AGENDA REPORT

Meeting Date: September 17, 2007

Item Number: E-3

To: Honorable Mayor & City Council

From: Vincent P. Bertoni, Director of Community Development, AICP

Michele McGrath, Senior Planner

Subject:

A) AN ORDINANCE ESTABLISHING A MIXED-USE PLANNED DEVELOPMENT OVERLAY ZONE AND REGULATIONS PERTAINING THERETO, AMENDING THE BEVERLY HILLS MUNICIPAL CODE AND APPLYING THE OVERLAY ZONE TO PROPERTY LOCATED AT 9200 WILSHIRE BOULEVARD

B) AN ORDINANCE OF THE CITY OF BEVERLY HILLS APPROVING 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

C) A RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING VESTING TENTATIVE TRACT MAP NO. 63078 AND A PLANNED DEVELOPMENT PERMIT TO ALLOW CONSTRUCTION OF A MIXED USE PROJECT FOR PROPERTY LOCATED AT 9200 WILSHIRE BOULEVARD

(Continued from September 4, 2007)

Attachments:

1. Ordinance Establishing A Mixed Use Planned Development Overlay Zone
2. Ordinance Approving Development Agreement
3. Resolution Approving Vesting Tentative Tract Map and Planned Development
4. Approved General Plan Amendment
5. Resolution Certifying the Final EIR
6. Two letters from the public

RECOMMENDATION

Staff recommends the City Council:

1. Consider for second reading and adoption an ordinance approving a mixed-use planned development overlay zone.

2. Consider for second reading and adoption an ordinance approving a development agreement requiring the project developer to pay additional fees associated with the project.

3. Adopt a resolution approving a vesting tentative tract map and mixed-use planned development project.

INTRODUCTION

After extensive review by the City Council at previous public hearings, ordinances approving a mixed-use overlay zone and a development agreement for a proposed mixed-use project at 9200 Wilshire are being presented to the Council for second reading and approval, along with a final resolution conditionally approving a vesting tentative tract map and planned development on the site. The final resolution includes additional project conditions discussed below.

The documents already approved by the City Council relative to this project are included in the packet for reference (the Resolution certifying the EIR and the Resolution approving an amendment to the General Plan allowing mixed uses at a height and density to accommodate the proposed project). Not included as they were a part of the packet for the City Council's September 4, 2007 meeting and have not changed, are the Vesting Tentative Tract Map and plans for the proposed mixed-use project at 9200 Wilshire. The resolution clearly conditions the Project to be built in substantial compliance with the plans submitted for and reviewed at the September 4, 2007 City Council meeting.

DISCUSSION

Project Description

The project applicant, Legacy Partners, proposes to construct a six-story, maximum 70-foot high (including rooftop uses) mixed-use development on the vacant lot at 9200 Wilshire Boulevard. The project would include:

- A maximum of 54 residential condominium units
- 14,000 square feet of ground floor commercial space (retail/restaurant), fronting on Wilshire Boulevard with parking to meet the Zoning Code
- Rooftop uses including pool, fitness center and clubhouse for residents. Building height would be 60 feet to the roof deck, and 70 feet to the top of the fitness center and clubhouse.
- Up to 283 parking spaces with 16-24 compact parking spaces and 30 tandem spaces.

- Two loading docks on Palm Drive consist of one 35-foot truck loading dock and one 55-foot truck loading dock.
- Total side setbacks of twelve feet (12') with a three-foot setback at Maple Drive and a nine-foot setback at Palm Drive to allow widening North Palm Drive.

Project Entitlements

Approval of the project is dependent upon approval of an overlay zone for this location because the current C-3 zoning does not allow residential use and the project would exceed the existing three-story/45-foot height limit and FAR (Floor Area Ratio) allowed in the C-3 Zone. In addition, approval of the project requires City Council approval of a vesting tentative tract map, planned development permit and a development agreement.

Project Chronology

The following reflects review of the project at the City Council level.

September 5, 2006
Appeal of the Planning Commission resolution denying a request for:
- A General Pan Amendment
- A Zoning Code amendment to create an overlay zone
- A planned development permit and associated encroachment permits
- A vesting tentative tract map,
- A development agreement to allow construction of a mixed-use project at 9200 Wilshire Boulevard.

After presentation of the project and extensive public comment at the September 5, 2006 City Council meeting, the City Council made the finding that mixed residential/commercial use would be appropriate at the proposed location and set a special meeting on October 9, 2006.

October 9, 2006
The City Council approved in concept a mixed-use development on the site but directed the applicant to revise certain elements of the project design.

April 26, 2007
The City Council took the following actions:
- Certified the Final Environmental Impact Report and adopted a Mitigation Monitoring and Reporting Program for the project
- First Reading of an ordinance amending the Zoning Code to create an overlay zone allowing mixed–use development with greater height and density
- Reviewed a proposed General Plan amendment
- Reviewed a proposed development agreement
- Reviewed draft plans showing the revisions previously requested by the City Council and requested an additional revision with regard to the alley setback/ garage design to be reviewed at a future meeting.

July 24, 2007
The City Council took the following actions:
- Reviewed an ordinance approving a development agreement with the project applicant to pay additional fees to the City
- Provided direction to staff to prepare a resolution approving the project with an increased rear setback of 5'-8" and a slightly smaller garage
- Adopted a Resolution approving a General Plan Amendment that applies only to the 9200 Wilshire site allowing mixed use and additional height and density

September 4, 2007
The City Council took the following actions:
- First Reading of an ordinance amending the Zoning Code to create an overlay zone allowing mixed–use development with greater height and density
- First Reading of an ordinance approving a development agreement with the project applicant to pay additional fees to the City
- Reviewed a draft resolution approving the vesting tentative tract map and planned development, with conditions.

September 17, 2007
Actions requested of the City Council:
- Second Reading and approval of an ordinance amending the Zoning Code to create an overlay zone allowing mixed–use development with greater height and density
- Second Reading and approval of an ordinance approving a development agreement with the project applicant to pay additional fees to the City
- Adopt a resolution approving the vesting tentative tract map and planned development, with conditions.

This would conclude the required City Council approvals for the proposed project except for encroachment permits for the garage which would be submitted later by the Public Works Department. The project is required to have Architectural Review of the building's exterior design and landscaping.

Development Agreement

A draft development agreement was presented and discussed at the April 26, 2007 City Council meeting. The development agreement was subsequently revised and introduced at the July 24, 2007 City Council meeting. Technical changes related to timing of the documents were required and the development agreement was reintroduced at the September 4, 2007 City Council meeting. The development agreement has not been revised since the September 4, 2007 meeting.

Overlay Zone Ordinance

As a result of revisions, the ordinance approving a mixed-use overlay zone was reintroduced at the September 4, 2007 City Council meeting. One small typing error was pointed out at that meeting by a member of the public and has been corrected in the final version attached to this report. No other changes have been made to the overlay zone ordinance since the September 4, 2007 meeting.

Resolution Approving Project

A draft resolution was reviewed by the City Council at its September 4, 2007 meeting. The final resolution presented for approval at the September 17, 2007 meeting includes small clarifications and some additional project conditions (#17 – 21, #28 and #37) related to public works approvals and improvements that would be the responsibility of the project applicant. It also contains a condition regarding construction of the project to the City's green building standards to a certified level (#43). The project applicant is aware of all of the conditions.

PUBLIC NOTICE AND COMMENTS

The public hearing was continued from the September 4, 2007 City Council meeting to the September 17, 2007 meeting so no additional public notice was necessary. Members of the public who attended the September 4, 2007 meeting were provided a courtesy reminder of the September 17, 2007 meeting. Staff has received two letters from the public included as attachments.

FISCAL IMPACT

It is anticipated that the proposed development agreement addresses the potential fiscal impacts to the City resulting from a change from commercial to residential uses at the project site.

Vincent P. Bertoni, AICP
Director of Community Development

Approved By

ATTACHMENT 1

Ordinance Establishing a Mixed-Use Planned Development Zone

9200 Wilshire Boulevard
City Council Meeting
September 17, 2007

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS ESTABLISHING A MIXED-USE PLANNED DEVELOPMENT OVERLAY ZONE AND REGULATIONS PERTAINING THERETO, AMENDING THE BEVERLY HILLS MUNICIPAL CODE AND APPLYING THE OVERLAY ZONE TO PROPERTY LOCATED AT 9200 WILSHIRE BOULEVARD

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

Section 1. Article 19.9 is hereby added to Chapter 3, Title 10 of the Beverly Hills Municipal Code to read as follows:

"Article 19.9

Mixed-Use Planned Development Overlay Zone (M-PD-4)

10-3-1990. M-PD-4 Zone created.
10-3-1990.01 Application of M-PD-4 Zone.
10-3-1990.02 Objectives of the M-PD-4 Zone.
10-3-1990.03 Definitions.
10-3-1990.04 Uses permitted.
10-3-1990.05 Restrictions.
10-3-1990.06 Applicability of underlying zone regulations.
10-3-1990.07 Height limitations.
10-3-1990.08 Density.
10-3-1990.09 Parking, access & circulation.
10-3-1990.10 Setbacks.
10-3-1990.11 Modulation.
10-3-1990.12 Loading and ancillary facilities.
10-3-1990.13 Outdoor living space required.
10-3-1990.14 Rooftop uses.
10-3-1990.15 Compatibility standards.
10-3-1990.16 Application of transitional operational standards.

10-3-1990. M-PD-4 Zone created.

There is hereby created an overlay zone designated as the Mixed-Use Planned Development Overlay Zone (M-PD-4).

10-3-1990.01 Application of M-PD-4 Zone.

The M-PD-4 Zone shall apply to the following areas, as shown on the Mixed-Use Planned Development Map, a copy of which is on file in the Department of Planning and Community Development and attached as Exhibit A to this Ordinance:

> All those parcels having frontage on the south side of Wilshire Boulevard, east of Maple Drive and west of Palm Drive, and north of the alley running parallel to and south of Wilshire Boulevard.

10-3-1990.02. Objectives of the M-PD-4 Zone.

The objectives of the M-PD-4 Zone shall be as follows:

(A) To ensure that mixed-use development in the M-PD-4 Zone will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.

(B) To provide for mixed-use development that is compatible with the scale and massing of the surrounding neighborhood, through appropriate height, modulation, upper-story setbacks, other similar measures, or any combination thereof.

(C) To provide pedestrian-friendly amenities along the street level, and setbacks that are generally consistent with other development along Wilshire Boulevard and along Palm Drive

between Wilshire Boulevard and Charleville Boulevard, and along Maple Drive between Wilshire Boulevard and Charleville Boulevard.

(D) To ensure that mixed-use development in the M-PD-4 Zone will not create any significant, adverse traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will minimize impediments to vehicular circulation and pedestrian safety.

(E) To foster uniform planning and development of all parcels in the M-PD-4 Zone to ensure unified development in the overlay zone.

(F) To protect the public health, safety, and welfare.

10-3-1990.03. Definitions.

Unless the context plainly requires otherwise, the following definitions shall govern this Article:

(A) 'Planned development' shall mean a development that is approved pursuant to the procedures of Article 18.4 of this Chapter.

(B) 'Entertainment use' shall mean any entertainment, other than live musical accompaniment to dining as defined in Section 10-3-2703 of this Chapter, and shall include, but not be limited to, movie theaters, playhouses, video arcades, cabarets, nightclubs, adult entertainment businesses, and similar uses.

10-3-1990.04. Uses permitted.

No lot, premises, building or portion thereof in the M-PD-4 Zone shall be used for any purpose except those approved by the Planning Commission as part of a planned development pursuant to Article 18.4 of this Chapter.

10-3-1990.05. Restrictions.

The following restrictions shall apply to mixed-use developments in the M-PD-4 Zone:

(A) No establishments whose primary purpose or business is to sell alcoholic beverages for on-site consumption, otherwise referred to as bars, may be included in a mixed-use development.

(B) No medical uses may be included in a mixed-use development.

(C) No entertainment uses including, but not limited to, cabarets, nightclubs, and adult entertainment businesses, may be included in a mixed-use development.

(D) No use shall be permitted in a mixed-use development if that use would cause the parking generation for all uses in the mixed-use development to exceed the available parking on site as determined in accordance with this Chapter.

(E) Residential uses included as part of a mixed-use development shall be permitted in all portions of the development regardless of the underlying zone, except that residential uses shall not be permitted within the first forty feet (40') of the first floor facing arterial roadways such as Wilshire Boulevard, measured from the building facade.

(F) Commercial uses included as part of a mixed-use development shall only be permitted in those portions of the development in which the underlying zone is a commercial zone.

(G) The Planning Commission shall have authority through conditions imposed on a Planned Development to prohibit other uses as it deems appropriate, on a use by use basis.

10-3-1990.06. Applicability of underlying zone regulations.

Except as otherwise specifically provided in this Article for mixed-use developments, development in an M-PD-4 Zone shall comply with the zoning regulations applicable to the underlying zone.

Nothing in this Article shall require a development to comply with the provisions of the M-PD-4 overlay zone if the development fully conforms to the requirements of the underlying zone.

10-3-1990.07. Height limitations.

No mixed-use development shall be constructed, altered, or enlarged in the M-PD-4 zone except in accordance with the following height restrictions:

(A) General Limitations. No building, structure, improvement, or any part thereof, erected, constructed or maintained as part of a mixed-use development in the M-PD-4 Zone shall exceed sixty feet (60') in height nor shall it exceed six (6) stories, measured as set forth in this Chapter, exclusive of unoccupied architectural features and rooftop uses as provided below.

(B) Unoccupied Architectural Features. Notwithstanding any other provision of this Code, unoccupied architectural features, such as skylights and clerestories, structures housing mechanical equipment, elevator penthouses, antennas and similar unoccupied space may exceed the sixty (60) foot height limit established by subsection (A) of this Section by not more than ten feet (10') in height if such unoccupied architectural features are approved by the Planning Commission as part of a planned development pursuant to Article 18.4 of this Chapter and do not exceed, in the aggregate, thirty-three percent (33%) of the total roof area upon which they are located and no such

feature exceeds or intersects a line projecting from the perimeter of the roof upward at an angle of forty five (45) degrees from the horizontal.

(C) Rooftop Uses. Notwithstanding any other provision of this Code, rooftop restrooms, fitness centers, and pools and pool related uses may exceed the height limits established by this Section by not more than ten feet (10') in height, provided that any structure housing a restroom facility and/or a fitness center is set back from the front (Wilshire Boulevard) and side (Palm Drive and Maple Drive) perimeters of the roof by a minimum of 10 feet.

10-3-1990.08. Density.

(A) Maximum Floor Area Ratio. Notwithstanding any other provision of this Code, a mixed-use development in the M-PD-4 Zone, including all components, shall have a maximum aggregate floor area ratio determined by the Planning Commission as part of a planned development pursuant to Article 18.4 of this Chapter. In no event shall the floor area ratio of a mixed-use development in the M-PD-4 Zone exceed a maximum of 4.0:1. For the purposes of this Article, floor area shall be calculated using the lot of the subject site prior to any required dedications or exactions.

(B) Minimum Commercial Floor Area. The minimum permitted floor area devoted to commercial uses in the M-PD-4 Zone shall be fourteen thousand (14,000) square feet, except as otherwise approved by the Planning Commission as part of a planned development pursuant to Article 18.4 of this Chapter.

(C) Maximum Number of Residential Units. The maximum number of residential units that may be included in a mixed-use development in the M-PD-4 Zone shall be determined by the Planning Commission as part of a planned development pursuant to Article 18.4 of this Chapter.

10-3-1990.09. Parking, Access & Circulation.

Notwithstanding any other provision of this Code, parking for mixed-use developments located in the M-PD-4 Zone shall be provided in accordance with this Section.

(A) A mixed-use development shall provide parking for the commercial and residential components that can be physically separated. Notwithstanding the foregoing, the Planning Commission may modify this requirement, as part of a planned development, if it finds that such access would advance the objectives of the M-PD-4 Zone as set forth in Section 10-3-1990.02 of this Article.

(B) Except as provided otherwise in this Article, parking for all uses in a mixed use development shall be provided in accordance with the applicable provisions of this Chapter. Notwithstanding the foregoing, the Planning Commission may modify the parking requirements for a mixed use development, as part of a planned development, if it finds that such modifications would advance the objectives of the M-PD-4 Zone as set forth in Section 10-3-1990.02 of this Article.

(C) Notwithstanding any other provision in this Chapter, up to ten percent (10%) of the parking spaces provided in a mixed use development in the M-PD-4 Zone may be compact spaces and up to twenty percent (20%) of the total number of multiple family dwelling units in a project may satisfy the parking requirements of this Chapter through the use of tandem parking spaces. The dimensions of each tandem space shall comply with the parking standards adopted by the City Council and on file in the Community Development Department-Building and Safety.

(D) If parking is provided above ground, all parking, except for driveways and access to loading areas, shall be located behind building space that is dedicated to a permitted use other than parking, which building space shall be a minimum of forty (40) feet deep as measured

from the building facades facing public streets, to prevent direct visibility from adjacent streets unless otherwise approved by the Planning Commission as part of a planned development.

10-3-1990.10. Setbacks.

Mixed-use developments in the M-PD-4 Zone shall maintain the following minimum setbacks:

(A) Wilshire Boulevard (front) setback. No minimum setback shall be required from the property line along the Wilshire Boulevard frontage of a mixed-use development in the M-PD-4 Zone.

(B) Maple Drive (side) setback. A minimum setback of three feet (3') shall be required from the property line along the Maple Drive frontage of a mixed-use development in the M-PD-4 Zone.

(C) Palm Drive (side) setback. A minimum setback of nine feet (9') shall be required from the property line along the Palm Drive frontage of a mixed-use development in the M-PD-4 Zone.

(D) Alley (rear) setback. A minimum setback of five feet, eight inches (5'8") shall be required from the property line along the rear alley of a mixed-use development in the M-PD-4 Zone.

(E) Parking uses setback. The minimum setback for any above ground parking component of a mixed-use development in the M-PD-4 Zone shall be as approved as part of a planned development.

