will therefore not result in any significant traffic impacts. With respect to traffic and vehicle safety, the Project contains only two driveways, both of which are positioned away from intersections to the maximum extent possible in order to avoid vehicle conflicts, and include warning devices to warn pedestrians of approaching vehicles in order to ensure pedestrian safety. Additionally, the Project contains directional signage and a sufficient number of parking spaces in order to accommodate all uses within the building, as well as three loading zones to accommodate deliveries, and a valet area to accommodate patron drop off and pick up. Based on the above design features and as conditioned herein, the Project will not result in detrimental impacts to existing or anticipated residential or commercial development in the vicinity of the project with regard to traffic levels, traffic safety, pedestrian-vehicle conflicts, pedestrian safety hazards, parking demand, parking design, loading or manner of operation;

6. The Project contains a mix of uses and will only be 45% occupied by medical uses. The variety of uses within the building, including general office uses, medical uses, a luxury vehicle showroom, pharmacy, and restaurant will contribute to and enhance the character of the neighborhood and location, will contribute positively to the

image of the city, and will not undermine efforts to maintain and foster an appropriate mix of uses in the city including a pedestrian friendly environment in the vicinity of the development. Furthermore, the synergy of uses and the availability of public parking on evenings and weekends will allow for added vitality in this area of the City;

7. The Project contains a mix of uses and will only be 45% occupied by medical uses. The remaining 65% of the building will be reserved for general office uses, a luxury vehicle showroom, a pharmacy, and a restaurant. Based on the broad mix of uses, the Project will contribute to and enhance the city's economic base while leaving ample space available for future commercial growth including business headquarters, entertainment businesses, information/technology businesses, and retail businesses. It is also possible that the reduced-rate parking spaces will encourage revitalization of the area since patrons will have additional parking opportunities that will allow them to easily visit commercial establishments; and

8. The Project includes a public benefit of publicly available parking offered at reduced rates. The public benefit includes 230 parking spaces that will be made available to the general public after 6:00 PM on weekdays, and throughout the day on weekends. The parking spaces will be offered at a reduced rate that is generally comparable to rates charged at City-owned facilities. The reduced rates are intended to encourage parking within the structure, thereby reducing the incursion of commercial parking into surrounding residential neighborhoods, and also relieving existing parking demand within the vicinity of the Project. Further, the reduced-rate parking spaces are expected to encourage revitalization of the area since patrons will have additional parking opportunities that will allow them to easily visit nearby commercial establishments. The

tax revenue from the revitalized area would also provide benefits to the City. Based on the identified opportunities, the public benefit is sufficient to offset any long term impacts to the City that result from allowing a medical use in the city's limited commercial areas.

Section 10. In reviewing the request for a Development Plan Review, the City Council considered whether the following findings could be made in support of the Project:

1. The proposed plan is consistent with the general plan and any specific plans adopted for the area;
2. The proposed plan will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;
3. The nature, configuration, location, density, height and manner of operation of any commercial development proposed by the plan will not significantly and adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property;
4. The proposed plan will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards; and
5. The proposed plan will not be detrimental to the public health, safety or general welfare.

Section 11. Based on the foregoing, the City Council hereby finds and determines as follows with respect to the Development Plan Review:

1. The Project site is not located within a specific plan area. The General Plan designates the Project site for low-density general commercial uses. The Project is

consistent with this land use designation, and in particular advances the following General Plan Policies:

- Policy LU 11.6 Parking. Explore opportunities to expand the parking supply in underserved commercial districts and residential neighborhoods which may developed publicly, privately, or by joint public-private partnerships.
- Policy LU 15.1 Economic Vitality and Business Revenue. Sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high-paying jobs.
- Policy CIR 4.1 Parking Provisions. Ensure that adequate parking is provided for existing and future uses while considering shared parking opportunities, Travel Demand Management (TDM) plans, and availability of alternate modes of travel, based on the site's proximity to transit;

2. The subject property is already developed with a commercial building, and the Project does not include any new development beyond tenant improvements. In addition, the Project contains a variety of uses that will be beneficial to existing and anticipated development, including publicly available parking at a reduced rate made available during weekdays after 6:00 PM and throughout the day and evening on weekends. Based on these features, the Project will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;

3. The subject building is already constructed, and the Project will be fully contained within the existing building. Although the subject building shares property

lines with multi-family residential uses to the northeast, the building has been designed with setbacks from the residential development, is located at the intersection of Wilshire and Robertson Boulevards, which are both commercial streets, and is accessed entirely from the commercial streets. Additionally, the Project includes a sufficient number of parking spaces to prevent intrusion into the adjacent residential neighborhood. Based on the subject building's design, access, and available parking, the Project will not adversely interfere with the use and enjoyment of residential properties in the vicinity of the proposed development;

4. A traffic study has been prepared and peer reviewed by the City's traffic engineer to assess the traffic impacts that will be generated by the Project. Based on the information contained in the traffic study, the Project will not exceed any of the City's traffic impact thresholds, and the Project will therefore not result in any significant traffic impacts. With respect to traffic and vehicle safety, the Project contains only two driveways, both of which are positioned away from intersections to the maximum extent possible in order to avoid vehicle conflicts, and include warning devices to warn pedestrians of approaching vehicles in order to ensure pedestrian safety. Additionally, the Project contains directional signage and a sufficient number of parking spaces in order to accommodate all uses within the building, as well as three loading zones to accommodate deliveries, and a valet area to accommodate patient drop off and pick up. Based on the above design features and as conditioned herein, the Project will not create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards; and

5. The Project contains a mix of commercial uses, has been designed to prevent impacts on surrounding residential and commercial development, will offer publicly available parking at reduced rates, and will not result in any significant and unavoidable environmental impacts. For these reasons the Project will not be detrimental to the public health, safety or general welfare.

Section 12. In reviewing the request for a Conditional Use Permit for an automobile showroom, the City Council considered whether the following findings could be made in support of the Project:

1. The proposed use is compatible with the area and surrounding uses;
2. The proposed use will have adequate buffering between the use and residential areas;
3. The proposed use will not create an adverse traffic impact or a traffic safety hazard to pedestrians or to vehicles, including, but not limited to, an adverse impact on traffic circulation or parking;
4. The proposed use will not create excessive noise, unpleasant odors, noxious fumes, excessive lighting, or substantial interference with neighboring properties or uses due to the activities associated with the proposed use or its hours of operation; and
5. The proposed location of any such use will not be detrimental to adjacent property or to the public welfare.

Section 13. Based on the foregoing, the City Council hereby finds and determines as follows with respect to the Conditional Use Permit:

1. As conditioned, the proposed automobile showroom will be used for sales only, with service being prohibited. Additionally, the tenant will be a luxury brand subject to review and approval by the City Council. The showroom will be pedestrian-oriented, and will be compatible with the area and surrounding uses;

2. The proposed automobile showroom will be fully enclosed within the existing building, will not include any service operations, and will be accessed entirely from commercial streets. These design features provide adequate buffering between the use and adjacent residential areas;

3. A traffic study has been prepared and peer reviewed by the City's traffic engineer to assess the traffic impacts that will be generated by the Project. Based on the information contained in the traffic study, the Project will not exceed any of the City's traffic impact thresholds, and the Project will therefore not result in any significant traffic impacts. With respect to traffic and vehicle safety, the Project contains only two driveways, both of which are positioned away from intersections to the maximum extent possible in order to avoid vehicle conflicts, and include warning devices to warn pedestrians of approaching vehicles in order to ensure pedestrian safety. Additionally, the Project contains directional signage and a sufficient number of parking spaces in order to accommodate all uses within the building, including the automobile showroom. Based on the above design features and as conditioned herein, the Project will not create an adverse traffic impact or a traffic safety hazard to pedestrians or to vehicles, including, but not limited to, an adverse impact on traffic circulation or parking;

4. The proposed automobile showroom will be fully enclosed within the existing building, will not include any service operations, and will be accessed entirely from commercial streets. Test drives will be restricted to commercial streets, and the showroom is not permitted to operate beyond the hours permitted for transitional uses located adjacent to residentially zoned properties unless otherwise approved by the Planning Commission pursuant to an Extended Hours Permit. Based on the above design features, conditions of approval and code restrictions, the proposed automobile showroom will not create excessive noise, unpleasant odors, noxious fumes, excessive lighting, or substantial interference with neighboring properties or uses due to the activities associated with the proposed use or its hours of operation; and

5. The automobile showroom use will not result in any significant and unavoidable environmental impacts, and is subject to numerous conditions of approval to ensure that no adverse impacts result from the Project, including conditions that would preclude service activities and limit test drive routes to non-residential areas. For these reasons the Project will not be detrimental to the public health, safety or general welfare.

Section 14. Based on the foregoing, the City Council hereby grants the requested Planned Development Permit, Development Plan Review, and Conditional Use Permit, subject to the following conditions:

Special Conditions

1. The conditions set forth in this resolution incorporate all applicable conditions previously imposed on the subject property pursuant to City Council Resolution No. 07-R-12273 and delete or modify conditions that are no longer applicable.

Therefore, this resolution and the conditions set forth herein shall supersede City Council Resolution No. 07-R-12273.

1.2. The All exterior modifications that result from the Project shall be subject to the review and approval by the Architectural Commission Architectural Review.

2.3. A detailed parking management plan, satisfactory to the Director of Community Development shall be provided to indicate the operation of the parking garage including public parking operation. In addition, a vehicle test drive route for automobile dealership test drives shall be provided to the Director of Community Development for review and approval prior to any automobile dealership opening for business. At a minimum, the test drive route shall avoid residential streets.

3.4. The Applicant shall provide free of charge parking forensure that all employees working in the building receive free parking on site. The Applicant shall provide informational signage satisfactory to the Director of Community Development informing employees of the availability of free parking, which signage shall be posted in the garages, elevators, and in all offices and businesses. Nothing herein shall be construed to limit the authority of the Applicant to assess tenants for the free parking provided for their employees.