Notwithstanding the foregoing, to provide visual relief and modulation of the main building facades, awnings and architectural features (including but not limited to sills, eyebrows, and cornices) may encroach into the setbacks required by this Section and modulation required by Section 10-3-1990.11 may also encroach into the setbacks if approved by the Planning Commission as part of a planned development pursuant to Article 18.4 of this Chapter.

10-3-1990.11. Modulation.

A mixed-use development in the M-PD-4 Zone shall be modulated as provided in planned development permit.

10-3-1990.12 Loading Facilities.

(A) Except as otherwise provided in this Section, loading facilities for mixed-use developments in the M-PD-4 Zone shall be provided in accordance with Sections 10-3-2740 through 10-3-2744 inclusive of this Chapter, or as otherwise approved as part of a Planned Development.

(B) Notwithstanding the foregoing, mixed-use developments in the M-PD-4 zone shall provide not less than one 35-foot deep truck loading space and one 50-foot deep truck loading space accessible from Palm Drive.

10-3-1990.13. Outdoor living space required.

The residential component of all mixed-use developments in the M-PD-4 zone shall provide outdoor living space in accordance with the requirements of Section 10-3-2803 of this Chapter, or as otherwise approved as part of a planned development.

10-3-1990.14. Rooftop Uses.

Notwithstanding any other provision of this Code and subject to the restrictions set forth in this Section, the Planning Commission may permit, as part of a planned development pursuant to Article 18.4, mixed-use developments in the M-PD-4 Zone to include rooftop pools and spas, fitness centers, and related restroom facilities provided that:

(1) The Planning Commission makes the findings set forth in Section 10-3-2804(b) of this Chapter regarding the rooftop restroom facilities.

(2) The additional height above the maximum height limit otherwise applicable to the mixed-use development will not exceed ten feet (10').

(3) The mixed-use development includes a maximum of two (2) rooftop restroom facilities.

(4) The aggregate floor area of all rooftop restroom facilities permitted pursuant to this Section shall not exceed two hundred (200) square feet or such minimum floor area as may be required by federal or state law, whichever is greater.

(5) Any rooftop fitness centers or restroom facilities permitted pursuant to this Section shall be set back from the face of any exterior wall of the floor immediately below so that a forty-five degree (45) angle to the vertical plane of the nearest outside wall is not intersected.

(6) Notwithstanding the provisions of subsection (5) of this Section, a rooftop structure may intersect a forty-five degree (45) angle to the vertical plane of the nearest outside wall provided that the exterior wall of the rooftop structure is constructed in the same plane as the exterior wall of the floor below and the rooftop structure will not exceed the applicable maximum allowable height otherwise permitted by more than forty-five inches (45").

(7) No food or beverage service, other than vending machines, shall be provided in connection with any rooftop pool use.

(8) Use of the rooftop pool facilities and fitness center shall be restricted to residents and guests of residents of the mixed-use development.

(9) No admittance or use fees shall be charged to use the rooftop pool facilities or fitness center. Nothing in this provision shall prohibit the imposition or collection of home owner association fees on residents of a mixed-use development to off-set the costs of operating and maintaining such rooftop pool facilities.

10-3-1990.15. Compatibility Standards.

The following design standards shall be incorporated into all mixed-use developments in the M-PD-4 Zone:

(A) Noise Attenuation:

(1) All dwelling units shall be constructed with double-glazed glass windows.

(2) The exterior walls of all dwelling units, and any interior walls or floor/ceilings that separate dwelling units from commercial uses shall comply with the sound transmission standards set forth in Sections 1208 and 1208A of the Uniform Building Code, as amended by the 1998 California Building Code, or their successors.

(3) All dwelling units shall be equipped with internal air conditioning, and state of the art air cleaning/filtering devices.

(B) Odors:

Air conditioning systems for the residential component shall be located and designed in a manner sufficient to prevent adverse impacts from odors generated by the commercial component.

10-3-1990.16. Application of transitional operational standards.

Unless otherwise provided in this Article, all uses in a mixed-use development shall comply with the general operational requirements set forth in Section 10-3-1956 of Article 19.5 of this Chapter."

Section 2. This ordinance has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000 et seq. ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.), and the City's Local CEQA Guidelines. An Environmental Impact Report was prepared in connection with the project of which this Ordinance is a part. The City Council has certified the Final Environmental Impact Report ("FEIR") and made environmental findings in connection with the Ordinance in Resolution No. 07-R-12323. The Resolution includes environmental findings and a Mitigation Monitoring Program. The Resolution is incorporated herein by this reference.

Section 3. The official zoning map of the City is hereby amended to apply the Mixed-Use Planned Development Overlay Zone (M-PD-4) to the property known as 9200 Wilshire Boulevard, Beverly Hills, as described in the legal description attached hereto as Exhibit A, and incorporated herein by reference.

Section 4. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be deemed repealed and the underlying zone shall control as to each property to which the Mixed-Use Planned Development Overlay Zone (M-PD-4) has been applied.

Section 5. 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 her certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 6. This Ordinance shall go into effect and be in full force and effect at upon the later of: (1) 12:01 a.m. on the thirty-first (31st) day after its passage, (2) the date of execution of a development agreement governing property within the M-PD-4 zone; or (3) the effective date of an ordinance approving a development agreement governing the property within the M-PD-4 zone.

Adopted:
Effective:

JIMMY DELSHAD
Mayor of the City of Beverly Hills, California

ATTEST:

_____ (SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

_____
LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

_____
RODERICK J. WOOD
City Manager

_____
VINCENT P. BERTONI, AICP
Director of Planning & Community Development

EXHIBIT A

LEGAL DESCRIPTION OF 9200 WILSHIRE BOULEVARD

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 said County.

APN: 4331-018-023 and 4331-018-024

ATTACHMENT 2

Ordinance Approving Development Agreement
&
Development Agreement

9200 Wilshire Boulevard
City Council Meeting
September 17, 2007

ORDINANCE NO. 07-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS APPROVING 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 ("Developer") desire to enter into that certain development agreement (the "Development Agreement" herein), attached to this Ordinance as Exhibit A in connection with the construction of a 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").

Section 2. The Development Agreement has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000 et seq. ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 et seq.), and the City's Local CEQA Guidelines. An Environmental Impact Report was prepared in connection with the Project. The City Council has certified the Final Environmental Impact Report ("FEIR") and made environmental findings in connection with the approval of the Project, including this Development Agreement, and adopted a Mitigation Monitoring and reporting program for the Project , as fully set forth in Resolution No. 07-R-12323, adopted by the City Council on April 26, 2007. That Resolution is incorporated herein by reference, and made a part hereof as if fully set forth herein.

Section 3. On April 6, 2006, the Planning Commission conducted a duly noticed public hearing to consider the Development Agreement and the Project. Notices of the time, place and purpose of public hearing were duly provided in accordance with California Government Code Sections 65867, 65090 and 65091.

Section 4. On April 26, 2007 and July 24, 2007, the City Council conducted a duly noticed public hearing to consider the Development Agreement and the Project. Notices of the time, place and purpose of the public hearing were duly provided in accordance with California Government Code Sections 65867, 65090 and 65091.

Section 5. The provisions of the Development Agreement are consistent with the City of Beverly Hills General Plan and comply with its objectives and policies including the objective of developing standards for mixed commercial and residential uses. The Development Agreement implements the terms of the General Plan and City ordinances, including a General Plan Amendment processed in connection with the Project to change the land use designation of the project site from Commercial to Mixed-Use, and does not allow development except in conformance with the General Plan, as amended.

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

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

Section 8. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage, in accordance with Section 36933 of the Government Code; shall

certify to the adoption of this Ordinance and shall cause this ordinance and this certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

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

Adopted:
Effective:

JIMMY DELSHAD
Mayor of the City of Beverly Hills, California

ATTEST:

(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager

VINCENT P. BERTONI
Director of Community Development

EXHIBIT A

DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY:
CITY OF BEVERLY HILLS

AND WHEN RECORDED MAIL TO:

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

DEVELOPMENT AGREEMENT AND LIENS FOR FEES DUE UPON SALES

THIS DEVELOPMENT AGREEMENT (the **"Agreement"**) is made effective as of _____, 2007, by and between THE CITY OF BEVERLY HILLS, a California municipal corporation (the "City"), and 9200 WILSHIRE LLC, a California limited liability company formerly known as Legacy Partners SSR 9200 Wilshire, LLC (the "Developer"). The City and Developer are individually referred to herein as a "Party" and collectively referred to as the "Parties."

RECITALS

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

A. Developer is the fee owner of that certain real property located in the City of Beverly Hills, California and described in Exhibit A attached hereto and incorporated herein by reference;

B. Developer desires to construct the Project (as hereafter defined);

C. Developer has applied to the City for approval of this mutually binding Agreement, pursuant to the provisions of the Development Agreement Act (as hereinafter defined) and other applicable laws;

D. In anticipation of the development of the Project, Developer has made application to the City (in its governmental capacity) for certain approvals, entitlements, findings and permits required for the development and construction of the Project, including, without limitation (i) application for a general plan amendment, zone change, tentative tract map; and (ii) application for a development agreement for the Project under the Development Agreement Act;

E. The Developer has, as of the Agreement Effective Date, submitted and received approval of the Project Approvals (as hereinafter defined) allowing the development and construction of the Project;

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

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

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

I. The City has determined that, as a result of the development of the Project in accordance with the Project Approvals and this Agreement, substantial benefits will accrue to the public, including without limitation, the provision of housing, the development of a mixed-use project on currently vacant land, and a monetary contribution to the City;

J. On April 6, 2006, pursuant to the requirements of the Development Agreement Act, the Planning Commission of the City of Beverly Hills conducted a hearing on the Developer's application for this Agreement;

K. On April 26, 2007, July 24, 2007 and September 4, 2007, pursuant to the requirements of the Development Agreement Act, the City Council of the City of Beverly Hills (the "City Council") conducted a hearing on the Developer's application for this Agreement;

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

M. On September 17, 2007, the City Council adopted Ordinance No. _____ approving this Agreement, and such ordinance became effective on _____, 2007;

N. By Resolution No. 07-R-12323, adopted by the City Council on April 26, 2007, the City Council reviewed and certified, after making appropriate findings, a Final Environmental Impact Report for the Project dated April, 2007, that contemplates this Agreement.

AGREEMENT

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

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

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

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

(c) "Change of Control" shall refer to a transaction whereby the transferee acquires a beneficial ownership interest in the Developer such that after such transaction there is a change of identity of the person or entity that has the power to direct or cause the direction of the management and policies of the Developer, whether through the ownership of voting securities, by contract or otherwise. However, neither of the following shall trigger the EMS Fee: (i) appointment or replacement of a non-owner manager nor (ii) the designation of an Existing Owner as a managing member of a successor Developer so long as the EMS Fee shall have been paid in connection with the acquisition of the Property by the successor Developer and the designee was an Existing Owner at the time of such acquisition.

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

(e) "Developer Fees" shall mean those fees established and adopted by City with respect to development and its impacts pursuant to applicable governmental requirements, including Section 66000 et seq., of the Government Code of the State of California, including but not limited to impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on or in connection with new development by the City. Developer Fees does not mean or include Processing Fees.

(f) "Development Agreement" or "Agreement" means this Agreement.

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

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

(i) "Effective Date of this Agreement" shall mean the date this Agreement is fully executed by the Parties.

(j) "EIR" shall mean the final Environmental Impact Report (Sch #2005041133) which was prepared, circulated and certified in accordance with applicable law, including, without limitation, CEQA. "EIR Mitigation Measures" shall mean the mitigation measures imposed upon the Project pursuant to the EIR and the Conditions of Approval.

(k) "Environmental Mitigation and Sustainability Fee" shall mean the fee defined in Section 10(f) and, in addition to the amount set forth in Section 10(f), shall include any costs incurred by the City in connection with the foreclosure of any lien, including attorneys' fees, attorneys' fees incurred by City in connection with any bankruptcy of the applicable seller, and interest at 10 percent per annum (but not in excess of the maximum amount permitted by law) on such unpaid fees.

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

(m) "Initial Sales Transaction" means the first Sales Transaction of each separate subdivided portion of the Project coupled with an interest in the common area of the Project or a membership in an association created for the purpose of managing the Project.

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

(o) "Processing Fees" means all processing fees and charges required by the City applied uniformly to all new construction including, but not limited to, fees for land use applications, building permit applications, building permits, grading permits, encroachment permits, subdivision or parcel maps, lot line adjustments, street vacations, inspection fees, certificates of occupancy and plan check fees. Processing Fees shall not mean or include Developer Fees.

(p) "Project" means the development of the Property as described in the Project Approvals.

(q) "Project Approvals" shall include, collectively, a general plan amendment, zoning overlay, planned development review, architectural review, encroachment permits and a vesting tentative tract map ("Tract Map"), approved by the City with respect to the Project and shall include any Subsequent Project Approvals (as hereinafter defined).

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

(s) "Reserved Powers" means the rights and authority excepted from this Agreement's restrictions on the exercise of City's police powers, as defined in Section 9(a) of this Agreement.

(t) "Sales Transaction" means any transaction evidenced by the recording of a conveyance document that conveys the Property, or any subdivided portion of the Property, and which conveyance would be subject to, and not exempt from, the Los Angeles County Documentary Transfer Tax (Los Angeles County Code, Chapter 4.60) or the City of Los Angeles Real Estate Transfer Tax (Los Angeles City Municipal Code, Chapter 2, Article 1.9) as those taxes existed on the Effective Date of this Agreement. A transaction whereby the possession of all or a portion of the Property is transferred but the seller retains the title as security for the payment of the price shall be deemed a Sales Transaction. Notwithstanding the foregoing, a transfer of all or a portion of the Property as a result of a judicial or non-judicial foreclosure, or by deed in lieu of foreclosure, initiated by a Mortgagee (as defined in Section 24 below), shall not be deemed a Sales Transaction. For the purposes of triggering the EMS Fee only, a Sales Transaction shall include (i) any sale, assignment, or transfer of fifty percent (50%) or more of the beneficial ownership interest in Developer, whether in one transaction or a series of transactions, provided however, that any transfers of ownership interests among the owners (or the beneficial owners of such owners) of any successor Developer hereunder (each an "Existing Owner"), shall not be deemed a Sales Transaction so long as the EMS Fee shall have been paid in connection with the acquisition of the Property by such successor Developer and the transferee was an Existing Owner at the time of such acquisition, or (ii) any Change of Control.

(u) "Subsequent Land Use Regulations" means any change in or addition to the Applicable Rules adopted after the Effective Date of this Agreement, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building regulation, including, without limitation, any such change by means of an ordinance, initiative, resolution, policy, order or moratorium, initiated or instituted for any reason whatsoever by the Mayor, City Council, Planning Commission or any other board, agency, commission or department of City, or any officer or employee thereof, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project.

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

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

2. Recitals of Premises, Purpose and Intent.

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

"The Legislature finds and declares that:

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

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

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

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

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

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

5. Term of Agreement and Tract Map. The initial term of this Agreement shall commence on the Agreement Effective Date, and shall continue for five (5) years or until the Project is complete and a certificate of occupancy has been issued, whichever is earlier. Upon approval of a final map for the Project, 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. The term of the tentative tract map for the Project shall be extended to five years from the Effective Date of this Agreement. 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).

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

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

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

9. Changes in Applicable Rules.

(a) Nonapplication of Changes in Applicable Rules. The adoption of any Subsequent Land Use Regulations after the Effective Date of this Agreement, or any change in, or addition to, the Applicable Rules (other than changes in Development Fees and Processing Fees or other changes as provided in this Agreement), including, without limitation, any changes in the

General Plan or the Zoning Regulations (including any regulation relating to the timing, sequencing, or phasing of the Project or construction of all or any part of the Project), adopted after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by any board, agency, commission or department of the City, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way with the Project Approvals shall not be applied to the Project unless such changes represent an exercise of the City's Reserved Powers. The City's Reserved Powers is defined as the enactment of regulations and/or the taking of Discretionary Actions if the same is expressly found by the City to be necessary to protect the residents of the Project or the residents of the City from a condition that is dangerous to public health or safety or if the same is required to comply with State or Federal laws (whether enacted previous or subsequent to the Effective Date of this Agreement).

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

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

(d) Changes in Processing Fees Under Applicable Rules. The Project shall be subject to any increase in Processing Fees imposed by the City, provided that no such change shall be solely applicable to the Project.

(e) Applicable Developer Fees. Except as set forth in subsection 10(e) below, the Project shall be subject to the payment of Developer Fees no matter when adopted, in the amount in effect at the time that the Developer Fee becomes due under the Applicable Rules or any law adopted after the Effective Date of this Agreement.

10. Developer's Obligations.

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

(b) Payment of Developer Fees and Processing Fees. The Developer shall pay all Developer Fees and Processing Fees when such fees are required to be paid under the laws of the

City, whether or not such fees are adopted or increased before or after the Effective Date of this Agreement.

(c) Payment of Other Fees. On the Effective Date of this Agreement, Developer shall pay all outstanding City Processing Fees, including the costs for processing of the Project applications and for the environmental impact report, and legal costs for the preparation of this Agreement.

(d) Public Benefit Contribution.

i. Prior to the issuance of a building permit for the Project, Developer shall pay to City a public benefit contribution of $3,248,000.

ii. To the extent the Project actually constructed contains less than 54 condominium units, the public contribution shall be reduced by $26,177.30 for each unit not constructed.

(e) Notwithstanding subsection 9(e), if, after the Effective Date of this Agreement, the City adopts a Developer Fee or Fees for the purpose of addressing a project's impact on the City's infrastructure (such as streets, utilities, lights), on affordable housing, on sustainability, or to offset the loss of business taxes, Developer shall not be required to pay said fee or fees since this Agreement requires Developer to pay the public benefit contribution set forth in paragraph (d) and the EMS Fee set forth in paragraph (f). The determination of whether a Developer Fee addresses a project's impact on the City's infrastructure (such as streets, utilities, lights), affordable housing, or sustainability, or whether a Developer Fee is adopted to offset the loss of business taxes, shall be determined by the City in its sole discretion.

(f) Environmental Mitigation and Sustainability Fee

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

ii. *Final Developer EMS payment.* If, at the time of the last Initial Sales Transaction, the total amount of the EMS Fee paid in connection with all Initial Sales Transactions is less than $504,000, then, in addition to the EMS Fee due as a result of the last Initial Sales Transaction, Developer shall pay to City one-half the difference between $504,000 and the total amount of the EMS Fees paid in connection with all Initial Sales

Transactions (which EMS Fees will include the EMS Fee paid in connection with the last Initial Sales Transaction) ("Final Developer EMS Payment"). For example, if the total EMS Fees paid in connection with all Initial Sales Transactions is $400,000, then the Final Developer EMS Payment shall be $52,000 ($504,000-$400,000=$104,000 ÷ 2 = $52,000). Developer shall pay or cause to be paid the Final Developer EMS Payment from the escrow account set up for the last Initial Sales Transaction. Notwithstanding the foregoing, if the last Initial Sales Transaction has not occurred within eighteen (18) months after the close of the first Initial Sales Transaction, then on the date that is eighteen months after the close of the first Initial Sales Transaction, Developer shall pay to City one-half the difference between (x) the total EMS Fees paid by Developer in connection with the Initial Sales Transactions through that date and (y) $504,000.

iii. *Final Developer EMS Credit.* If, at the time of the last Initial Sales Transaction, the total amount of the EMS Fee paid in connection with all Initial Sales Transactions, including the EMS Fee paid in connection with the last Initial Sales Transaction, is more than $504,000, then, Developer shall be entitled to a credit against the EMS Fee paid in connection with the last Initial Sales Transaction equal to one-half the difference between $504,000 and the total amount of the EMS Fees paid in connection with all Initial Sales Transactions (which EMS Fees will include the EMS Fee paid in connection with the last Initial Sales Transaction) ("Final Developer EMS Credit"). For example, if the total EMS Fees paid in connection with all Initial Sales Transactions is $600,000, then the Final Developer EMS Credit shall be $48,000 ($600,000-$504,000=$96,000 ÷ 2 = $48,000). If the amount of the Final Developer EMS Credit exceeds the amount of the EMS Fee due upon the last Initial Sales Transaction, the City shall promptly pay to Developer the difference between the Final Developer EMS Credit and the EMS Fee due upon the last Initial Sales Transaction. Notwithstanding the foregoing, if the last Initial Sales Transaction has not occurred within eighteen (18) months after the close of the first Initial Sales Transaction, then on the date that is eighteen (18) months after the close of the first Initial Sales Transaction, the Final Developer EMS Fee Credit, if any, shall be calculated as of that date and City shall promptly pay such credit to Developer. No further credit shall be owed by City to Developer.

iv. *Adjustment of EMS Fee.* If, after the Effective Date of this Agreement, the City adopts or increases a real estate transfer tax or documentary transfer tax for Beverly Hills, so that the combined total of the City's taxes and the County of Los Angeles Documentary Transfer Tax exceeds the current $1.10 per $1000 of City and County documentary transfer taxes, then the

EMS Fee imposed upon all subsequent Sales Transactions shall be reduced by the amount of the combined taxes that exceeds $1.10 per $1000. For example, if City adopts a real estate transfer tax of $2.20 per $1000, thus increasing the combined City and County real estate transfer taxes and documentary transfer taxes to $3.30 per $1,000 of sales price, then the EMS Fee on all subsequent Sales Transactions would be $2.30 per $1000 of sales price ($4.50-$2.20= $2.30). If the City increases the documentary transfer tax or adopts a real estate transfer tax so that the combined taxes exceed $5.60 per $1000 of sales price, then no further EMS Fee shall be due or payable.

(g) Liens for EMS Fee Payable Upon Sale. Developer hereby grants to the City, with power of sale, a lien on the Property and each lot or parcel created by Vesting Tentative Tract Map. No. ____ to secure the payment of the EMS Fee payable upon each Sales Transaction. In the event that the EMS Fee secured by such lien is not paid concurrently with and as a condition to the closing of a Sales Transaction by Developer or any successor-in-interest to Developer, then City may enforce such lien by sale by City, its attorney or any other person or entity authorized by the City Manager to conduct the sale. Any such sale shall be conducted in accordance with California Civil Code Sections 2924, 2924b, 2924c, 2924f, 2924g, and 2924h, or in any other manner permitted or provided by law. City, through its agent authorized by the City Manager, shall have the power to bid on the encumbered property at the sale, using as a credit bid the amounts secured by such lien, its own funds, or funds borrowed for such purpose, and to acquire the lot or parcel. City is hereby granted, in trust, the applicable lot or parcel and is appointed as trustee for purposes of noticing and effecting any sale pursuant to the provisions of this Section and is hereby expressly granted a "power of sale" in connection therewith. Developer, or any subsequent owner of the Property or any portion thereof, shall provide notice to City, in a form satisfactory to the City, upon any opening of escrow that will result in a Sales Transaction or any other conveyance of the Property or portion thereof. The notice shall include a declaration stating the amount of the EMS Fee due upon closing of any Sales Transaction, or in the case of a conveyance that is not a Sales Transaction, the reason that such conveyance is not a Sales Transaction and therefore not subject to the EMS Fee. Upon receipt of the full amount of the EMS Fee payable with respect to a sale, City shall execute and deliver such documentation, in recordable form, as Developer, the buyer or the title company may reasonably request to evidence the payment of the EMS Fee and extinguishment of the City's lien rights with respect to such sale. Such documentation shall also indicate that payment of the EMS Fee shall not extinguish the City's lien rights with respect to subsequent Sales Transactions.

(h) Nothing in this section shall excuse the Developer from paying any increases in existing Developer Fees.

(i) Prior to any Sales Transaction, City and Developer shall record a document containing forms and procedures for implementation of paragraphs 10(f) and (g).

11. Issuance of Building Permit. The City shall be under no obligation to issue a building permit(s) for the Project until all the fees set forth in Section 10, except for the EMS Fees, have been fully paid to City.

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

Subject to the foregoing, and except as provided below, after notice and expiration of the 30-day period without cure, the notifying party, at its option, shall have all rights and remedies provided by law and/or may give notice of intent to terminate this Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the Council within thirty calendar days in the manner set forth in Government Code Sections 65867 and 65868.

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

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

13. Expiration. Upon the expiration of the Term, this Agreement shall terminate and be of no further force or effect; provided, however, such termination shall not affect the obligation to pay the EMS Fee as provided in Section 10(f) or any claim of any Party hereto, arising out of the provisions of this Agreement, prior to the effective date of such termination.

14. Transfers of Interests in Property or Agreement.

(a) Developer shall have the right to sell, assign or transfer all of the real property comprising the Property or this Agreement to any person at any time during the term of this Agreement.

(b) Upon the delegation of all duties and obligations and the sale, transfer or assignment of all or part of the Property, Developer shall be released from its obligations under this Agreement with respect to the Property, or portion thereof sold, transferred or assigned, that arise subsequent to the effective date of such transfer if: (i) Developer has provided to City at least thirty (30) days written notice of such proposed assignment prior to the proposed transfer; (ii) Developer provides satisfactory evidence that the transferee will assume in writing through an assignment and assumption agreement all obligations of Developer under this Agreement with respect to the portion of the Property subject to such sale, transfer or assignment, and (iii) the applicable EMS Fee has been paid. Notwithstanding anything to the contrary contained herein, Developer may provide the City with the thirty (30) day notice under clause (i) of this subsection (b) prior to the Effective Date of this Agreement, in which case the thirty (30) day period shall begin on the date of such notice or on the day following City Council adoption of this Agreement, whichever is later, rather than on the Effective Date.

(c) Assignment and Assumption of Obligations. For all proposed transfers of interest in the Property or in this Agreement, Developer shall provide to City an assignment and assumption agreement in the form attached as Exhibit "B" hereto

(d) Successors and Assigns. All of the terms, covenants and conditions of this Agreement shall be binding upon Developer and its successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other successors and assigns as herein provided.

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

16. Indemnification.

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

(b) In the event of any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the EIR prepared and adopted for the Project, Developer shall defend, at its own expense, the action or proceeding. In addition, Developer shall reimburse City for its actual costs in defending any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the EIR and the Developer shall also pay any award of costs, expenses and fees that the court having jurisdiction over such challenge makes in favor of any challenger and against the City. Developer shall cooperate with City in any such defense as City may reasonably request and may not resolve such challenge without the agreement of City. In the event Developer fails or refuses to reimburse City for its cost to defend any challenge to this Agreement, the Project Approvals or the EIR, City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 13 above. In all events, City shall have the right to resolve any challenge in any manner, in its sole discretion.

(c) In order to ensure compliance with this section, 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 Agreement, any of the Project Approvals or the EIR prepared and adopted for the Project, the Developer shall deposit with the City cash or other security in the amount of $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 section. 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 section, the Developer shall provide such additional security within fifteen (15) days of notice from the City Attorney. The City shall promptly notify the Developer of any claim, action or proceeding within the scope of this Section and the City shall cooperate fully in the defense of any such claim or action.

(d) Notwithstanding anything to the contrary contained herein, Developer's obligations under subsection (b) of this Section 16 shall not extend to any challenge to the legality or enforceability of the EMS Fee that arises or is asserted more than ninety (90) days after the recordation of the final map for the Project or the issuance of a building permit for the Project, whichever is later.

17. Relationship of the Parties. The Parties acknowledge and agree that the Developer is not acting as an agent, joint venturer or partner of the City, but is, in fact, an independent contractual party and not in any way under the control or direction of the City except as is expressly provided to the contrary in this Agreement.

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

19. No Third Party Beneficiaries. The only Parties to this Agreement are the City and Developer and their respective successors-in-interest. There are no third party beneficiaries and this Agreement is not intended and shall not be construed to benefit or be enforceable by any other person whatsoever.

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

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

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

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

23. Periodic Reviews.

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

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

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

(d) Result of Review. If, following such a review, the Planning Director finds good faith compliance by the Developer with the terms and conditions of this Agreement, the Planning Director shall issue to the Developer an executed certificate of compliance, certifying the Developer's good faith compliance with the terms and conditions of this Agreement through the

period of such review. Such certificate shall be in recordable form, and shall contain such information as may be necessary to impart constructive record notice of the finding of good faith compliance hereunder. The Developer shall have the right to record such certificate of compliance in the Official Records of the County of Los Angeles.

If, following such a review, the Planning Director, finds that the Developer has not complied in good faith with the terms and conditions of this Agreement, the Planning Director shall specify in writing the respects in which the Developer has failed to so comply. The Planning Director shall provide the Developer with written notice of such noncompliance in the manner provided in Section 31, together with a written specification of the reasons therefor. Such written notice shall also specify a reasonable time for the Developer to cure such non-compliance, which time shall be not less than thirty (30) days after the Developer's receipt of such notice.

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

(f) Effect on Default. Nothing in this Section 23 shall be interpreted to prevent the City from providing the Developer with a notice of default hereunder at any time other than during a periodic review under this Section 23, or from terminating this Agreement pursuant to the provisions hereof following any event of default by the Developer, subject to the notice and cure provisions of Section 12 above.

(g) Failure of Periodic Review. The City's failure to review, at least annually, compliance by Developer with the terms and conditions of this Agreement shall not constitute or be asserted by any Party as a breach by any other Party of this Agreement.

24. Mortgagee Protection. This Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any improvements

thereon by any mortgage, deed of trust or other security device. The City acknowledges that the lender(s) providing such financing ("Mortgagee") may require certain Agreement interpretations and agrees, upon request, from time to time, to meet with Developer and representatives of such lender(s) to provide within a reasonable time period the City's response to such requested interpretations. Any Mortgagee of a mortgage or a beneficiary of a deed of trust or any successor or assign thereof, including without limitation the purchaser at a judicial or non-judicial foreclosure sale or a person or entity who obtains title by deed-in-lieu of foreclosure on the Property must be entitled to the following rights and privileges:

(a) Mortgage Not Rendered Invalid. Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish, or impair the priority of the lien of any mortgage or deed of trust on the Property made in good faith and for value provided, however, that each lien securing EMS Fees described in Section 10(g) above shall be prior and superior to mortgage or deed of trust security financing used to purchase the applicable condominium unit if the EMS Fee payable upon such purchase and sale shall not have been paid. No Mortgagee shall have an obligation or duty under this Agreement to perform Developer's obligations, or to guarantee such performance, before taking title to all or a portion of the Property.

(b) Request for Notice to Mortgagee. The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, who has submitted a request in writing to the City in the manner specified herein for giving notices, shall be entitled to receive a copy of any notice of default hereunder delivered to Developer.

(c) Mortgagee's Time to Cure. The City shall provide a copy of any notice of default hereunder to the Mortgagee within ten (10) days of sending the notice of default to Developer. The Mortgagee must have the right, but not the obligation, to cure the default for a period of thirty (30) days after receipt of such notice of default. Notwithstanding the foregoing, if such default is a default which can only be remedied by such Mortgagee obtaining possession of the Property, Mortgagee shall have the right to seek to obtain possession with diligence and continuity, and to remedy or cure such default within thirty (30) days after obtaining possession, and except in cases of emergency or to protect the public health or safety, the City may not exercise its remedies set forth herein until expiration of such thirty (30) day period; provided, however, that in the case of a default which cannot with diligence be remedied or cured or the remedy or cure of which cannot be commenced within such thirty (30) day period, the Mortgagee shall have such additional time as it is reasonably necessary to remedy or cure such default, provided that Mortgagee diligently proceeds to cure and provided further that in no case shall such default be cured no later than one (1) year after Mortgagee obtains such possession. In no case will the time to remedy or cure the default extend the term of this Agreement.

(d) Cure Rights. Any Mortgagee who takes title to all of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or a deed in lieu of foreclosure, may succeed to the rights and obligations of Developer under this Agreement as to the Property or portion thereof so acquired; provided, however, in no event shall such Mortgagee be liable for any defaults or monetary obligations of Developer arising before acquisition of title to the Property by such Mortgagee, except that any such Mortgagee shall not be entitled to a building

permit or occupancy certificate until all delinquent and current fees and other monetary or non-monetary obligations due under this Agreement for the Property have been satisfied.

(e) Bankruptcy. If any Mortgagee is prohibited from commencing or prosecuting foreclosure or other appropriate proceedings in the nature of foreclosure by any process or injunction issued by any court or by reason of any action by any court having jurisdiction of any bankruptcy or insolvency proceedings involving Developer, the times specified in Section 24(c) above shall be extended for the period of the prohibition as long as the Mortgagee is diligently attempting to obtain possession by seeking relief of the automatic stay and/or other reasonable means, except that any such extension shall not extend the term of this Agreement.

25. Future Litigation Expenses.

(a) Payment of Prevailing Party. If City or Developer brings an action or proceeding (including, without limitation, any motion, order to show cause, cross-complaint, counterclaim, third-party claim or arbitration proceeding) by reason of defaults, breaches, tortious acts, or otherwise arising out of this Agreement, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit including, but not limited to, reasonable attorneys' fees and expert witness fees.

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

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

27. Amendment; Waiver. No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Agreement, and made in the manner required by the Development Agreement Act. The failure of either party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by any party hereto of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such party.

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

unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement, or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, except that if any provision of Section 10 (Developer's obligations) is held invalid or unenforceable, this entire Agreement shall be void and unenforceable and of no further force and effect.

29. Binding Effect. Except as may otherwise be expressly provided herein to the contrary, this Agreement and each of the provisions hereof shall be binding upon and inure to the benefit of each of the parties hereto, and their respective successors and assigns.

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

To the Developer:	9200 Wilshire, LLC 5141 California Avenue Suite 100 Irvine, CA 92617 Attn: Dennis Cavallari and Scott Rynders
with copy to:	Dale J. Goldsmith, Esq. Armbruster & Goldsmith LLP 10940 Wilshire Boulevard, Suite 2100 Los Angeles, California 90024
To the City:	City Manager City of Beverly Hills 455 N. Rexford Dr. Beverly Hills, California 90210
with copy to:	City Attorney City of Beverly Hills 455 N. Rexford Drive Room 220 Beverly Hills, California 90210

Any party hereto may from time to time, by notice given to the other parties hereto pursuant to the terms of this Section 30 change the address to which Communications to such party are to be sent or designate one or more additional persons or entities to which Communications are to be sent.

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

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

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

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

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

[Add signature and acknowledgement blocks to execution copies]

[Add Exhibits]

SIGNATURE PAGES

EXHIBIT A

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 said County.

APN: 4331-018-023 and 4331-018-024

EXHIBIT B

FORM OF ASSUMPTION AGREEMENT

FORM OF ASSUMPTION AGREEMENT

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

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

APN:

[Space Above For Recorder's Use Only]

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is entered into as of _____ ___, _____, by and between_____, a _____ ("Assignor") and _____, a _____ ("Assignee").

RECITALS:

A. Assignor entered into that certain Development Agreement dated _____ ___, 200__, with the City of Beverly Hills, a California municipal corporation ("City"), pursuant to which Assignor agreed to develop the property more particularly described therein ("Project"), subject to the terms and conditions thereof (the "Development Agreement").

B. Assignor has assigned its interest under the Development Agreement to Assignee in connection with the sale of the portion of the Project more particular described on Exhibit A attached hereto and incorporated herein by this reference (the "Property").

C. Assignee wishes to assume all of Assignor's rights and obligations under the Development Agreement with respect to the Property.

AGREEMENT:

NOW THEREFORE, in consideration the foregoing and for other good and valuable consideration, Assignor and Assignee agree as follows:

1. Assumption by Assignee. Assignee assumes all of the burdens and obligations of Assignor under the Development Agreement, including but not limited to the provisions of Section 10 thereof, and agrees to observe and fully perform all the duties and obligations of Assignor under the Development Agreement, that relate to the Property, and further agrees that the Property shall be subject to all of the terms and conditions thereof applicable to the Property. It is the express intention of both Assignor and Assignee that upon execution of this Agreement, Assignee shall be substituted for Assignor as the "Developer" under the Development Agreement with respect to the Property.