4.5. Two-hour free, validated on-site parking shall be provided for patrons of all tenants, including retail, offices, restaurants and other uses that may occupy all or part of the building, and the Applicant shall provide appropriate signage at entrances to the parking area informing patrons of the validated parking availability. The informational signage shall be subject to approval by the Director of Community Development and shall be installed prior to issuance of a certificate of occupancy. In addition, signage

satisfactory to the Director of Community Development informing patrons of the availability of two hours of free validated parking shall be posted in the garage, elevators, on the ground floor, and in all offices and businesses. Nothing herein shall be construed to limit the authority of the Applicant to assess tenants for the free validated parking provided for their patrons. Valet parking may be provided in the building, provided that at least 230 parking spaces are reserved for self parking. Valet parking is allowed in all other parking spaces and in aisles, provided that reasonable access and egress is maintained in the parking garage. Reduced rate public parking in the self parking spaces shall be available at the Property on weekdays after 6:00 p.m. and on weekends. The Applicant will begin to offer this reduced rate parking to the public no later than the first day that tenants occupy at least 37,483 square feet of floor area at the Property. The fee for the public parking shall not exceed a \$5.00 flat rate for parking after 6:00 p.m., and \$1.00 per hour for the first three hours plus \$3.00 per half hour thereafter with a cap of \$12.00 for weekend days before 6:00 p.m.. If in the future the City or Parking Authority increases facility parking rates, the Applicant may adjust the discounted parking rate by the same percentage as any future adjustment to an evening parking rate offered at City or Parking Authority owned parking structures in the City's business triangle, as may be adopted in the Parking Facility Rates list by facility address on either the City Schedule of Taxes, Fees & Charges or Parking Authority Schedule of Parking Facility Rates.

5.6. Parking spaces, as noted on the staff report, with determined by the Director of Community Development to have obscured visibility and potential backing out conflict shall be used as reserved or employee parking spaces.

~~6. Not more than 80 haul truck trips per day (40 arrivals, 40 departures) shall be permitted per day during construction.~~

~~7. No more than five pieces of diesel equipment shall be permitted to operate on the Project site per day.~~

~~8. Staging of construction-related vehicles on the City's streets is prohibited.~~

~~9. A detailed construction management plan, satisfactory to the Director of Public Works, shall be provided prior to issuance of a building permit.~~

~~10.7.~~ Prior to the issuance of a certificate of occupancy, a loading management plan, satisfactory to the Director of Community Development, shall be provided and shall include delivery hours and a delivery monitor with responsibility for controlling the circulation of trucks. The delivery monitor shall be responsible for directing the incoming/outgoing cars while one or more delivery trucks are present. In addition, vehicle deliveries for the automobile dealership shall be prohibited on any public right-of-way. Vehicles shall either be driven individually to the Project site, or shall be delivered in limited numbers on trucks capable of using the loading zones within the Project.

~~11.8.~~ "Right Turn Only" signs and arrow marking on the pavement shall be installed at Wilshire Boulevard and Robertson Boulevard driveways.

~~12.9.~~ Exit onto Robertson Boulevard shall be designed with raised barriers to force right-only turn movement when exiting the property.

~~13.10.~~ A silent warning device shall be installed at each exit from the garage that would light up whenever a vehicle is leaving the garage, warning the on-coming vehicular and pedestrian traffic.

~~14.11.~~ Security gates shall be constructed at each garage entrance and exit.

~~15.12.~~ The proposal requires the removal of three metered parking spaces. Prior to removal of the metered parking spaces, the Applicant shall compensate the City for the lost revenues of the removed spaces in an amount designated by the City's Chief Financial Officer.

~~16.13.~~ The proposal requires removal and relocation of street lights, a traffic signal pole, pull boxes, underground wiring, striping, marking, and sign installations. The Applicant shall hire a registered civil engineer to prepare plans and specifications for review and approval by the City. All works shall be performed by the Project contractor/sub-contractors.

~~17.14.~~ The following uses shall be prohibited on the ground floor level of the Project site: medical uses and pharmacies. The following uses shall be prohibited on the Project site: more than 33,802 square feet of medical uses; vehicle dealership- related automotive uses above the ground floor of the building, except that a maximum of 92 parking spaces may be used as car storage for nearby vehicle storage associated with any off-site car dealerships; adult entertainment businesses; massage parlors; bars or taverns; liquor stores; markets; exercise facilities; hair or nail salons; pharmacies; and uses that, in the sole opinion of the Director of Community Development, would create potential traffic impacts on the Wilshire Boulevard/ Robertson Boulevard intersection. Subject to City Council approval of the Medical Use Overlay Zone for the Project site, up to 33,802 square feet of medical uses may be permitted on the Project site. Luxury automobile sales uses may be permitted on the ground floor, subject to the approval by the City Council of the specific tenant. In addition, other uses may be permitted provided that the

City Council, upon application by the Applicant, approves a reduction in the number of public parking spaces required by Permit Condition 25 as necessary to allow a particular use to meet the Municipal Code parking requirement, provided that the use and tenant shall also be approved by the City Council.

18.15. No more than 3,000 square feet of building floor area shall be used for restaurant purposes, and no more than 1,500 square feet of building area shall be dedicated to dining and bar area. Non-destination food service establishments such as coffee shops, fast food establishments, or similar establishments designed to primarily serve building tenants shall not be permitted. Notwithstanding the 3,000 square foot limitation on the size of restaurant uses in the building, the City Council may, upon application by the Applicant, approve a specific restaurant tenant to occupy up to 7,010 square feet within the building, provided however that not more than 60% of the restaurant space is devoted to dining and bar area. The City Council may approve a proposed restaurant tenant if the City Council determines i) that the proposed tenant is a destination food service establishment, and not a coffee shop, casual dining, fast casual dining, fast food, or similar non-destination establishment, and ii) that the proposed tenant will contribute to the pedestrian character of the area. In the event an expanded restaurant establishment is approved, there may be a concomitant reduction in public parking required by Permit Condition 25 as may be necessary to accommodate the expanded restaurant use, and if approved by the City Council.