2. Obligations Assumed. Assignor and Assignee agree that the obligations specified in Exhibit B attached hereto and incorporated herein by this reference are expressly allocated to the Property and shall be the obligation of Assignee from and after the effective date of this Agreement.

3. Development Agreement. Assignee has reviewed all of the provisions of the Development Agreement, has sought legal counsel were necessary, and fully understands and assumes all of the terms and conditions of the Development Agreement that are allocated to the Property.

4. No Amendment to Development Agreement. Assignor and Assignee acknowledge and agree that the Development Agreement shall continue to be of full force and effect notwithstanding the assignment thereof with respect to the Property, and shall continue to govern the rights and obligations of Assignee as the "Developer" of the Property.

IN WITNESS WHEREOF Assignor and Assignee have executed this Assignment and Assumption Agreement as of the day and year first above written.

ASSIGNOR: _____, a
_____

By: _____
Name: _____
Its: _____

ASSIGNEE: _____, a
_____

By: _____
Name: _____
Its: _____

EXHIBIT A
TO
ASSIGNMENT AND ASSUMPTION AGREEMENT

DESCRIPTION OF THE PROPERTY

EXHIBIT B
TO
ASSIGNMENT AND ASSUMPTION AGREEMENT

ASSUMED OBLIGATIONS

ATTACHMENT 3

Resolution Approving Vesting Tentative Tract Map
&
Planned Development

9200 Wilshire Boulevard
City Council Meeting
September 17, 2007

RESOLUTION NO. 07-R-

RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING VESTING TENTATIVE TRACT MAP NO. 63078 AND A PLANNED DEVELOPMENT PERMIT TO ALLOW CONSTRUCTION OF A MIXED-USE PROJECT FOR PROPERTY LOCATED AT 9200 WILSHIRE BOULEVARD

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

Section 1. Introduction. 9200 Wilshire LLC, a California limited liability company formerly known as Legacy Partners SSR 9200 Wilshire, LLC, the owner and applicant (hereinafter the "Applicant"), submitted an appeal of the Planning Commission decision denying applications for a General Plan Amendment, a Zoning Code Amendment to create an overlay zone, Vesting Tentative Tract Map No. 63078, a Planned Development Permit, and a proposed Development Agreement to allow construction of a mixed-use project with approximately 14,000 square feet of retail/commercial space and 54 residential condominium units for property located at 9200 Wilshire Boulevard (collectively the "Project"). The appeal of the Planning Commission decision to the City Council was timely filed on July 28, 2006.

Although the Planning Commission's role on General Plan Amendments, Zoning Code Amendments, and Development Agreements is solely advisory to the City Council, the Commission typically has the role of approving or conditionally approving Planned Development Permits and applications for tentative tract maps. In this case, the Planning Commission denied the Project on July 27, 2006, which decision was appealed to the City Council. After granting the appeal as to the concept of mixed-use, the City Council retained jurisdiction over the Project.

Section 2. Project Background. The City Council, at its meeting on September 5, 2006, considered the Applicant's appeal of the Planning Commission resolution denying the applications for the Project. After presentation of the Project and extensive public comment, the City Council found that mixed residential/commercial use could be appropriate at the proposed location, reversed the Planning Commission's decision, and set the Project for consideration at a special meeting on October 9, 2006.

On October 9, 2006, the City Council approved in concept a mixed-use development on the site but directed the Applicant to revise certain elements of the Project design. In response to deliberations at the Planning Commission and City Council hearings, the Applicant made certain revisions to the Project, and the City Council indicated that it supported certain additional revisions to the Project including: relocating the loading area from the Maple Drive frontage to the Palm Drive frontage; shifting the building location three feet closer to Maple Drive to allow widening of Palm Drive adjacent to the Project site; and, increasing the setbacks for the upper stories of the Project, including a substantial increase of the Wilshire Boulevard setback for the sixth floor to give the appearance the building is more consistent with the maximum 45-foot height limit allowed by the C-3 zoning standards, which would underlie the proposed mixed-use overlay zone. The City Council considered the potential impacts of the Project, directed the Applicant to revise the Project to address the impacts as outlined above and recommended mitigation measures and conditions of approval to further address the potential impacts.

On April 26, 2007, the City Council

- Considered and certified the Final Environmental Impact Report prepared for the Project and adopted a Mitigation Monitoring and Reporting Program;

- Conducted first reading of an ordinance amending the Zoning Code to create an overlay zone allowing mixed-use development with greater height and density;
- Reviewed a proposed General Plan Amendment;
- Reviewed a proposed Development Agreement between the City and the Applicant; and,
- Reviewed draft plans showing the revisions previously requested by the City Council and requested an additional revision with regard to the alley setback/garage design to be reviewed at a future meeting.

On July 24, 2007, the City Council:

- Adopted a resolution approving a General Plan Amendment that applies to the 9200 Wilshire site, thus allowing mixed-use and additional height and density;
- Conducted first reading of an ordinance approving the Development Agreement between the Applicant and the City; and,
- Directed staff to prepare a resolution approving the Project with an alley setback of 5'-8" and additional landscaping in the rear.

On September 4, 2007, the City Council:

- Due to technical revisions to the Development Agreement, the City Council reintroduced and conducted first reading of an ordinance approving the Development Agreement between the Applicant and the City;
- As a result of the revisions to the Development Agreement, the ordinance amending the Zoning Code to create an overlay zone allowing mixed-use development was reintroduced and first reading was conducted.

Section 3. Project Description. The Project consists of 54 residential condominium units; approximately 14,000 square feet of ground-floor commercial space and rooftop uses including a pool, fitness center and clubhouse for residents. Building height would be 60 feet to the roof deck, and 70 feet to the top of the fitness center and clubhouse. Up to 283 parking spaces would be located in a four-level subterranean garage. Access to Project parking will be split between Maple Drive (resident parking) and Palm Drive (visitor and commercial parking). The Project's loading facilities will be located on Palm Drive and will include one space for a 35-foot truck and one space for a 55-foot truck. The approval of the Project is dependent upon approval of an overlay zone for this location because the current C-3 zoning does not allow residential uses and the Project will exceed the existing three-story/45-foot height limit and 2:1 FAR (Floor Area Ratio) allowed in the C-3 Zone.

Section 4. Planning Commission Environmental Review. The Planning Commission held duly noticed public hearings to consider the Project and the Draft Environmental Impact Report ("Draft EIR") on January 25, 2006, March 30, 2006, and June 8, 2006, and a separate public hearing for the Development Agreement on April 6, 2006. Evidence, both written and oral, was presented at said hearings. Based upon the evidence presented to it, the Planning Commission denied the Project. The Planning Commission reviewed and considered the Draft EIR prior to taking action on the Project. However, pursuant to Guidelines Section 15061(b)(4), a Project that is denied or rejected is exempt from the requirements of CEQA. Accordingly, although the Planning Commission did consider the Draft EIR, it did not adopt or certify the Draft EIR in connection with this Project because of its denial determination.

Section 5. City Council Environmental Review. On September 5, 2006, the City Council held a hearing on the appeal of the Planning Commission's July 27, 2006 action denying the Project and the City Council overturned the Planning Commission's decision. Subsequently, the City Council held public hearings on October 9, 2006, and April 26, 2007, to consider the Draft EIR, the Project, and the Development Agreement. On April 26, 2007, the City Council held a public hearing and adopted a resolution certifying the Final Environmental Impact Report ("Final EIR") making environmental findings pursuant to CEQA and adopting a mitigation monitoring and reporting program. The certification, environmental findings and mitigation monitoring and reporting program are set forth in Resolution No. 07-R-12323, dated April 26, 2007, which is incorporated herein by this reference. The mitigation measures are expressly made applicable to the Project and are incorporated into the conditions of approval for the Project.

Section 6. Vesting Tentative Tract Map Criteria. Pursuant to the California Subdivision Map Act and the City's subdivision requirements, the City Council considered the following issues in reviewing the application for Vesting Tentative Tract Map No. 63078:

6.1 Whether the proposed tentative map and the design or improvement of the proposed subdivision are consistent with the General Plan of the City and any applicable Specific Plan of the City;

6.2 Whether the site is physically suitable for the type of development and the proposed density;

6.3 Whether the design of the subdivision and the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;

6.4 Whether the design of the subdivision or type of improvements are likely to cause serious public health problems and whether the design of the subdivision or the type of improvements will conflict with any public easements; and

6.5 Whether the discharge of wastewater from the proposed subdivision into the existing sewer systems will result in a violation of existing requirements established by the Regional Water Quality Control Board.

Section 7. Vesting Tentative Tract Map Findings. Based upon the evidence presented in the record on this matter, including the staff reports and oral and written testimony, the City Council hereby finds as follows with respect to Vesting Tentative Tract Map No. 63078:

7.1 As conditioned, the proposed Project and its design and improvements are consistent with both the General Plan of the City as amended by the City Council on July 24, 2007, and the proposed Overlay Zone. The proposed subdivision and improvements implement the development and improvements described in the Development Agreement and the Final EIR, which in turn are consistent with the General Plan and the Overlay Zone, all of which are hereby incorporated by reference. Further, the Project advances general plan policies and objectives related to providing a mix of residential types and improving residential-commercial transitions, as discussed further in Section 8 of this Resolution.

7.2 As conditioned, the site is physically suitable for the type of development and the proposed density. The site currently is vacant. The infrastructure serving the site is

generally adequate to support the development proposed on the site. The site has no unusual seismic or other hazards. Therefore, the site is physically suitable for the type of development and the proposed density.

7.3 As conditioned, the proposed Project will not cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat. The Final EIR prepared for the Project found no significant impacts to fish, wildlife or habitat, and concluded that all Project impacts can be mitigated to less than significant levels.

7.4 The design of the subdivision and the type of improvements will not cause serious public health problems and will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision. The proposed map has been preliminarily reviewed by the Public Works and Engineering Department, which has recommended conditions of approval requiring the Applicant to obtain encroachment permits for all temporary and permanent encroachments into the public rights-of-way. Further, in order to ensure sufficient alley width adjacent to the Project site to adequately serve the Project, the Public Works and Engineering Department recommends that the Applicant dedicate an additional 2.5-foot easement along the alley to accommodate widening. The public at large has not acquired any other easement for access through or use of the property.

7.5 The discharge of waste from the proposed subdivision into the existing sewer system will not result in a violation of existing requirements prescribed by the Regional Water Quality Control Board. The subdivision will be served by the Hyperion Water Treatment Plant. The plant has sufficient capacity to handle the wastewater from the Project. Therefore, the discharge of wastewater from the proposed subdivision into the existing sewer systems will

not result in a violation of existing requirements presented by the Regional Water Quality Control Board.

Section 8. General Plan Consistency. Based upon the evidence presented, including staff reports and oral testimony, the City Council hereby finds that the Project will advance the objectives of the General Plan and proposed Mixed-Use Planned Development Overlay Zone (M-PD-4) for the following reasons:

8.1 The Land Use Element Map of the General Plan was amended by the City Council on July 24, 2007 and identifies the maximum FAR for the site to be 4:0:1, with a maximum building height of 60 feet. The Project is consistent with the amended General Plan Land Use Element Map. The Project is also consistent with specific land use policies and objectives in the Land Use and Housing Elements including provision of development standards for projects involving a mix of commercial and residential uses in order to expand the variety of available housing types, possibly including low-income housing components and/or additional height in areas currently zoned for commercial use (see Objective 4.3, page 16 of the Housing Element); and, maintaining and enhancing qualities that contribute to the long-term stability and desirability of residential and non-residential areas of the City.

8.2 The Project will further the goals and objectives of the General Plan by creating a Mixed-Use Planned Development Overlay Zone (M-PD-4) and providing a mixed commercial/residential development that would not otherwise be provided in the City. The Land Use Element of the General Plan recommends that in commercial areas, "[t]he 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." (Land Use Element, Section 2.2)

The Project will further goals and objectives of the General Plan by replacing a vacant lot with a mixed-use project, including 54 residential condominium units. Implementation of the Project expands the housing opportunities available in the City and helps the City fulfill its obligations under the Housing Element and state housing law by helping the City meet its share of the regional housing needs. The Project is consistent with goals and policies set forth in the General Plan including Program 4.3 of the Housing Element that states as an objective, "[d]evelop standards for mixed commercial and residential uses ... with and without low-income housing components, including additional height, in areas currently zoned for commercial use ... such as: South side of Wilshire Blvd., east of Beverly Drive." The General Plan clearly encourages the development of standards for mixed-use development on the South side of Wilshire Boulevard, east of Beverly Drive, which is the location of the Project.

8.3 The Project will further goal/objective (2) of the Land Use Element by replacing a vacant lot with a mixed-use project, including 14,000 square feet of commercial space with subterranean parking and 54 housing units that are compatible with the existing neighborhood in scale and preserve the character and "rhythm" of the surrounding streets. The Project'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.

Section 9. Overlay Zone Objectives. Pursuant to Beverly Hills Municipal Code Article 1, Chapter 4 and Section 10-3-1844, the City Council may approve a planned development permit if the City Council finds that the proposal will meet the requirements of the

Municipal Code and will advance objectives of the zone in which it is located. The City Council may impose such conditions and restrictions on the approval as are necessary to ensure a planned development will advance objectives of the zone. Any approval of the Project would be contingent upon the City Council's enactment of the ordinance establishing a Mixed-Use Planned Development Overlay Zone for the site. The proposed Zone Text Amendment to create the Mixed-Use Planned Development Overlay Zone (M-PD-4) and zone change to apply the overlay to the subject property is warranted because it furthers the public interest, health, safety, morals, peace, comfort, convenience or general welfare. The proposed Overlay Zone would create appropriate standards and criteria to ensure that the Overlay Zone is compatible with uses allowed within the underlying zone and on adjacent properties while maintaining and protecting the public interest, health, safety, morals, peace, comfort, convenience or general welfare.

Should the proposed Mixed-Use Overlay Zone be adopted, a mixed-use development such as the Project would be reviewed in accordance with the following ordinance objectives Pursuant to the proposed Section 10-3-1990 of the Beverly Hills Municipal Code:

9.1 To ensure that mixed-use development in the M-PD-4 Zone will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;

9.2 To provide for mixed-use development that is compatible with the scale and massing of the surrounding neighborhood, through appropriate height, modulation, upper-story setbacks, other similar measures, or any combination thereof;

9.3 To provide pedestrian-friendly amenities along the street level, and setbacks that are generally consistent with other development along Wilshire Boulevard and

along Palm Drive between Wilshire Boulevard and Charleville Boulevard, and along Maple Drive between Wilshire Boulevard and Charleville Boulevard;

9.4 To ensure that mixed-use development in the M-PD-4 Zone will not create any significant, adverse traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will minimize impediments to vehicular circulation and pedestrian safety;

9.5 To foster uniform planning and development of all parcels in the M-PD-4 Zone to ensure unified development in the overlay zone; and,

9.6 To protect the public health, safety and welfare.

Section 10. Based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony, the City Council hereby finds as follows with respect to the objectives of the overlay zone:

10.1 As conditioned, the proposed Project is compatible with and will not adversely affect existing and anticipated development in the vicinity and promotes harmonious development of the area. The Project as conditioned incorporates many design elements, including architectural modulation, setbacks and landscaping, designed to integrate the Project with both the commercial areas along Wilshire Boulevard and the multi-family residential areas along Maple Drive and Palm Drive. Additionally, the arrangement of uses on the site is respectful of and reflects the Project's context to surrounding streets, with commercial uses concentrated along the Wilshire façade and residential uses behind the commercial uses at the ground floor and located above the commercial uses. The Applicant will be required to prepare and submit a construction management plan and to conform all construction activities to said plans to minimize construction impacts on adjacent land uses. Thus, the Project will not

adversely affect existing or anticipated development in the vicinity and will promote harmonious development of the area.

10.2 As conditioned, the Project provides for mixed-use development that is compatible with the scale and massing of the surrounding neighborhood. This is achieved through the Project's maximum 60-foot height limit adjacent to a 55' height district (with existing structures that exceed 55'); modulation of the upper floors, particularly the sixth floor along Wilshire Boulevard (which begins approximately 49 feet above grade and is set back 9'-6" to 27'-6" from the front property line) to make the building appear more consistent in height with the existing Code-maximum height of 45'; and a rear setback of 5'-8" to allow for substantial landscaping along the rear alley adjacent to existing residences. The Project has a large courtyard area at the third floor along the alley, resulting in additional open space in the rear from the third through sixth floors providing some relief to the neighbors to the south. The Project has a three-foot setback at Maple Drive and a nine-foot setback at Palm Drive. This allows widening North Palm Drive by five feet along the Project site to provide additional room for truck maneuvers and to provide additional space for landscaping around the loading docks to improve their appearance.

10.3 As conditioned, the Project will provide pedestrian-friendly amenities along the street level, including retail/commercial uses and setbacks that are generally consistent with other development along Wilshire Boulevard as well as setbacks along Palm Drive and Maple Drive that are more generous than typically provided for a commercial development, and thus allowing for better truck loading access along Palm Drive and more landscaping along Palm Drive and Maple Drive in keeping with the largely residential uses of the building. The Project provides an opportunity to construct a quality mixed-use development that would not otherwise

be encouraged by the underlying zone. The Project provides sufficient floor area to allow the Applicant to construct a commercial building that includes high quality amenities and high quality architectural design. The Project design will contribute to the urban design amenities that will serve as a visual and pedestrian link between commercial areas along Wilshire Boulevard.

10.4 As conditioned, the proposed Project will not create any significant, adverse traffic safety hazards, pedestrian-vehicle conflicts or pedestrian safety hazards and will minimize impediments to vehicular circulation and pedestrian safety. The Project EIR fully analyzes the existing traffic conditions, taking into account ambient traffic growth in the area surrounding the Project, as well as traffic from other projects that are proposed in the vicinity of the Project site. The EIR then adds in traffic generated from the Project, as determined pursuant to the ITE Trip Generation publication. The Project is expected to generate approximately 950 trips for a typical weekday and 992 trips for a typical Saturday. The Project would generate 33, 82 and 101 trips, during weekday morning peak hour, weekday evening peak hour, and Saturday peak hour (which is midday), respectively. Accordingly, the Project impacts do not exceed the Thresholds of Significance, which are set forth in Section 3C of the EIR, for any of the thirteen study intersections analyzed. Thus, the Project will not result in any significant traffic impacts and no mitigation is required for operation of the Project. The EIR also demonstrates that, as designed, the Project will not result in any significant adverse traffic impacts to adjacent residential streets because traffic volumes will not significantly increase on residential streets. Notwithstanding this conclusion, the City Council has required modifications to the Project to permit the widening of Palm Drive in order to further lessen any potential traffic impacts from the Project. Coupled with the revisions to the loading facility design, the Project will not result in any adverse traffic impacts on adjacent residential streets. Under the City's parking Codes,

253 parking spaces would be required and pursuant to the ITE Parking Generation, 3rd Edition, Project parking demand would be 241 parking spaces. Actual parking provided is proposed to be 275 spaces (6% compact, 11% tandem). This should be more than adequate to accommodate Project parking.

10.5 As conditioned, the Project will foster uniform planning and development of all parcels in the M-PD-4 Zone because all parcels are included in the Project which is an integrated development. Further, the Project's building façade, architectural details and landscaping are subject to review and approval by the Architectural Commission.

Based on the foregoing, the City Council finds that the Project as proposed is consistent with the objectives of the M-PD-4 Zone.

Additionally, the City Council may modify the parking requirements for a mixed use development, as part of a planned development, if it finds that such modifications would advance the objectives of the M-PD-4 Zone as set forth in Section 10-3-1990.02 of the Beverly Hills Municipal Code. The Council has determined that allowing certain standard parking spaces, as shown on the plans submitted to the City Council for its meeting of September 4, 2007, to be eighteen feet (18') in length would further the goal of ensuring that mixed-use development in the MPD-4 Zone will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area because the shorter spaces will allow for increased setbacks to be provided between the mixed use development and adjacent multi family residential buildings. Therefore, the City Council hereby modifies the parking requirements of the Municipal Code to allow for certain spaces to be eighteen feet (18') in length as shown on the above referenced plans.

Section 11. As conditioned, the proposed Project has sufficiently mitigated potentially adverse construction traffic impacts and parking impacts as a result of patron, employee and resident parking demand. Conditions will be imposed on the Project 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 employees will be provided free, on-site parking and all commercial patrons will be provided with free, on-site validated parking; and (3) a Loading Management Plan and a Parking Management Plan satisfactory to the Director of Community Development and the Director of Public Works and Transportation will be prepared. The Final EIR concluded that the Project's supply of parking is adequate to meet the parking demand generated by the Project. Two loading bays on Palm Drive will be provided. The Final EIR concludes that the proposed loading spaces will be adequate to handle the delivery demands of the Project.

Section 12. As proposed and conditioned, the Project meets the objectives of the proposed Overlay Zone as set forth in Section 11 of this Resolution. For the reasons set forth above, the City Council determines that the findings necessary to approve the Vesting Tentative Tract Map as set forth in Section 6 of this Resolution and the findings necessary to approve the Planned Development Permit can be made, provided that certain conditions of approval, including the mitigation measures and conditions set forth in Resolution No. 07-R-12323, dated April 26, 2007, are imposed and provided that such approvals shall only become valid upon the later effective date of the ordinance adopting the Zone Text Amendment and Zone Change and the ordinance adopting a development agreement.

Section 13. Conditions. Based upon the foregoing findings, the City Council hereby approves, subject to the following conditions, Vesting Tentative Tract Map No. 63078, a Planned Development Permit to allow construction of the Project at the property located at 9200 Wilshire Boulevard, and the occupancy of multi family residential uses and commercial uses at the Project site, provided that commercial uses that front on Wilshire Boulevard shall be pedestrian friendly, as determined by the Director of Community Development:

1. 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 Project.

Covenant Recordation

2. This Resolution approving the Vesting Tentative Tract Map and Planned Development to allow construction of a mixed-use development at the property located at 9200 Wilshire Boulevard (collectively the "Approvals"), 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 a conformed copy of the executed covenant to the Community Development Department **within 60 days** of the City Council decision. If the Applicant fails to deliver the executed covenant within the required 60 days, this Resolution approving a Development Plan Review 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 will affect the City's ability to approve the discretionary approvals.

3. Approval of this Project is subject to all other discretionary approvals required by the City for the Project.

Planning Project Conditions

4. The Project shall be built in substantial compliance with the plans submitted for the September 4, 2007 City Council meeting, on file with the City Clerk's office and the Department of Community Development/Planning, except as modified by these conditions of approval, including Exhibit A, "Standard Conditions List," and Exhibit B, "Mitigation Monitoring Program," which are incorporated herein by reference, and subject to additional conditions as may be imposed by the Architectural Commission. In no case shall the Project include more than 54 multi-family residential units or less than 14,000 square feet of commercial space. In addition, the ground floor space fronting on Wilshire Boulevard shall be occupied by commercial uses, which, in the opinion of the Director of Community Development, are pedestrian-friendly uses. Any modifications to the plans shall be approved by the Department of Community Development/Planning prior to any work being done on the Project pursuant to those modifications. Review of modifications or corrections of may trigger the need to pay additional processing fees.

5. Parking spaces for the residential units shall be permanently assigned to each unit and shall be labeled as such. Parking spaces for residential units shall be used solely for the parking of the personal vehicles of residents and their guests. Parking spaces for residential units may not be leased, subleased, sold, transferred, or otherwise separated from the unit for which the parking spaces are required. Those parking spaces required to comply with the City's Municipal Code shall not be dedicated to or used to provide parking for any off-site use. Any

parking spaces not required to comply with the City's Municipal Code may be made available to serve off-site uses upon approval by the Department of Community Development/Planning of such use of the parking space. Each parking stall designated to meet the numeric requirements of the Americans with Disabilities Act ("ADA") shall meet all ADA requirements for an accessible parking space.

6. Prior to issuance of a building permit, the applicant shall submit a signage plan for review and approval by the Department of Community Development/Planning, which plan shall include, but not be limited to, provision of appropriate signage and precautionary devices inside the parking garage. All signage shall conform to the signage plan.

7. There shall be a sign visible to vehicles exiting the garage at North Palm Drive prohibiting right turns into the residential neighborhood. Similarly there shall be a sign visible to vehicles exiting the garage at North Maple Drive prohibiting left turns into the residential neighborhood.

8. Prior to issuance of occupancy permits and subject to the review and approval of the Directors of Community Development and Public Works and Transportation, the Applicant shall provide a Loading Management Plan to minimize loading-related impacts from the Project on adjacent land uses. The Loading Management Plan shall identify permissible hours for loading and shall designate a delivery monitor to monitor the loading area and deliveries in order to control the circulation activities and to prevent overcrowding in the loading area. The City hereby retains the authority to impose additional conditions on the Project to address loading, delivery and parking issues, including without limitation the authority to require valet parking for patrons of the commercial uses. The Applicant shall comply with the approved Loading Management Plan and any additional conditions imposed after adoption of this Resolution and

after adoption of the Loading Management Plan, in order to address parking, loading and delivery issues.

9. The traffic generated by the Project shall be periodically monitored, at the expense of the Applicant or the successor to the Applicant who owns the commercial portions of the Property, to ensure that the actual levels of traffic do not significantly exceed the levels of traffic anticipated by the Environmental Impact Report prepared for the Project ("EIR"). In the event that such monitoring indicates that traffic generated by the Project significantly exceeds the traffic generation anticipated in the EIR, the Planning Commission or the City Council, after a public hearing, may impose additional conditions on the Project, or specifically on the owner of the commercial portion of the Project, to mitigate the impacts of the increased traffic or to reduce traffic generation to the levels anticipated in the EIR. The Applicant and any successor to the Applicant shall abide by such conditions. The first monitoring activity shall be undertaken approximately one year after the Project construction is complete and the building is fully operational.

10. All common areas and facilities shall be clearly depicted, described, or both, in the final plans reviewed by the Department of Community Development/Planning, prior to issuance of a building permit.

11. The Applicant shall cause the outdoor areas on the Project rooftop to be posted to clearly prohibit any rooftop structures, including without limitation, walls, fences and hedges, to exceed the 60' maximum building height for the Project, except those rooftop structures expressly permitted in the M-PD-4 overlay zone to exceed the 60' height limitation.

12. The Applicant shall cause the outdoor areas on the roof to be clearly posted to prohibit rooftop activities except between the hours of 7:00 a.m. and 10:00 p.m., Monday through Friday and between the hours of 8:00 a.m. and 10:00 p.m., Saturday and Sunday.

13. All electrical transformers and other such mechanical equipment shall be clearly depicted, described, or both, in the final plans reviewed by the Department of Community Development/Planning, prior to issuance of a building permit. Screening and/or relocation may be required if the proposed locations have the potential to adversely affect the appearance of the building from the public right-of-way.

14. The Project shall conform to all requirements of the overlay zone that governs the Project site and authorizes construction of the Project.

15. No banquets or similar private receptions or events shall be held in the Project's Community Room or Conference Room or on the roof. Project common rooms and areas should be used for their intended purpose as resident recreational areas and community meeting rooms.

16. Rooftop areas shall be used by Project residents and their guests only. No commercial occupant of the Property shall use the rooftop facilities.

17. The Codes, Covenants and Restrictions (CC&Rs) for this project shall reflect the fact that, as this Project is located on Wilshire Boulevard, the maintenance of public improvements (street payment, sidewalk, curb, gutter, water and sewer lines) is usually performed at night.

18. The Applicant shall reconstruct the curb return at the southwestern corner of Wilshire/Palm and southeastern corner of Wilshire/Maple to a radius of 25 feet. The Applicant shall note the following when the curb radius is enlarged at these intersections: (i) the corner of the property shall be set back enough to accommodate the ADA requirements for the design of

handicapped ramps and adequate sidewalk behind the ramp per the latest ADA standards; (ii) the vertical slope of the intersection shall be maintained with the enlarged radius. This means that the section of the intersection would need to be rebuilt to ensure the natural slope and the standard curb height is provided; and (iii) pull boxes, light poles, and other objects that were adjacent to the previous curb shall be relocated and placed properly adjacent to the new curb.

19. In accordance with the requirements set forth in City Council Resolution 71-R-4269, the applicant shall file a formal written request with the Civil Engineering Department for approval of any type of temporary construction encroachment (steel tieback rods, etc.) within the public right-of-way. Shoring plans and elevations prepared by a registered civil engineer must be submitted for review by the Civil Engineering Department. An indemnity bond must be submitted and approved by the City Attorney prior to excavation. A copy of a document titled *SUMMARY OF REQUIREMENTS FOR THE INSTALLATION/REMOVAL OF TIE-BACKS AND SUPPORTING STRUCTURES* which summarizes these requirements is attached and should be forwarded to the applicant.

20. The Applicant shall dedicate a 2.5-foot strip of land along the alley as depicted in the plan. The applicant shall remove and reconstruct the roadway pavement including a concrete gutter at the center of the alley in the above-mentioned area in accordance with the specifications of the City Engineer. This condition includes the relocation of any existing improvements and culture such as meter boxes, pull boxes, etc.

21. The subterranean parking is extended into the new alley dedication. An eight-foot vertical separation is required from the top of the parking structure to the finishing elevation of the alley pavement. Also an Encroachment Permit is required for the subterranean parking.

Architectural Commission Review

22. Prior to the issuance of building permits, the design, materials and finishes of the building and proposed landscaping shall be subject to the review and approval of the Architectural Commission. The Applicant shall submit final landscape, lighting and irrigation plans that include mature-sized plantings along the northern property line, in order to soften the view of the building from the neighboring property, to the Department of Community Development/Planning for review and approval before the issuance of any building permit. Mature plantings shall include a mix of 36 inch box trees and 15 gallon shrubs, and the landscape plan shall be consistent with the preliminary plans approved by this resolution and shall be prepared by a licensed landscape architect.

23. Final building plans shall be consistent with the preliminary plans approved by this Resolution and shall be prepared by a licensed professional.

Landscaping and Irrigation

24. Prior to final building inspection, the Applicant shall install all proposed irrigation and landscaping, including irrigation controllers, staking, and mulching, to the satisfaction of the Director of Community Development.

25. Prior to occupancy, the Applicant shall submit a letter from the Project landscape architect certifying that all landscape material and irrigation have been installed and are functioning according to the approved landscape plans.

26. The building owner and successors in interest shall be responsible for the maintenance of the site drainage system, sidewalks, parkways, street trees and other landscaping, including irrigation, within and along the adjacent public right-of-way.

Other Departments' Requirements

27. The Applicant shall comply with all applicable conditions and permits required from the Public Works and Transportation Department and Community Services-Recreation and Parks Department attached as Exhibit A. The Applicant shall secure all necessary permits from the Engineering Division of Public Works prior to commencement of any demolition or Project related work.

28. An offsite improvement plan prepared by a registered civil engineer must be submitted to the Civil Engineering Division. This plan must show all existing street furniture within the public right-of-way (ROW) fronting the proposed improvement site. All new construction and relocation of any existing street furniture must be clearly shown.

29. The Project shall comply with all applicable conditions from the Fire Department as may be identified through the plan check process.

Construction Management

30. The Applicant shall comply with a Construction Management Plan that has been submitted to and approved by the Department of Community Development prior to issuance of a building permit. The Construction Management Plan shall include, at a minimum, the following:

a. Written information about the construction parking arrangements and hauling activities at different stages of construction to be reviewed and approved by the Engineering Division of Public Works and the Building and Safety Division of Community Development. On-street parking shall be prohibited at all times during construction. The plan shall provide for construction parking at a nearby site where workers can be transported to and from the Project site.

b. Information regarding the anticipated number of workers, the location of parking with respect to schedule during the construction period, the arrangement of deliveries, hauling activities, the length of time of operation, designation of construction staging area and other pertinent information regarding construction related traffic.

c. The proposed demolition/construction staging for the 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.

31. A cash deposit of $10,000.00 shall be deposited with the City to ensure compliance with the conditions of this Resolution regarding construction activities. Such deposit shall be returned to the 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 $10,000.00 is deposited with the City to cover the cost 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 request 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 addition $10,000.00, 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, if any.

Requirements of this condition are in addition to any other remedy that the City may have at 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.

32. Construction vehicular movement in and out of the construction site shall be controlled by flagmen located on North Palm Drive, North Maple Drive and/or Wilshire Boulevard to the extent necessary to ensure traffic safety as determined by the Engineering Division of the City's Public Works Department.

33. During construction, the Applicant shall install a minimum twelve-foot (12') construction fence to reduce noise and dust impacts on neighboring properties.

34. The Applicant shall maintain the site in an orderly condition prior to commencement of and during construction, including but not limited to, maintenance of the orderly appearance of existing structures and landscaping on the site, dust suppression for areas cleared by demolition, maintenance of safety barriers and adjacent public sidewalks, and provision of a contact person directly accessible to the public by telephone in the event that the public has any concerns regarding the maintenance of the site. The name and telephone number of the contact person shall be transmitted to the Director of Community Development and the Building Official. In addition, the Applicant shall post the name and telephone number of the contact person on the site in a location readily visible to the general public as approved by the Director of Community Development. Said signs shall also include the name and number of a City contact from the Community Development Department. The Applicant representative's telephone number provided shall be manned during construction hours.

35. 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 $50.00 for a

documentary handling fee in connection with the filing of the Notice of Determination, along with the appropriate Department of Fish and Game filing fee.

Property Maintenance

36. The property owners association shall be responsible for the operation and maintenance of the private sewer connection to the public sewer in the public right-of-way, the site drainage system, the maintenance of the common areas and facilities, the exterior of the building, the abutting street trees, parkways and any costs or corrections due to building or property maintenance code enforcement actions. The covenants, codes and restrictions shall specifically reflect this obligation.

Street Widening

36. Palm Drive shall be widened by three feet adjacent to the Project at the expense of the applicant to accommodate the Project loading docks on North Palm Drive.

Street Paving

37. The applicant shall pave the southerly half of Wilshire Boulevard, the full width of N. Palm Drive adjacent to then Project site, the full width of N. Maple Drive adjacent to the Project site, and the alley contiguous the Project site.

Exterior Lighting

38. Exterior lighting should be as limited as feasible to minimize negative light and glare impacts on the neighboring residential properties. All lighting shall be shielded to prevent "spillover" and shall be directed away from surrounding properties.

Loading/Deliveries/Parking

39. Deliveries shall not be made from the adjacent rear alley and delivery trucks shall not idle and/or park in the alley or on any residential street.

40. On-site parking shall be provided to all commercial and residential tenants of the development and all employees shall be provided free, on-site parking. All commercial patrons shall be provided with free, on-site validated parking.

41. Prior to the issuance of a building permit, a Parking Management Plan satisfactory to the Director of Community Development and the Director of Public Works and Transportation will be prepared. The parking shall be operated in conformance with such plan.

42. The life of the Vesting Tentative Tract Map shall be extended to a date that is five years from the effective date of the Development Agreement for the Project.

Green Building Design

43. The Project shall be constructed to meet the "Certified" rating pursuant to the City's green building rating system, which means achieving 26 points out of a possible 69 points as set forth in the City's Green Building/Sustainability Checklist ("Checklist") attached hereto and incorporated herein as Exhibit C. A green building plan shall be submitted as part of the application for a building permit. The green building plan shall indicate which points in the Checklist that the project will utilize, and indicate where compliance with each selected point is shown on the plans. The applicant shall be required to implement all points shown in the final green building plan. The Building Official or his designee shall verify compliance with each selected point prior to issuance of a final certificate of occupancy. The Building Official may conduct other inspections as needed to ensure compliance with this condition. The Applicant may request amendment of the green building plan and such amendment may be approved by the Building Official as along as the cumulative points total 26. If the City Council adopts a green building ordinance prior to the submittal of an application for a building permit, the Applicant shall then comply with the procedures set forth in that ordinance.