19.16. The Applicant shall comply with the applicable conditions and permits from the Public Works/Engineering Department/ Recreation, Transportation Department and Parks Department. (Attached hereto as Exhibit B is the list of conditions).

~~20.17.~~ The Applicant shall comply with ~~the~~ all applicable City ordinances related to use of groundwater and dewatering, including but not limited to Section 9-4-610 of the Beverly Hills Municipal Code, and shall provide for future connection to reclaimed water lines if deemed appropriate and feasible by City's Department of Public Works.

~~21.~~ ~~The Applicant shall obtain the necessary NPDES permit from the State Regional Water Quality Control Board for the permanent dewatering prior to the issuance of grading permits.~~

~~22.18.~~ The Project shall comply with the applicable Fire Department conditions as identified through the building permit plan check process.

~~23.19.~~ As provided in the Beverly Hills Municipal Code, an extended hours permit is required for any commercial uses that receive patrons between the hours of 10:00 p.m. and 7:00 a.m..

~~24.20.~~ An off-site improvement plan prepared by a registered civil engineer must be submitted to the Engineering and Transportation Department for review and approval prior to the issuance of grading permits. This plan must show all improvements in the public-right-of-way adjacent to the Project site. All facilities to be constructed or relocated within the public right-of-way must be clearly shown.

~~25.21.~~ The Applicant shall file a formal written request for approval of any type of temporary construction encroachment within the public right-of-way.

~~26.~~ ~~An encroachment permit is required for the subterranean garage encroachment into the public right-of-way.~~

~~27.~~ ~~Pedestrian access on Robertson Boulevard shall be maintained during construction. A pedestrian canopy shall be constructed along Robertson Boulevard.~~

~~28.22.~~ The Applicant shall provide all necessary supporting documentation to the City for the City Council to take action concerning right-of-way dedications offered by the Applicant, including all legal descriptions and drawings signed and stamped by a land surveyor licensed to practice in California.

~~29.23.~~ The Applicant shall submit the appropriate fees for processing of the right-of-way issues through the City Council, and shall comply with the applicable city ordinances.

~~30.24.~~ The Applicant shall replace the sidewalk adjacent to the Project and sidewalk paving material shall be subject to review by the City Council.

25. ~~A maximum of 92 of the 358 parking spaces may be used as overflow storage of vehicles for nearby auto dealerships, and a minimum of 51 of the 358~~ 336 parking spaces shall be made available for daytime use by the general public. The 51 spaces to be available for use by the general public shall be located on the first and second levels of parking. In the event an expanded restaurant use is approved by the City Council pursuant to Condition 15, there may be a concomitant reduction in public parking required by this condition, as may be necessary to accommodate the expanded restaurant use. In the event other uses are approved by the City Council pursuant to Permit Condition 15, there may be a reduction in the number of public parking spaces required by this condition, as may be necessary to allow a particular use to meet the Municipal Code parking requirements.

31.26. In no event shall any combination of uses within the building be authorized to provide less than the total number of parking spaces required in order to meet Municipal Code standards.

~~32.27.~~ The Property Owner shall not enter into any covenant dedicating use of the excess parking provided by the Project for off-site projects or uses, unless the Planning Commission first approves the use of the excess parking for off-site projects or uses and allows such a covenant.

~~33.28.~~ Roof-top uses shall not be permitted.

~~34.29.~~ The Applicant shall develop the Project in an environmentally sensitive and sustainable manner to the satisfaction of the Director of Community Development. The Director of Community Development shall consider techniques and measures such as those used in seeking LEED certification from the U.S. Green Building Council.

Standard Conditions

~~35.30.~~ The Project shall be constructed in substantial compliance with the plans submitted to and approved by the ~~Planning Commission~~City Council on January 30, 2007, as modified by the City Council~~Planning Commission~~ at its meeting of February 4, 2014.

~~36.31.~~ The Applicant shall comply with the requirements of the street tree mitigation plan of the Recreation and Parks Department, ~~attached hereto as Exhibit C and~~ incorporated herein by this reference.

~~37.32.~~ The City shall monitor the operation of the Project at the site. The City expressly reserves jurisdiction with respect to traffic, ~~and parking, and loading~~ issues. Should the business or activity conducted at the Project site change so that, in the opinion of the Director of Community Development, additional parking or other ~~mitigation~~ isconditions are required for the Project site in order to avoid ~~significantly~~ adverse traffic

safety impacts, pedestrian vehicle conflicts, or parking impacts, then, regardless of the use at the site, additional conditions, including the requirement of providing parking spaces, may be imposed upon the Project site by the Planning Commission pursuant to a public hearing noticed in accordance with the procedures set forth in Section 10-3-3307 of the Beverly Hills Municipal Code. Any decision of the Planning Commission in this regard may be appealed in the manner provided by Title 1, Chapter 4, of the Beverly Hills Municipal Code.

~~38. Construction related parking, staging and hauling shall conform to a construction parking, staging and hauling plan submitted by the Applicant and approved by the City Engineer and the Director of Community Development. The Applicant shall provide to the City Engineer the proposed staging for demolition and construction of the Project so that the City Engineer may determine the amount, appropriate routes, and time of day that heavy hauling truck traffic will need to travel to the subject site.~~

~~39.33.~~ 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 an 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 procedures 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.

40.34. 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, the owner and their heirs, representatives, successors and assigns shall comply with all such modified or additional conditions.

41.35. This Resolution approving a Planned Development Permit, Development Plan Review, and Conditional Use Permit and ~~a Variance~~ 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 Community Development within 60 days of the City Council's Planning Commission's

decision memorialized in this resolution. 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 a Planned Development Permit, Development Plan Review, and Conditional Use Permit and a Variance shall be null and void and of no further effect. Notwithstanding the foregoing, the Director of 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 Planned Development Permit, Development Plan Review, and Conditional Use Permit and the Variance.

36. The authorization for medical use shall only become effective upon the effective date of an ordinance approving application of the Medical Use Overlay Zone to the Project site. Further, none of the approvals granted herein shall become effective unless and until the Applicant performs all of the following:

a. The Applicant has taken such actions as necessary to dismiss the, with prejudice, Case No. B235768 pending in Division Four of the Second Appellate District of the State of California Court of Appeal; and

42.b. The Applicant shall execute and record an agreement and covenant to provide the public parking as set forth in Condition No. 4 above, and as memorialized in Section III.B of that Mutual Release and Settlement Agreement between the City and the Applicant (City Agreement No. 443-13).

~~43.37.~~ The conditions set forth in this resolution shall run with the land and shall remain in force for the duration of the life of the permitProject, inclusive of all development constructed pursuant to City Council Resolution No. 07-R-12273.

~~44. — 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 appropriate amount for a documentary handling fee in connection with Fish and Game Code requirements plus the Department of Fish and Game filing fee imposed pursuant to Fish and Game Code Section 711.4.~~

38. Minor amendments to the plans shall be subject to approval by the Director of Community Development. A significant change to the approved Project shall be subject to Planning Commission Review. Construction shall be in conformance with the plans approved herein or as modified by the Planning Commission or Director of Community Development.

39. Project Plans are subject to compliance with all applicable zoning regulations, except as may be expressly modified herein. Project plans shall be subject to a complete Code Compliance review when building plans are submitted for plan check. Compliance with all applicable Municipal Code and General Plan Policies is required prior to the issuance of a building permit.

~~— APPEAL. Decisions of the Planning Commission may be appealed to the City Council within fourteen (14) days of the Planning Commission action by filing a written appeal with the City Clerk. Appeal forms are available in the City Clerk's office. Decisions involving subdivision maps must be appealed within ten (10) days of the Planning Commission Action. An appeal fee is required.~~

40. VIOLATION OF CONDITIONS: A violation of any of these conditions of approval may result in termination of the entitlements granted herein, subject to applicable law.

Mitigation Measures

Measure 1. Water or a stabilizing agent shall be applied to exposed surfaces in sufficient quantity to prevent generation of dust plumes.

Measure 2. Track-out shall not extend 25 feet or more from an active operation, and track-out shall be removed at the conclusion of each workday.

Measure 3. A wheel washing system shall be installed and used to remove bulk material from tires and vehicle undercarriages before vehicles exit the Project site.

Measure 4. All haul trucks hauling soil, sand, and other loose materials shall be covered (e.g., with tarps or other enclosures that would reduce fugitive dust emissions).

Measure 5. All trucks hauling soil, sand, and loose materials shall maintain at least six inches of freeboard in accordance with California Vehicle code Section 23114.

Measure 6. Traffic speeds on unpaved surfaces shall be limited to 15 miles per hour.

Measure 7. Operations on unpaved surfaces shall be suspended when winds exceed 25 miles per hour.

Measure 8. Heavy-equipment operations shall be suspended during first and second stage smog alerts.

Measure 9. On-site stock piles of debris, dirt, or rusty materials shall be covered or watered at least twice per hour.

Measure 10. All construction equipment shall be equipped with mufflers and other suitable noise attenuation devices.

Measure 11. Grading and construction contractors shall use quieter equipment as opposed to noisier equipment (such as rubber tired equipment rather than track equipment).

Measure 12. Equipment staging areas shall be located on the western portion of the Project site, as far as possible from 141 and 143 N. Arnaz Drive residential developments.

Measure 13. During construction, sound attenuation blankets with a Sound Transmission Class rating of 20 or more shall be used on the second, third, and fourth floors that face 141 and 143 N. Arnaz Drive development. The sound attenuation blankets shall break the line of sight between the construction activities and 141 and 143 N. Arnaz Drive.

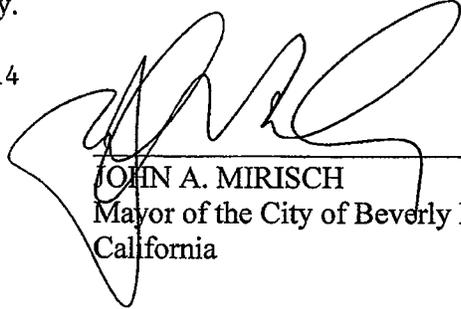
Measure 14. All residential units located within 500 feet of the construction site shall be sent a notice regarding the construction schedule of the proposed Project. A sign, legible at a distance of 50 feet shall also be posted at the construction site. All notices and the signs shall indicated the dates and duration of construction activities, as well as provided a telephone number where residents can inquire about the construction process and register complaints.

Measure 15. A “noise disturbance coordinator” shall be established. The disturbance coordinator shall be responsible for responding to any local complaints about construction noise. The disturbance coordinator shall determine the cause, if any, of the noise complaint (e.g. starting too early, bad muffler, etc.) and shall be required to implement reasonable measures such that the complaint is resolved. All notices that are sent to residential units within 500 feet of the construction site and all signs posted at the construction site shall list the telephone number for the disturbance coordinator.