Section 14. The City Clerk shall certify to the adoption of this Resolution, and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the City Council.

Adopted:

JIMMY DELSHAD
Mayor of the City of Beverly Hills, California

ATTEST:

BYRON POPE
City Clerk

Approved as to form:

LAURENCE S. WIENER
City Attorney

Approved as to content:

VINCENT P. BERTONI, AICP
Director of Community Development

DAVID D. GUSTAVSON
Director of Public Works & Transportation

EXHIBIT A

CITY OF BEVERLY HILLS
STANDARD CONDITIONS LIST FOR THE PLANNING COMMISSION

ENGINEERING, UTILITIES AND RECREATION & PARKS:

1. The applicant shall remove and replace all defective sidewalks surrounding the existing and proposed buildings to the satisfaction of the Engineering Division of the City's Public Works Department.

2. The applicant shall remove and replace all defective curb and gutter surrounding the existing and proposed buildings to the satisfaction of the Engineering Division of the City's Public Works Department.

3. The applicant shall remove all unused landings and driveway approaches. These parkway areas, if any, shall be landscaped and maintained by the project owner or any successor in interest. The landscape material shall not exceed six to eight inches in height and shall not be planted against the street trees. Care shall be taken to not damage or remove existing tree roots within the parkway area. Further the applicant shall remove and replace all defective alley and driveway approaches surrounding the existing and proposed buildings, to the satisfaction of the Engineering Division of the City's Public Works Department.

4. 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 conceptual landscape or site plans, shall be removed or relocated unless written approval from the Recreation and Parks Department and the City Engineer first 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.

5. 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 shall be permitted.

6. 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.

7. The applicant shall underground, if necessary, the utilities in adjacent streets and alleys per requirements of the Utility Company and the City.

8. 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.

9. 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.

10. 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.

11. 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-or-way, and for use of the public right-or-way for staging and/or hauling certain equipment and materials related to the project.

12. 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.

13. During construction all items in the Erosion, Sediment, Chemical and Waste Control section of the general construction notes shall be followed.

14. Condensate from HVAC and refrigeration equipment shall drain to the sanitary sewer, not curb drains.

15. Organic residuals from daily operations and water used to wash trash rooms cannot be discharged to the alley. Examples include but are not limited to grocery stores, mini markets and food services.

16. 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.

17. 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. If parking area cleaning is implemented, records of cleaning activities shall be retained for verification by a City inspector.

EXHIBIT B

ADOPTED MITIGATION MONITORING AND REPORTING PROGRAM

Completed

9200 Wilshire Boulevard Mixed Use Project
Mitigation Monitoring Program

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
Aesthetics			
Measure 3B.1: During construction, a security fence, the height of which shall be determined by the City of Beverly Hills, shall be maintained around the perimeter of the site. The construction site shall be kept clear of trash, weeds, etc.	Department of Community Development	The Construction Management Plan cited in Measure 3C.1 shall include and address Measure 3B.1.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.
Measure 3B.2: All exterior lighting shall be limited to ground level and the third floor private courtyard to accent project landscaping areas. Minimal security lighting shall be located on the south façade and in the courtyard of the building limited to project entrances, landscaping and loading areas. All lighting shall be shielded to prevent "spillover."	Department of Community Development	Measure 3B.2 shall be addressed in the plans submitted for plan check in the Department of Community Development. No building permits shall be issued in violation of this measure.	This measure shall remain in effect throughout the life of the project.
Traffic, Circulation, and Parking			
Measure 3C.1: The project applicant shall develop and submit for approval by the City a Construction Staging and Traffic Management Plan that shall include the following: Haul Truck Routes, Queue Areas, and Deliveries. The designated truck route for the site shall be Wilshire Boulevard for trucks coming from the east or the west. The primary entry point to the site shall be off of Palm Drive at the southeast corner of the site. Trucks will access this entry point on Palm Drive from the north to and from Wilshire Boulevard. No construction traffic shall be permitted to utilize Palm Drive or Maple Drive. Flag men shall be provided to control trucks access to the site to minimize traffic delays and enhance safety. Construction Transportation/Circulation. General site access and egress shall be located on Palm and Maple Drive. There shall be no site access/egress points on Wilshire Boulevard. Flag men will be provided as necessary to minimize delays.	Department of Community Development Public Works Department, Engineering Division	A Construction Management Plan shall be filed with the Department of Community Development. Such Construction Management Plan shall address for construction staging and construction traffic and be reviewed by the Department of Community Development and City's Engineering Division prior to issuance of grading permits. All mitigation measures will be enforced by the City's Plan Check Engineers, Inspectors, and Code Enforcement Officers.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.

Completed

9200 Wilshire Boulevard Mixed Use Project
Mitigation Monitoring Program

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
Traffic, Circulation, and Parking (continued)			
Pedestrian Safety. The contractor shall install a construction fence around the site perimeter, complying with City requirements, before excavation begins. The contractor shall be required to maintain a minimum sidewalk width of five feet on Wilshire Boulevard during the construction period. The contractor shall also erect protective sidewalk canopies on Palm Drive, Maple Drive and Wilshire Boulevard to enhance pedestrian safety along the construction site. A flag man shall be provided whenever trucks entering or leaving the project site may impede the flow of pedestrian or automotive traffic. Parking. Worker parking shall be provided in an off-site parking lot, nearby, and workers will be shuttled to and from the site. The shuttle shall load and un-load near the main gate, which would be on Palm Drive near the southeast corner of the site. The shuttle shall run during the morning starting time and afternoon quitting time. Occasionally, additional trips may be operated between he construction site and parking lot. These trips are expected to have negligible effect to the surrounding street systems within the study area.	See previous page.	See previous page.	
☐ **Measure 3C.2:** Trucks longer than 30 feet shall be prohibited from servicing the project site for deliveries.	Department of Community Development	The Loading Management Plan shall be filed with the Department of Community Development for review and approval. The approved Plan shall be maintained on file in the Department. Any violations will be addressed by the City's Community Preservation Program.	The Loading Management plan is effective immediately upon issuance of certificate of occupancy for the project. The plan shall remain effective throughout the life of the project
☐ **Measure 3C.3:** A loading dock management plan shall be developed to ensure that loading dock deliveries to the project site are not made from the curb.			
Geology and Soils			
☐ **Measure 3F.1:** Design and construction of proposed structures should be in conformance with current building codes and engineering practices.	See following page.	See following page.	See following page.

9200 Wilshire Boulevard Mixed Use Project
Mitigation Monitoring Program

Completed	Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
	Geology and Soils (continued)			
☐	**Measure 3F.2:** Where the planned depth of excavation does not extend below the existing fill soils, the existing fill soils shall be removed and recompacted in accordance with the requirements of the appropriate governmental agencies.	Department of Community Development	The construction plans filed with the Building & Safety division shall comply with all mitigation measures. City Plan Check Engineers will review such plans to ensure compliance with all mitigation measures. City inspectors will ensure that all temporary and permanent structures are in compliance with all measures. The Construction Management Plan cited with Measure 3C.1 will address Measures 3F.1 through 3F.13.	All measures shall be in effect until the issuance of the Certificate of Occupancy. Measure 3F.1, which addresses the design of the permanent structures, shall remain in effect throughout the life of the project.
☐	**Measure 3F.3:** A temporary shoring system with lagging shall be required during project excavation.			
☐	**Measure 3F.4:** Temporary and permanent retaining walls shall be designed for the recommended lateral earth pressures and shall be provided with a good drainage system.			
☐	**Measure 3F.5:** A registered geotechnical engineer or his representative shall be present on-site to observe grading operations and foundation excavations.			
☐	**Measure 3F.6:** On-site grading shall be performed in such a manner that alteration of stormwater runoff or erosion of graded areas will not occur. All areas of construction shall be fine-graded to direct water away from foundation and basement areas and direct water to the nearest available storm drain or to the street. Runoff at the project site shall not be allowed to flow in an uncontrolled manner, especially over any permanent or temporary slopes.			
☐	**Measure 3F.7:** Where there is sufficient space for sloped excavations, temporary cut slopes may be made at 1.5:1 or 1:1 (horizontal to vertical) gradient with the 1.5:1 slope made adjacent to existing structures. However, the stability of the graded slopes shall be addressed when grading plans are completed for the proposed development. Excavation sup to four feet in height may be cut vertically.			

9200 Wilshire Boulevard Mixed Use Project
Mitigation Monitoring Program

Completed	Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
	Geology and Soils (continued)			
☐	**Measure 3F.8:** If temporary excavation slopes are to be maintained during the rainy season, all drainage shall be directed away from the top of the slope. No water shall be allowed to flow uncontrolled over the face of any temporary or permanent slope.	See previous page.	See previous page.	See previous page.
☐	**Measure 3F.9:** Water shall not be allowed to pond at the top of the excavation or allowed to flow into the excavation.			
☐	**Measure 3F.10:** Where sufficient space for sloped excavations is not available, shoring shall be used. The shoring system may consist of soldier piles and lagging.			
☐	**Measure 3F.11:** Final shoring plans, specifications, and designs for walls below grade shall be reviewed and approved by a geotechnical engineer.			
☐	**Measure 3F.12:** A drainage system shall be placed at the bases of building walls below grade.			
☐	**Measure 3F-13:** Prior to the issuance of a grading permit by the City, the applicant shall have an approved Water Quality Management Plan (WQMP). The WQMP shall identify the site design, source control and treatment control BMPs that will be implemented on the site to control predictable pollutant runoff.			
	Hydrology and Water Quality			
☐	**Measure 3G.1:** Prior to submission of project plans for approval, the applicant shall prepare a drainage plan for submittal to the City. The drainage plan shall identify storm water runoff volumes for the entire site and shall identify the capacity of local storm sewers. The drainage plan shall provide the necessary detention and conveyance infrastructure to ensure that the existing storm sewer capacity would not be exceeded during a design flood.	Department of Public Works, Engineering Division Department of Community Development	Pursuant to Section 9-4-506 of the Beverly Hills Municipal Code, the project is required to have an Urban Runoff Mitigation Plan filed with the Department of Public Works. Such Plan shall include and address Measures 3G.1 and 3G.2.	No grading or construction permits shall be issued prior to the approval of the Urban Runoff Mitigation Plan by the Department of Public Works.

Completed

9200 Wilshire Boulevard Mixed Use Project
Mitigation Monitoring Program

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
Hydrology and Water Quality (continued)			
Measure 3G.2: Prior to the issuance of a grading permit by the City, the applicant shall have an approved Water Quality Management Plan. The WQMP shall identify the site design, source control and treatment control BMPs that will be implemented on the site to control predictable pollutant runoff.	See previous page.	See previous page.	See previous page.
Hazards and Hazardous Materials			
Measure 3H.1: A Phase II soil investigation shall be conducted by a qualified geologist in soil areas near the former UST and automotive repair facilities to determine whether contaminates remain in the soils. If contaminates are identified at hazardous levels, affected soils will be removed and disposed of in accordance with applicable hazardous materials handling, transportation, and disposal regulations.	Department of Community Development Fire Department	A Phase II soil investigation shall be submitted to the Department of Community Development. If the investigation reveals contamination and the need for remediation, all remediation shall be conducted accordance with the recommendations of the investigation, the requirements of the County of Los Angeles (as administered by the Fire Department), the requirements of the Los Angeles Regional Water Quality Control Board, and the California Department of Toxic Substances Control.	No grading permits shall be issued prior to the submittal of the Phase II soil investigation other than those that might be necessary to conduct the investigation. In the event that soil remediation is deemed necessary, no grading permits shall be issued other than those necessary for the removal of USTs and soil remediation until the remediation has been completed. Measures 3H.1, 3H.2, and 3H.3 remain in effect until all grading is completed.
Measure 3H.2: If contained soils are detected during in site excavation, the RWQCB and DTSC will be notified and a quality geologist will be retained to assess contamination and determine a course of action in coordination with RWQCB and DTSC.			
Measure 3H.3: While no UST was detected by magnetic investigation, there is a remote possibility that a tank may have been missed and may still exist. Prior to the start of construction, the applicant shall undertake another search for an underground tank. If a tank is found it shall be removed in accordance with local regulations.			

Completed

9200 Wilshire Boulevard Mixed Use Project Mitigation Monitoring Program			
Mitigation Measures	**Responsible Agency**	**Monitoring Procedure and Reporting Mechanism**	**Implementation Schedule**
Public Services & Utilities.			
Measure 3I.1: The applicant shall undertake a flow monitoring study to assess the capacity of the local pipes to accommodate water demand. If insufficient capacity is available, the applicant shall pay their fair share as reasonably determined by the city to correct this deficiency.	Department of Public Works Department of Community Development	All flow studies shall be conducted as directed by the Department of Public Works.	Permits to commence construction shall not be issued unless approval is received from the Department of Public Works.
Measure 3I.2: The applicant shall undertake a flow monitoring study to assess the capacity of the local sewers to accommodate project flow. If insufficient capacity is available, the applicant shall pay their fair share as reasonably determined by the city to correct this deficiency.			

EXHIBIT C

CITY OF BEVERLY HILLS
GREEN BUILDING/SUSTAINABILITY CHECKLIST

City of Beverly Hills

Green Building/Sustainability Checklist

New Commercial and Multi-Family Development - Final

Project Name:			
Project Address:			
Project Pt.	Minimum Certified Points Required (26 Points)*		
Sustainable Sites		**14 Points**	
C.E.	**Construction Activity Pollution Prevention**	Required	SS P1**
C.E.	**Stormwater Design Requirement**	Required	
OWNER	**Development Density & Community Connectivity**	1	SS 2**
OWNER	**Brownfield Redevelopment**	1	SS 3**
ARCH.	**Alternative Transportation**, Public Transportation Access	1	SS 4.1**
ARCH.	**Alternative Transportation**, Bicycle Storage & Changing Rooms	1	SS 4.2**
ARCH.	**Alternative Transportation**, Low-Emitting & Fuel-Efficient Vehicles	1	SS 4.3**
C.E.	**Alternative Transportation**, Parking Capacity	1	SS 4.4**
C.E.	**Site Development,** Protect of Restore Habitat	1	SS 5.1**
C.E.	**Site Development,** Maximize Open Space	1	SS 5.2**
C.E.	**Stormwater Design,** Quantity Control	1	SS 6.1**
C.E.	**Stormwater Design,** Quality Control	1	SS 6.2**
C.E./ARCH.	**Heat Island Effect,** Non-Roof	1	SS 7.1**
C.E./ARCH.	**Heat Island Effect,** Roof	1	SS 7.2**
E.E.	**Light Pollution Reduction**	1	SS 8**
Water Efficiency		**5 Points**	
LANDSCAPE	**Water Efficient Landscaping**, Reduce by 50%	1	WE 1.1**
LANDSCAPE	**Water Efficient Landscaping**, No Potable Use or No Irrigation	1	WE 1.2**
M.E.	**Innovative Wastewater Technologies**	1	WE 2**
M.E.	**Water Use Reduction**, 20% Reduction	1	WE 3.1**
M.E.	**Water Use Reduction**, 30% Reduction	1	WE 3.2**
Energy & Atmosphere		**17 Points**	

COMM.	**Fundamental Commissioning of the Building Energy Systems**	Required	EA P1**
M.E.	**Minimum Energy Performance**	Required	EA P2**
M.E.	**Fundamental Refrigerant Management**	Required	EA P3**
M.E.	**Optimize Energy Performance** (Report from M.E. based on ASHRAE is required)	1 to 10	EA 1**
M.E.	**On-Site Renewable Energy** (Report from M.E. based on ASHRAE is required)	1 to 3	EA 2**
COMM.	**Enhanced Commissioning**	1	EA 3**
M.E.	**Enhanced Refrigerant Management**	1	EA 4**
M.E.	**Measurement & Verification**	1	EA 5**
OWNER	**Green Power**	1	EA 6**
Materials & Resources		**13 Points**	
ARCH.	**Storage & Collection of Recyclables**	Required	MR P1**
ARCH.	**Building Reuse**, Maintain 75% of Existing Walls, Floors & Roof	1	MR 1.1**
ARCH.	**Building Reuse**, Maintain 100% of Existing Walls, Floors & Roof	1	MR 1.2**
ARCH.	**Building Reuse**, Maintain 50% of Interior Non-Structural Elements	1	MR 1.3**
CONT.	**Construction Waste Management**, Divert 50% from Disposal	1	MR 2.1**
CONT.	**Construction Waste Management**, Divert 75% from Disposal	1	MR 2.2**
ARCH.	**Materials Reuse**, 5%	1	MR 3.1**
ARCH.	**Materials Reuse**,10%	1	MR 3.2**
ARCH.	**Recycled Content**, 10% (post-consumer + ½ pre-consumer)	1	MR 4.1**
ARCH.	**Recycled Content**, 20% (post-consumer + ½ pre-consumer)	1	MR 4.2**
ARCH.	**Regional Materials**, 10% Extracted, Processed & Manufactured Regionally	1	MR 5.1**
ARCH.	**Regional Materials**, 20% Extracted, Processed & Manufactured Regionally	1	MR 5.2**
ARCH.	**Rapidly Renewable Materials**	1	MR 6**
ARCH.	**Certified Wood**	1	MR 7**
Indoor Environmental Quality		**15 Points**	
M.E.	**Minimum IAQ Performance**	Required	EQ P1**
LEED AP	**Environmental Tobacco Smoke** (ETS) **Control**	Required	EQ P2**
M.E.	**Outdoor Air Delivery Monitoring**	1	EQ 1**
M.E.	**Increased Ventilation**	1	EQ 2**
CONT.	**Construction IAQ Management Plan**, During Construction	1	*EQ 3.1***

CONT.	**Construction IAQ Management Plan**, Before Occupancy	1	EQ 3.2**
ARCH.	**Low-Emitting Materials**, Adhesives & Sealants	1	EQ 4.1**
ARCH.	**Low-Emitting Materials**, Paints & Coatings	1	EQ 4.2**
ARCH.	**Low-Emitting Materials**, Carpet Systems	1	EQ 4.3**
ARCH.	**Low-Emitting Materials**, Composite Wood & Agrifiber Products	1	EQ 4.4**
LEED AP	**Indoor Chemical & Pollutant Source Control**	1	EQ 5**
M.E.	**Controllability of Systems**, Lighting	1	EQ 6.1**
M.E.	**Controllability of Systems**, Thermal Comfort	1	EQ 6.2**
M.E.	**Thermal Comfort**, Design	1	EQ 7.1**
M.E.	**Thermal Comfort**, Verification	1	EQ 7.2**
ARCH.	**Daylight & Views**, Daylight 75% of Spaces	1	EQ 8.1**
ARCH.	**Daylight & Views**, Views for 90% of Spaces	1	EQ 8.2**
Innovation & Design Process		5 Points	
ALL PROFS.	**Innovation in Design**: Provide Specific Title	1	ID 1.1**
ALL PROFS.	**Innovation in Design**: Provide Specific Title	1	ID 1.2**
ALL PROFS.	**Innovation in Design**: Provide Specific Title	1	ID 1.3**
ALL PROFS.	**Innovation in Design**: Provide Specific Title	1	ID 1.4**
	LEED® Accredited Professional	1	ID 2**
Project Totals (Pre-certification estimates) =			
* Certified 26- 32 points; Silver 33 - 38 points; Gold 39 - 51 points; Platinum 52 - 69 points			
** Refers to LEED Source Book for New Construction for Intent and Requirement of each category			

ATTACHMENT 4

Approved General Plan Amendment

9200 Wilshire Boulevard
City Council Meeting
September 17, 2007

RESOLUTION NO. 07-R-12399

RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS GENERAL PLAN BY CHANGING THE LAND USE MAP DESIGNATION, MAXIMUM DENSITY AND MAXIMUM HEIGHT FOR THOSE REAL PROPERTIES LOCATED AT 9200 WILSHIRE BOULEVARD

The Council of the City of Beverly Hills hereby resolves as follows:

Section 1. California Government Code Section 65358 provides the authority for the City Council to amend the City's General Plan. The City Council hereby considers and approves an amendment to the Land Use Element of the General Plan consisting of changes to the land use designation, maximum floor area ratio and maximum building height for the project site described more fully below.

Section 2. The land use map of the Beverly Hills General Plan is hereby amended by redesignating that certain real property generally located at 9200 Wilshire Boulevard, consisting of five individual lots known as lots 1110, 1111, 1112, 1113 and 1114 of Tract 6380, map book 69, pages 11 through 20 inclusive (the "9200 Wilshire Property") from commercial to mixed use, with a maximum floor area ratio of 4.0 to 1.0, and a maximum height of 60 feet, as shown on the map attached hereto as Exhibit A and incorporated herein by this reference.

Section 3. The project proposed for the 9200 Wilshire Property, including the General Plan Amendment, has been environmentally reviewed pursuant to the provisions of the CEQA. An Environmental Impact Report was prepared and the City Council has certified the FEIR,

made appropriate environmental findings, and adopted a Mitigation Monitoring and Reporting Program for the project, as fully set forth in Resolution No. 07-R-12323, adopted by the City Council on April 26, 2007. That resolution is incorporated herein by reference, and made a part hereof as if fully set forth herein. Further, the mitigation measures set forth therein are hereby made applicable to the general plan amendment for the 9200 Wilshire Property.

Section 4. The City Clerk shall certify to the adoption of this Resolution and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the Council of the City.

Adopted: July 24, 2007

JIMMY DELSHAD
Mayor of the City of Beverly Hills, California

ATTEST:

(SEAL)

BYRON POPE
City Clerk

APPROVED AS TO FORM:

CITY ATTORNEY

APPROVED AS TO CONTENT

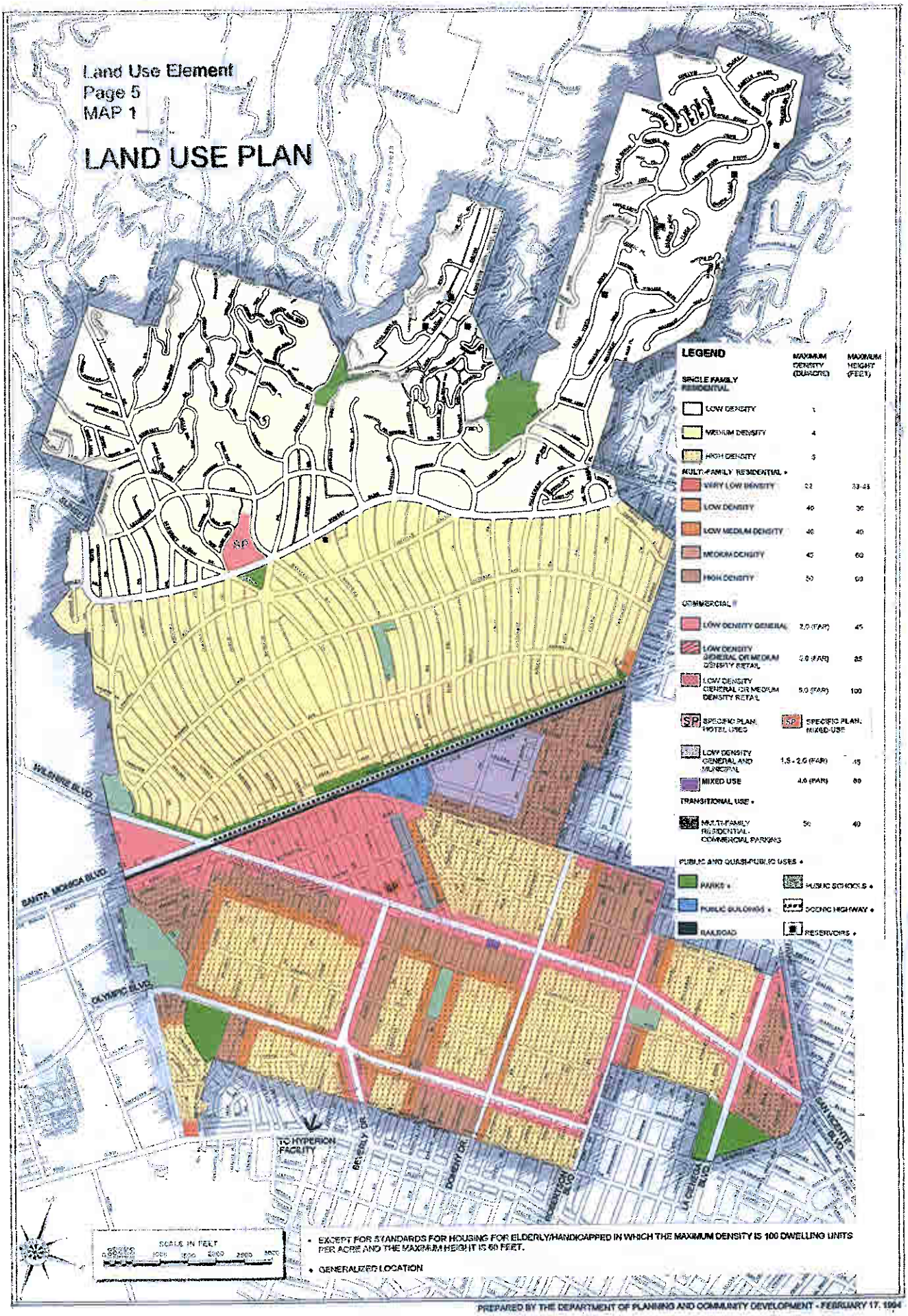
VINCENT P. BERTONI, AICP
Director of Community Development

EXHIBIT A

REVISED LAND USE MAP

MAP 1

LAND USE PLAN



* EXCEPT FOR STANDARDS FOR HOUSING FOR ELDERLY/HANDICAPPED IN WHICH THE MAXIMUM DENSITY IS 100 DWELLING UNITS PER ACRE AND THE MAXIMUM HEIGHT IS 60 FEET.

* GENERALIZED LOCATION

PREPARED BY THE DEPARTMENT OF PLANNING AND COMMUNITY DEVELOPMENT - FEBRUARY 17, 1994

ATTACHMENT 5

Resolution Certifying the Final EIR

9200 Wilshire Boulevard
City Council Meeting
September 17, 2007

RESOLUTION NO. 07-R-12323

RESOLUTION OF THE CITY COUNCIL OF BEVERLY HILLS CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR A PROPOSED MIXED USE PROJECT GENERALLY LOCATED AT 9200 WILSHIRE BOULEVARD; MAKING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND ADOPTING A MITIGATION MONITORING PROGRAM

THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS HEREBY FINDS AND RESOLVES AS FOLLOWS:

Section 1. Legacy Partners SSR 9200 Wilshire, LLC (the "Applicant"), has applied for a General Plan Amendment, a Zoning Code Amendment to create an Overlay Zone, a Zoning Map Amendment to apply an overlay zone to the subject property, a Vesting Tentative Tract Map, a Planned Development Permit and a proposed Development Agreement to allow construction of a mixed-use project (the "Project") at property known as 9200 Wilshire Boulevard (the "Project site"). Parking will be provided in a multi-level subterranean garage with access provided from Maple and Palm Drives. A Draft Environmental Impact Report dated January 2006 (the "Draft EIR") was prepared for the Project. In accordance with the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code §21000 *et seq.*) and the State Guidelines (the "Guidelines") (14 Cal. Code Regs. §15000 *et seq.*) promulgated with respect thereto, the City analyzed the Project's potential impacts on the environment.

Section 2. The City has contracted with independent consultants for the preparation of the environmental impact report and, on April 22, 2005, prepared and sent a Notice of Preparation of the Draft EIR to responsible, trustee, and other interested agencies and persons in accordance with Guidelines Section 15082(a). The City held a public scoping meeting on May 5, 2005 to invite comments on the environmental issues to be included in the Draft EIR.

Section 3. The City circulated the Draft EIR to the public and other interested persons between January 6, 2006 and February 21, 2006 for a 45-day comment period as required by Guidelines Sections 15087(c) and 15105. The Planning Commission held duly noticed public hearings on January 25, 2006 (to discuss the Draft EIR), March 30, 2006, and June 8, 2006 (to discuss the Project), and April 6, 2006 (to discuss the Development Agreement) (collectively, the "PC Hearings"), at which times it received oral and documentary evidence from the public regarding the Project and the Draft EIR. In addition, on September 5, 2006, the City Council held a hearing on the appeal of the Planning Commission's July 27, 2006 action denying the Project based on denial of the requested General Plan Amendment and Zone Change necessary to permit the Project, at which time the Council overturned the Planning Commission's decision. Subsequently, the City Council held public hearings on October 9, 2006, and April 26, 2007, to consider the Draft EIR, the Project, and the Development Agreement (collectively the "CC Hearings").

Section 4. The City prepared written responses to all comments received on the Draft EIR and made revisions to the Draft EIR, as appropriate, in response to those comments. The City completed the written responses to comments on the Draft EIR in April 2007. The written responses to comments were made available for public review in the Department of Community Development. After reviewing the responses to comments and the revisions to the Draft EIR, the City Council concludes that the information and issues raised by the comments and the responses thereto did not constitute new information requiring additional recirculation of the Draft EIR.

Section 5. During the Planning Commission deliberations at the PC Hearings and the City Council deliberations at the CC Hearings, the Applicant made certain revisions to the Project, and the City Council indicated that it supported certain additional revisions to the Project including: relocating the loading area from the Maple Drive frontage to the Palm Drive frontage; shifting the building location three feet (3') closer to Maple Drive to allow widening of

Palm Drive adjacent to the Project site; and increasing the setbacks for the upper stories of the Project, including a substantial increase of the sixth floor setback along Wilshire Boulevard to give the appearance that the building is consistent with the maximum 45-foot height limit allowed by the underlying C-3 zoning standards. As demonstrated in the EIR and the record, the environmental impacts of the Project revised in accord with the City Council's direction results in impacts that are generally less than the environmental impacts of the Project as originally proposed and mitigated. Therefore, each of the findings set forth herein for the "Project," as well as the discussion in the EIR, would apply to both the Project as originally proposed and the Project as modified by the City Council.

Section 6. The Final Environmental Impact Report (the "EIR") is comprised of: the Draft EIR, including Appendices, dated January 2006; and the Comments and Responses to Comments on the Draft EIR dated April 2007.

Section 7. The findings made in this Resolution are based upon the information and evidence set forth in the EIR and upon other substantial evidence which has been presented at the PC Hearings, the CC Hearings, and in the record of the proceedings. The documents, staff reports, technical studies, appendices, plans, specifications, and other materials that constitute the record of proceedings on which this Resolution is based are on file and available for public examination during normal business hours in the Department of Community Development and with the Director of Community Development, who serves as the custodian of these records, at the Beverly Hills City Hall, 455 North Rexford Drive, Beverly Hills, California, 90210.

Section 8. The City Council finds that agencies and interested members of the public have been afforded ample notice and opportunity to comment on the EIR.

Section 9. The City Council has independently reviewed and considered the contents of the EIR prior to deciding whether to approve the Project. The City Council believes

that the EIR reflects the independent judgment of the City and the City Council. The City Council further believes that the additional information provided in the staff reports, in the responses to comments received after circulation of the Draft EIR, and in the evidence presented in written and oral testimony presented at the PC Hearings and the CC Hearings, does not constitute new information requiring recirculation of the EIR under CEQA. None of the information presented to the City Council, nor any revisions to the Project made, after circulation of the Draft EIR has deprived the public of a meaningful opportunity to comment upon a substantial environmental impact of the Project or a feasible mitigation measure or alternative that the City has declined to implement.

Section 10. The City Council finds that the comments regarding the Draft EIR and the responses to those comments have been received by the City; that the Planning Commission received public testimony regarding the adequacy of the EIR; and that the City Council reviewed and considered all documents and testimony related to the EIR prior to acting on the Project. Pursuant to Guidelines Section 15090, the City Council hereby certifies that the EIR has been completed in compliance with CEQA.

Section 11. Based upon the EIR and the record before the City Council, the City Council finds that the Project will not cause any significant environmental impacts after mitigation. Explanations for why the impacts were found to be less than significant are contained in the Environmental Findings set forth in Exhibit A to this Resolution and more fully described in the EIR and the Initial Study (included as Appendix A to the Draft EIR).

Section 12. Based upon the EIR and the record before the City Council, the City Council finds that the Project will create no significant unavoidable impacts as further explained in the "Findings and Facts In Support of Findings" set forth in Exhibit A, which is attached hereto and is incorporated herein by reference, and in the EIR.

Section 13. Based upon the EIR and the record before the City Council, the City Council finds that cumulative impacts of the Project are not significant. Further explanation for this determination may be found in the EIR and Exhibit A, attached hereto.

Section 14. The EIR describes, and the City Council has fully considered, a reasonable range of alternatives to the Project. The City Council expressly finds that each of the alternatives identified in the EIR either would not sufficiently achieve the basic objectives of the Project, would do so only with unacceptable adverse environmental impacts greater than those associated with the Project, or are not feasible. Accordingly, and for any one of the reasons set forth in Exhibit A, attached hereto and incorporated herein by this reference, or set forth in the record, the City Council finds that specific economic, social, or other considerations make infeasible each of the Project alternatives, including the "No Project" alternative, identified in the EIR, and each is hereby rejected. The City Council further finds that a good faith effort was made to incorporate alternatives into the preparation of the EIR, and that a reasonable range of alternatives were considered in the review process of the EIR and the ultimate decision on the Project.

Section 15. The City Council hereby adopts the mitigation measures set forth in the "Mitigation Monitoring and Reporting Program," attached hereto as Exhibit B and incorporated herein by this reference, and directs that each mitigation measure be included as a condition of any planned development approval. The City Council further adopts the "Mitigation Monitoring and Reporting Program," which is presented as Exhibit B. City staff shall implement and monitor the mitigation measures as described in Exhibit B.

Section 16. The City Clerk shall certify to the adoption of this resolution, and shall cause this resolution and his certification to be entered in the Book of Resolutions of the Council of this City.

Adopted: April 26, 2007

JIMMY DELSHAD
Mayor of the City of Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

VINCENT P. BERTONI
Acting Director of Community Development

EXHIBIT A
Findings and Facts In Support Of Findings

Article I. Introduction.

The California Environmental Quality Act ("CEQA") and the State CEQA Guidelines (the "Guidelines") provide that no public agency shall approve or carry out a project for which an environmental impact report has been certified which identifies one or more significant effects on the environment that will occur if a project is approved or carried out unless the public agency makes one or more of the following findings:

a. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects identified in the EIR.

b. Such changes or alterations are within the responsibility or jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.

c. Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the EIR.

Pursuant the requirements of CEQA, the City Council hereby makes the following environmental findings in connection with the proposed Project. The Project has been modified from that analyzed in the EIR and alternatives to further reduce any potential impacts from the Project as approved by the City Council. These findings are based upon evidence presented in the record of these proceedings, both written and oral, including, without limitation, the EIR and all of its contents, the Comments and Responses to Comments on the Draft EIR, and staff and consultants' reports prepared and presented to the Planning Commission and City Council.

Article II. Project Objectives.