45. Measure 16. A right-turn lane shall be added to the westbound approach to the intersection of Wilshire Boulevard and Robertson Boulevard.

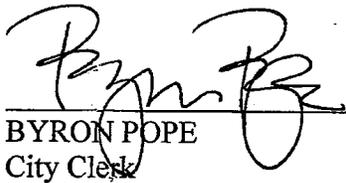
Section 15. The City Clerk shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his Certification to be entered in the Book of Resolutions of the City Council of the City.

Adopted: February 4, 2014



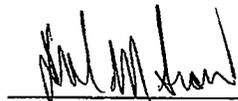
JOHN A. MIRISCH
Mayor of the City of Beverly Hills,
California

Attest:



BYRON POPE
City Clerk

Approved as to form:



David M. Snow
Assistant City Attorney

Approved as to content:



SUSAN HEALY KEENE, AICP
Director of Community Development

Attachment 2

MUTUAL RELEASE AND SETTLEMENT AGREEMENT

I. PARTIES

The parties to this Mutual Release and Settlement Agreement (this "Agreement") are 8767 Wilshire Boulevard, L.P., a California limited partnership (hereinafter referred to as "Plaintiff"), and the City of Beverly Hills, a California municipal corporation (hereinafter referred to as "City").

II. RECITALS

A. **Lawsuit.** On April 20, 2010, Plaintiff filed a petition for writ of mandate and complaint for money damages entitled 8767 Wilshire Boulevard, L.P. v. City of Beverly Hills in the Los Angeles Superior Court (Case No. BS 125999) (the "Action"). The Action challenged the City's denial of a request to amend conditions of approval of the Development Plan Review Permit (the "Permit") applicable to the 75,116 square foot office building (the "Building") located at 8767 Wilshire Boulevard in the City of Beverly Hills (the "Property") to allow medical office space, and to eliminate a requirement that 51 parking spaces be made available for use by the general public. On February 15, 2011, the trial court denied the petition. Thereafter, the trial court granted the City's motion for summary judgment as to the remaining causes of action in the case. The Plaintiff thereafter timely appealed the decisions of the trial court, which appeal is pending in Division Four of the Second Appellate District of the State of California Court of Appeal (Case No. B235768) (the "Appeal"). The Appeal is fully briefed and pending argument before, and a decision by, the Court of Appeal.

B. **New Proposed Project.** The Plaintiff now proposes a materially different project that would revise the Permit to allow 45% of the Building (which is equivalent to 33,802 square feet), to be occupied by medical office use. The Permit would continue to prohibit medical office or pharmacy uses on the ground floor of the building, but would allow luxury automotive sales uses on the ground floor of the building if the City approves a specific automotive sales tenant. The Plaintiff also proposes, as a benefit to the City and community, to make reduced rate parking available to the public during weekday evening hours and weekend daytime and evening hours at rates comparable to the parking rates charged at City or Parking Authority owned or operated parking facilities, as described below.

C. **Settlement of Disputes.** The City and the Plaintiff agree that if the Plaintiff files applications to revise the Permit as described above, and if the City approves the applications after holding public hearings and considering public input on the merits of the new proposal, then the Appeal becomes unnecessary and the Plaintiff will dismiss the Action within 5 business days of the final approval which is not subject to any further administrative appeals

III. AGREEMENT

The parties agree as follows:

A. Plaintiff will prepare and submit the necessary applications (collectively the "Applications") for:

1. Application of the Medical Use Overlay Zone to the Property, pursuant to Beverly Hills Municipal Code Sections 10-3-1851, et. seq., to allow up to 33,802 square feet of medical office use on the Property.
2. Conditional use permit to allow luxury auto sales use on the ground floor, subject to the approval by the City of the specific tenant, which may be withheld if the City determines that the proposed tenancy is not consistent with the City Council's vision for the important gateway intersection at which the Property is located;
3. Revisions to the Permit conditions of approval to:
 - a) Permit more than 3,000 square feet of restaurant use and more than 1,500 square feet of dining and bar area on any floor of the Building subject to reasonable conditions of approval typically and customarily imposed by the City in conjunction with the proposed use, and the concomitant reduction in public parking required by Permit condition 31 as may be necessary, provided that the City Council approves the proposed restaurant tenant, after determining that the proposed tenant is a destination food service establishment, and not a coffee shop, casual dining, fast casual dining, fast food, or similar non-destination establishment, and that the proposed tenant will contribute to the pedestrian character of the area;
 - b) Permit up to 33,802 square feet of medical office use and allow the property owner to request approval from the City Council for a reduction in the number of public parking spaces required by Permit condition 31 if necessary to allow a particular use to meet the Beverly Hills Municipal Code parking requirement, provided that the use and tenant shall also be approved by the City Council, provided that: (i) neither medical office uses nor pharmacies, which are allowed on floors other than the ground floor, are located on the ground floor of the building, (ii) two hours of free validated parking is provided for all uses in the building, (iii) signage satisfactory to the Director of Community Development informing patrons of the availability of two hours of free validated parking shall be posted in the garage, elevators, on the ground floor, and in all offices and businesses.

B. In the Applications submitted pursuant to paragraph A, Plaintiff shall propose to offer reduced rate public parking at the Property on weekdays after 6:00 p.m. and on weekends, as set forth in the table below. Plaintiff will begin to offer the reduced rate parking to the public no later than the first day that tenants occupy at least 37,483 square feet of floor area at the Property. If in the future the City or Parking Authority increases facility parking rates, Plaintiff may adjust the discounted parking rate by the same percentage as any future adjustment to an evening parking rate offered at City or Parking Authority owned parking structures in the City's business triangle, as may be adopted in the Parking Facility Rates list by facility address on either the City Schedule of Taxes, Fees & Charges or Parking Authority Schedule of Parking Facility Rates.

The reduced public parking rates set forth below shall not apply to valet parking that may be provided in the building, provided that at least 230 parking spaces are reserved for self parking. Valet parking would be allowed in parking spaces other than the spaces reserved for self parking

and in aisles provided that reasonable access and egress is maintained in the parking garage. The following table sets forth the parking rates and restrictions:

Time of Day / Week	Public Parking Rate	Building Patrons Parking Rate
Weekdays Until 6:00pm	No limit	2 hours of free validated parking for patrons of any business or office in the building
Weekend Days Until 6:00pm	\$1.00 per hour for the first 3 hours; \$3.00 per ½ hour thereafter, with a cap on the fee of \$12.00.	2 hours of free validated parking for patrons of any business or office in the building
Evenings – from 6:00pm on	\$5.00 flat rate	2 hours of free validated parking for patrons of any business or office in the building

C. The parties agree to the share in the fees and costs for the Applications pursuant to the following table:

Application	Approximate Fee	Applicant Portion	City Portion
Medical Overlay Zone (Zoning Amendment)	\$16,990.30	(50%)	(50%)
Development Plan Review (Amendment)*	\$2,540.20	(0%)	(100%)
Conditional Use Permit (for auto sales)*	\$2,540.20	(100%)	(0%)
Newspaper Notice (\$750.30 each) x 4	\$3,001.20	(50%)	(50%)
Mailing Labels (\$1.30/label, est 300 labels)	\$390.00	(50%)	(50%)
Environmental Analysis (MND Addendum)	\$990.70	(100%)	0 (0%)
Technology Fee (5.5%)	\$1,454.89	(100%)	0 (0%)
Environmental Consultation	\$2,000.00	(50%)	(50%)

Total (NIC building permit fees)	\$29,907.49		
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The fees and costs set forth in the above table are estimates, and the parties agree that in the event that the actual fees and costs noted above vary, the each party shall be responsible for its percentage amount of each of the actual fees or costs.

D. If the City approves the applications submitted pursuant to paragraph A, substantially as described in that paragraph and subject to conditions typically imposed by the City of Beverly Hills upon applicants for a Development Plan Review Permit or Medical Use Overlay Zone request, then before the effective date of such approval, Plaintiff shall execute and record an agreement and covenant to provide the public parking as set forth in paragraph B. The agreement and covenant shall be in a form acceptable to the City Manager and City Attorney.

E. The City understands and agrees that time is of the essence and that the Applications and any permits resulting therefrom shall be reviewed and administered expeditiously, that public hearings will be calendared, noticed and held at the earliest possible dates, and that decisions shall be issued as soon as possible, subject to compliance with all applicable laws.

F. In the event that the applications seeking approval of automobile sales and expanded restaurant space are approved, any applicant request for City Council approval of a tenant pursuant to the terms of this Agreement, shall be agendaized by the City for City Council consideration at the next available City Council meeting, and the City Council will make a decision on the request at that meeting.

G. If i) the Applications are approved by the City, ii) the City approval of one or more of the Applications are subsequently challenged by a third party in a court of competent jurisdiction, iii) the court, in a final judgment, finds that the City erred in processing and/or approving one or more of the Applications, and iv) any identified errors are capable of being remedied by City reprocessing of the Application or Applications, then the City agrees to re-process the Application or Applications in a timely and expeditious manner and consider remedying the court-identified defects.

IV. Dismissal of Entire Action, With Prejudice.

If the City approves the Applications submitted pursuant to Section III, paragraph A above, substantially as described in that paragraph and subject to conditions typically imposed by the City of Beverly Hills upon applicants for a Development Plan Review Permit, conditional use permit, or medical uses, which conditions do not materially limit Plaintiff's development rights pursuant to the current approval (Resolution No. 07-R-12273) except as contemplated by the Applications, then within five days after the final approval of the Applications, Plaintiff shall take such action as is necessary to dismiss the Action, with prejudice, including, as appropriate, filing a request with the Court of Appeal for dismissal of the Appeal.

In consideration for the dismissal, the City shall waive its entitlement to any costs or fees associated with the Action.

V. Mutual Release.

In consideration of the foregoing, upon dismissal of the Action as provided in Section IV, Plaintiff and City do hereby mutually release and discharge each other, and each of their respective officers, directors, stockholders, partners, members, managers, Council members, employees, agents, representatives, successors, heirs, assigns, affiliates, and attorneys, and each of them, of and from any and all claims, demands, liabilities, losses, costs, damages, expenses, debts, agreements, claims for indemnity and causes of action whatsoever, of whatever kind or nature, known or unknown, suspected or unsuspected, actual or contingent, direct or consequential, which any party has had or claimed to have had, or may now have or claim to have, against the other party, and which exist as of the date of execution of this Agreement and which arise from or in any way relate to the facts stated in the Recitals to this Agreement, or in any way arise from or in any way relate to those facts or the Action, including the effects or consequences thereof and all causes of action therefor.

VI. Representations and Warranties.

A. In making and executing this mutual release and settlement Agreement, it is the express understanding of each of the parties hereto, and each of them does hereby represent, warrant, and agree as follows:

1. Each of the parties does hereby agree that this mutual release and settlement Agreement shall apply to all unknown or unanticipated results of the matters, claims, and controversies specified herein, as well as those known and anticipated, and upon the advice of legal counsel, each of the parties hereto does hereby waive any and all rights under California Civil Code Section 1542, which section has been explained, and which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

2. This mutual release and settlement Agreement is the result of a compromise of doubtful and disputed claims between the parties and shall not at any time or for any purpose be considered as an admission of liability or responsibility on the part of any party, or as an admission or concession to the truth of any claim, allegation, or statement of fact which is the subject of the Action or of the matters, claims, and controversies specified herein.

3. The parties acknowledge they hereafter may discover facts different from, or in addition to, those that they now believe to be true with respect to any and all of the matters released herein. Nevertheless, the parties hereby agree that each of the releases herein shall be and remain effective in all respects, notwithstanding the discovery of such different or additional facts.
4. Each of the parties acknowledges: (i) this Agreement is the resolution of a fully matured set of facts and each party individually declares and represents that it is executing this Agreement in reliance solely on its own judgment, belief, and knowledge of the facts surrounding the transactions described in this Agreement; (ii) this Agreement is made without reliance upon any statement or representation not contained in this Agreement of any other party, or any representative, agent or attorney of any other party; (iii) no promise, inducement or agreement not expressed in this Agreement has been made to any party; and (iv) the recitals, terms and conditions contained in this Agreement are contractual and not mere recitals.

B. Warranty of Capacity to Execute Agreement and Assignment of Rights.

Each party represents and warrants that the individuals executing this Agreement on each party's behalf possess full authority to execute this Agreement and to settle and compromise all claims settled and compromised by this Agreement. Each party represents and warrants that it has not assigned its rights in any of its claims against the other to any other person or entity.

VII. Integration.

This mutual release and settlement Agreement contains the entire agreement of the parties and supersedes any and all prior or contemporaneous understandings, negotiations, representations, promises, and agreements, oral or written, by or between the parties with respect to the matters set forth in this Agreement. This mutual release and settlement Agreement shall not be amended, modified, or otherwise changed except by a writing duly signed by authorized representatives of each party. Upon the establishment of the medical use as contemplated in the Applications and vesting of that use, Plaintiff would be entitled to continue the vested use subject to the applicable City rules and permit conditions.

VIII. Legal Advice.

In entering into this Agreement, each party has had the opportunity to consult with and rely upon the advice of the attorneys of its own choice. Each party represents and warrants that the terms of this Agreement have been completely read by and explained to it by its attorneys, and that those terms are fully understood and voluntarily accepted by it. Accordingly, any rule of law, including but not limited to Section 1654 of the California Civil Code, or any other statute, legal decision, or common law principle of similar effect, which would require interpretation of ambiguities in this Agreement against the party that has drafted it, are of no application and are expressly waived.

IX. Governing Law.

This Agreement shall be construed and interpreted in accordance with the laws of the State of California.

X. Enforcement.

In the event an action is brought to resolve any dispute or controversy over the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs, as determined by the court.

XI. Execution of Counterparts.

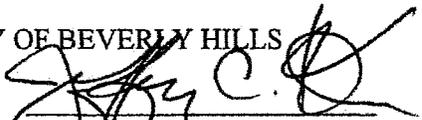
This Agreement shall become effective upon execution by all parties. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which shall be deemed to constitute one and the same document.

XII. Assignees

This Agreement shall bind and inure to the benefit of the successors and assigns of the parties, and to all affiliates, fictitiously named business entities, or any other associated entities.

IN WITNESS WHEREOF, the parties have executed this mutual release and settlement Agreement as of October 22, 2013.

CITY OF BEVERLY HILLS

By: 

Jeffrey C. Kohn
City Manager

~~8767 WILSHIRE BLVD., L.P.~~

~~By: EKCG Wilshire, LLC~~

~~By: George and Erika Kobor Family Trust
dated July 7, 1989, its Managing Member~~

~~By: _____~~

~~Erika Kobor, Trustee~~

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This Agreement shall bind and inure to the benefit of the successors and assigns of the parties, and to all affiliates, fictitiously named business entities, or any other associated entities.

IN WITNESS WHEREOF, the parties have executed this mutual release and settlement Agreement as of October 23, 2013.

~~CITY OF BEVERLY HILLS~~

By: _____

~~Jeffrey C. Kolin
City Manager~~

8767 WILSHIRE BLVD., L.P.

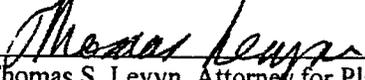
By: EKCG Wilshire, LLC

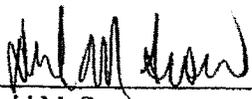
By: George and Erika Kobor Family Trust
dated July 7, 1989, its Managing Member

By: _____

~~Erika Kobor, Trustee~~

APPROVED AS TO FORM AND CONTENT:


Thomas S. Levyn, Attorney for Plaintiff,
8767 Wilshire Boulevard, L.P.


David M. Snow
City Attorney for Defendant
City of Beverly Hills