As set forth in Chapter 2 of the EIR, the objectives which the Project applicant seeks to achieve with this Project (the "Project Objectives") are as follows:

- To develop high quality housing in a premier location with ready access to high end commercial areas;

- To maintain the general scale and character of the City, particularly along Wilshire Boulevard, through new development which provides environments consistent with the character and quality of life generally associated with the City's single- and multiple-family residential areas;

- To expand the variety of housing product beyond single-family detached, rental apartment and condominium units through development of mixed commercial and residential uses;

- To construct a building that is compatible in design and use with other development in the area, will not interfere with the enjoyment of residential properties in the vicinity, and is consistent with the public interest and general welfare;

- Develop a project which would include a significant amount of housing to promote livable community principles by allowing residents to walk to on-site, as well as off-site, restaurant, retail establishments, and workplaces;

- Provide neighborhood-serving retail and/or restaurant uses within distance of existing nearby residences to reduce automobile uses and to promote a pedestrian orientation in the immediate project area;

- Provide ground floor neighborhood-serving retail and/or restaurant uses to activate the Wilshire Street frontage and enhance the pedestrian experience;

- Create temporary and permanent jobs with the City, while mitigating, to the extent feasible, any significant environmental impacts;

- Develop a project that is financially viable and at the same time provide fiscal benefits to the City through property, transfer, business and sales tax revenues;

- Develop a project with on-site recreational amenities for residents to reduce potential demand on City recreational facilities and to reduce traffic associated with residents driving to such facilities; and

- Develop underutilized and vacant land consistent with sound planning principles.

Article III. <u>Impacts Determined to be Insignificant.</u>

The Initial Study analyzed the potential impacts of the Project and concluded that there would be no significant environmental impact in the following impact areas: Agricultural Resources, Biological Resources, Cultural Resources, Mineral Resources, Population and Housing, and Recreation. Because the Project will not have significant impacts of the foregoing types, no mitigation measures are necessary to address these issues.

Article IV. <u>Potentially Significant Environmental Impacts Determined to be Mitigated to a Level of Insignificance.</u>

The EIR discussed the potential for the Project to cause significant environmental impacts in the areas of Land Use and Planning; Aesthetics; Transportation, Circulation and Parking; Air Quality; Noise; Geology and Soils; Hydrology and Water Quality; Hazards and Hazardous Materials; Public Services and Utilities. Each of these topics was analyzed in the Draft EIR, which concluded that the Project either would not have a significant impact, or would not have a significant impact with the implementation of identified mitigation measures.

Except as specifically provided below, the City Council finds that the mitigation measures for the Project identified in the EIR are feasible and would reduce the Project's impacts to a less than significant level.

4.1 Land Use and Planning

A. Potential Impacts

Section 3A of the EIR analyzes the Project's consistency with the General Plan and other local and regional land use policies.

B. Findings

No mitigation is required since the Project will not have a significant impact on land use plans or policies. The requested amendments to the zoning code and the land use map of the General Plan are consistent with the goals of the City's General Plan which encourages the development of mixed-use projects. Further, while the proposed Zoning Ordinance and accompanying General Plan Amendment will increase the permissible height and floor area for development on the Project site, implementation of the Project actually results in a less intense overall development than permitted under existing zoning standards. Therefore, the Project's land use impacts will be less than significant.

C. Facts in Support of Findings

1. General Plan Consistency. The General Plan Land Use Map designates the Project site for low-density commercial development. Therefore, in order to allow the increased height and density proposed, that map must be amended. The requested amendment to the General Plan Land Use Map will assist in implementing the City's Housing Element, which includes Program 4.3, which calls for development of "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 such as ...[the] South side of Wilshire Blvd., east of Beverly Dr." (which includes the area between Maple Drive and Palm Drive). The proposed Project would carry out this Housing Element objective. The Land Use Element further provides:

> "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." (Beverly Hills General Plan, Land Use Element, p. 7.)

The Project furthers this policy.

Thus, the Project, including the related General Plan and Zoning Code Amendments, is consistent with the General Plan and will not have a significant effect on land use policies.

2. Zoning Ordinance. The City's zoning map designates the Project site as within the Commercial (C-3) zone. Therefore, in order to allow the proposed mix of land uses which involves residences in a commercial designation, the zoning of the Project site must

be amended. An overlay zone has been requested, which would include the requirement for a Planned Development process and set of objectives to ensure compatibility of development with nearby uses. Although the proposed Overlay Zone permits development with greater height and floor area than existing zoning, the land uses height and density permitted by the proposed overlay zone are consistent with the General Plan housing goals and the land use policies of the City. Thus, the proposed zoning code amendment will not have a significant effect on land use policies.

3. Cumulative Impacts. The Project, in conjunction with other projects, would not have a cumulative impact on land use. Although a large number of mixed use projects could have a financial impact on the City, this Project will pay its fair share of mitigating any such impact through a $3.5 million public benefit contribution and its impacts will not be cumulatively considerable.

4.2 Aesthetics

A. Potential Impacts

Section 3B of the EIR analyzes the potential for significant impacts to aesthetics, and in particular, the visual character of the Project site and the general vicinity and shade and shadows. Development of the Project will permanently alter the existing view from neighboring properties and will change the visual character of the site. Additionally, the Project will add new sources of light and glare to the environment and will create a new source of shade and shadow. These potential impacts were fully analyzed the EIR.

B. Findings

Through the incorporation of project design features, the compliance with applicable City codes, adherence to the mitigation measures, or combination thereof, the Project will avoid or substantially lessen any significant effects, such that no significant aesthetic impact will result. Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen aesthetic impacts.

C. Facts in Support of Findings

1. Visual Character. The impacts to visual character, which are more fully described in the EIR, primarily involve the contrast between the existing site conditions, which include vacant property, and the built condition after Project completion. Construction and development of a six-story, 60-foot tall mixed-use structure on the Project site will forever alter the visual character of the site. The impacts will be both short term and long term in nature. Short term impacts are expected to occur during the construction phase due to site grading and construction activities which will include, among other things, exposed soil, dirt storage, and staging areas for various construction activities on the site. This short-term condition would create a temporary visual distraction typically associated with construction activities. The City imposes standard conditions on all projects requiring the installation of barriers to screen construction activities from view. Given the short-term nature of these construction-related impacts and the City's standard screening requirement, the short-term impacts to visual character will not be significant.

The Project also includes construction of a 60-foot tall, six-story structure. The proposed building will comply with the City's development codes, as amended by the proposed Overlay Zone, and will be visually compatible in mass, scale and form to structures to the north, east and west of the Project site. Additional architectural features, including modulation, architectural ornamentation and stepped facades, have been incorporated into the Project design to further soften the mass and make the Project more harmonious with existing development surrounding the Project site. In addition, the City Council has modified the Project to require an additional setback on the sixth story further reducing the perceived mass and scale of the building and making it more harmonious not only with existing development in the vicinity but future development in accordance with the maximum 45-foot height limit allowed by the underlying C-3 zoning standards. As modified, the Project will have no significant adverse impact to visual character in the surrounding area.

2. New Sources of Light. The Project site is currently vacant, and surrounding land uses are not affected by light or glare from the site. Lighting associated with the proposed Project will be typical for residential development and will not significantly affect adjacent uses provided that exterior lighting is focused on landscape areas and shielded. As mitigated and designed, the lighting fixtures facing residential areas would not result in spillover or lighting glare effects on adjacent residences. Therefore the Project will not result in significant light or glare effects.

4.3 Transportation, Circulation and Parking

A. Potential Impacts

The traffic studies prepared in connection with the EIR identify the potential for significant traffic impacts due to construction period traffic and traffic and parking needs related to operation of the Project after construction. Potential impacts considered in the EIR include those associated traffic congestion at local intersections, increased traffic volumes on adjacent residential streets, the effect of the Project on Congestion Management Program ("CMP") compliance, and increased parking demand on local streets. These potential impacts are fully analyzed in the EIR.

B. Findings

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen traffic impacts resulting from construction activities and operation, including the relocation of the Project loading facilities from the Palm Drive frontage to the Maple Drive frontage. With the redesign of the loading facilities, the Project will not have an adverse traffic impact in the operational phase, and no operational period mitigation beyond one measure directed at the loading facilities is necessary.

C. Facts in Support of Findings

1. Construction Traffic. During construction of the Project, short-term adverse traffic impact could potentially occur in the vicinity of the Project site. Further, parking demand during construction could spill over to residential areas if appropriate accommodations, including on-site parking, are not provided by the Project developer. Although

there is the possibility that lane closures would occur during construction, there will be no need to completely close any of the streets adjacent to the Project site. Further, construction related traffic impacts will be short term; and mitigation measures, including development and implementation of a construction staging and traffic management plan, have been identified that reduce the potential impacts to less than significant levels.

2. Operational Traffic. The EIR fully analyzes the existing traffic conditions, taking into account ambient traffic growth in the area surrounding the Project, and as well as traffic from other projects that are proposed in the vicinity of the Project site. The EIR then adds in traffic generated from the proposed project, as determined pursuant to the ITE Trip Generation publication. The Project is expected to generate approximately 950 trips for a typical weekday and 992 trips for a typical Saturday. The Project would generate 33, 82 and 101 trips during weekday morning peak hour, weekday evening peak hour, and Saturday peak hour (which is midday), respectively. Accordingly, the Project impacts do not exceed the Thresholds of Significance, which are set forth in Section 3C of the EIR, for any of the thirteen study intersections analyzed. Thus, the Project will not result in any significant traffic impacts to study intersections during the operational phase; and no mitigation is required for operation of the Project. The EIR also demonstrates that, as designed, the Project will not result in any significant adverse traffic impacts to adjacent residential streets because traffic volumes will not significantly increase on residential streets. Notwithstanding this conclusion, the City Council has required modifications to the Project to permit the widening of Palm Drive in order to further lessen any potential traffic impacts from the Project. Coupled with the revisions to the loading facility design, the Project will not result in any adverse traffic impacts on adjacent residential streets.

3. Congestion Management Program Conformance. The Congestion Management Plan (CMP) for Los Angeles County requires that the traffic impact on individual development projects of potentially regional significance be analyzed. The CMP system is comprised of a specific system of arterial roadways and all freeways. The CMP requires preparation of a Traffic Impact Analysis (TIA) if a project adds 50 or more trips to a CMP monitoring intersection or adds 150 or more trips at a CMP mainline freeway monitoring location. The nearest CMP monitoring station to the Project site is at the intersection of Wilshire Boulevard and Santa Monica Boulevard. Based on the Project Trip Generation estimates and trip distribution, the proposed Project will not result in 50 or more trips per hour at the CMP intersection, nor will it add 150 or more trips to a freeway monitoring location. Thus, the Project will not be regionally significant and no further analysis is required.

4. Parking and Loading. The Project analyzed in the EIR provided 321 parking spaces, whereas the demand for parking calculated pursuant to the ITE Parking Generation, 3rd Edition concluded that the Project demand would be 241 parking spaces. Further, under the City's parking codes, 253 parking spaces would be required. Therefore, the Project, with 321 parking stalls would exceed the Project's parking demand. Subsequent redesigns and modifications to the Project have reduced the on-site parking to 279 parking stalls, which still provides a sufficient number of parking stalls to accommodate the demand generated. Thus, no significant parking impacts will result from the Project. Loading has been revised to move the loading docks to Palm Drive to reduce potential conflicts with competing traffic on Maple Drive and to allow loading trucks to more easily access the Project. As a result of the

redesign and relocation of the loading facility, trucks up to fifty feet in length are now able to access the loading facility without multiple turn movements and without crossing lanes. Thus, there is no longer a need for the mitigation measure set forth in the Draft EIR restricting delivery truck length. The City Council hereby declines to adopt that measure because a more effective substitute measure, the redesign and relocation of the loading dock, has been incorporated into the Project. The City Council now finds the truck length restriction socially infeasible because it will require longer delivery trucks to use scarce street parking when adequate loading is otherwise available. A loading dock management plan, however, and will still be imposed as a condition of Project approval. With this mitigation, parking and loading impacts will be less than significant.

5. Cumulative Impacts. Cumulative impacts are not significant as the incremental effects of the Project are not significant, when viewed in connection with other projects on the cumulative project list. As shown in the tables set forth in the EIR, the Project's incremental impacts will not impact the operation of intersections that may be cumulatively impacted. Additionally, the Project's impacts are not cumulatively considerable as the Project is contributing $3.5 million to the City that may be used, in part, to mitigate cumulative traffic impacts.

4.4 Air Quality

A. Potential Impacts

The Air Quality Impact Analysis examines the Project's potential to result in significant adverse changes to air quality. The analysis discusses both short-term impacts resulting from air pollutants generated during construction activities and long-term impacts resulting from operational emissions. Construction activities that could generate emissions include grading and excavation, construction workers traveling to and from the Project site, delivery and hauling of construction supplies and debris to and from the Project site, fuel combustion by on-site construction equipment, the application of architectural coatings and other building materials that release volatile organic compounds (VOCs), and asphalt paving. Operational activities that could generate emissions include residents and customers traveling to and from the Project site, deliveries to the Project site, energy consumption, and on-site stationary source emissions. These potential impacts are fully analyzed in the EIR, including specifically Section 3D.

B. Findings

The Project will not result in significant air quality impacts.

C. Facts in Support of Findings

1. Construction Impacts. Construction activities will result in the generation of air pollutants. Analysis of the construction emissions indicates that all emission levels will remain below established thresholds of significance for such emissions. (EIR, Table 3D.4 and Impact Discussion 3D.2) Based on the analysis set forth in the EIR, these emissions will be reduced to less than significant levels by compliance with existing regulations. Further, any impacts will be insignificant and will cease at the completion of construction activities.

2. Operational Impacts. Total operational emissions for the Project will remain significantly below established thresholds and, therefore, will not create a significant impact on air quality. (EIR, Table 3D.5.) Localized impacts from carbon monoxide (CO) concentrations were estimated using the CALINE4 traffic pollutant dispersion model. The results of this modeling indicate that the 1-hour CO concentrations and the 8-hour CO concentrations for the Project are well below the established State standard. (EIR, Tables 3D.6 and 3D.7.) Accordingly, the Project will not result in any significant impacts to localized air quality. The results of the air quality analysis, EIR Section 3D, demonstrate that the Project's daily emissions from stationary sources are well below South Coast Air Quality Management District (SCAQMD) thresholds and that residents won't be significantly exposed to toxic air contaminants. The City Council has determined that the State health standards are an appropriate measure of any localized impact from air emissions and that the SCAQMD CEQA significance standards are an appropriate measure of the significance of the City's contribution to cumulative, regional, air impacts as that agency has responsibility for ensuring long term compliance with regional air quality goals. The City Council has not been presented with a fair argument based on substantial evidence that it is appropriate to use any other threshold of significance for air quality impacts.

Further, the City Council hereby finds that the Project is consistent with the SCAQMD Air Quality Management Plan (AQMP) because the Project will not result in an increase in the frequency or severity of existing air quality violations or cause or contribute to new violations, or delay the timely attainment of air quality standards or interfere with emissions reductions specified in the AQMP. The City Council also finds that the proposed Project will not exceed the growth assumptions in the most recent AQMP.

Accordingly, the City Council finds that the Project will not have a significant impact on long-term air quality; and no mitigation is necessary.

3. Cumulative Impacts. The Project will not contribute to significant cumulative air quality impacts. The Project is consistent with Air Quality Management Plan assumptions and will therefore not interfere with attaining regional air quality goals, even if development approved elsewhere in the air basin contributes to diminution of regional air quality.

4.5 Noise

A. Potential Impacts

The Noise Impact Analysis examines the potential for significant noise impacts during construction from construction hauling and equipment (earth-moving equipment such as backhoes, bulldozers, pile drivers, skip loaders, fork lifts, concrete mixers, concrete pumps, tower cranes, and other equipment) and long-term impacts from the Project operations. These potential impacts are fully analyzed in the EIR.

B. Finding

The Project will not result in significant noise impacts.

C. Facts in Support of Finding

1. Construction Impacts. Project construction activities require the use of several different types of noise generating equipment on an intermittent basis. The increase in noise could result in temporary annoyance to nearby residents. Noise levels will fluctuate depending on the construction phase, the equipment used, and the duration of the activity. Distance between the noise source and the receptor will also impact noise levels. Construction related noise will be short-term in nature. Construction related noise will be mitigated by compliance with the City's standard construction noise regulations.

2. Operational Noise Impacts. The Project, when in operation, has the potential to generate material noise from Project-related traffic, delivery truck and trash pick up, and rooftop equipment operation. Based on the traffic increases expected to result from operation of the Project, the EIR concludes, and the City Council finds, that the Project will not result in a significant adverse impact due to traffic noise because such noise will not exceed thresholds of significance. With respect to noise impacts of rooftop mechanical equipment, the noise generated will be minimized through the distance between the equipment and neighboring properties, and with the construction techniques and building design that will shield mechanical equipment from view from adjacent residences. Through compliance with the City's standard codes, the Project's operational noise impacts will be less than significant.

3. Cumulative Impacts. The Project's construction and stationary noise impacts would not be cumulative with other projects due to their distance from the site. Cumulative vehicle noise will not exceed thresholds of significance.

4.6 Geology and Soils

A. Potential Impacts

Section 3F of the EIR identifies the potential for significant impacts resulting from geologic materials and soils, seismicity, flooding and inundation, and groundwater. These potential impacts are fully analyzed in the EIR.

B. Finding

Through compliance with applicable regulatory processes, uniform codes, and City requirements, and the mitigation measures identified in the EIR, the Project will not result in any significant adverse impacts. Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen potential impacts.

C. Facts in Support of Finding

1. Surface Rupture, Liquefaction and Seismically-induced Settlement. The Project site is not located within or adjacent to an Alquist-Priolo Earthquake Fault Zone, but is within 1.3 miles of an active fault system that has the potential for fault rupture, as discussed more fully in Section 3F.4.3 of the EIR. Although there is a potential for such impacts on the Project, the potential for surface ruptures at the site is considered low. Furthermore, compliance with the City's building codes mitigate any potential impact to a less

than significant level. The Project site does not lie within an area identified as having a potential for liquefaction or seismic settlement.

2. Slope Stability. The relatively flat topography at the Project site precludes stability problems except with regard to excavation. During excavation, sandy alluvium deposits could be prone to caving. However, compliance with the City's standard building codes and other standard construction practices as set forth in the mitigation measures recommended in the EIR will ensure that any risk of exposure to slope stability hazard during excavation will be less than significant.

3. Soils and Soil Erosion. The site is relatively flat. There is no evidence of subsidence, and the soils are sufficiently dense to adequately support the Project. However, construction activities could result in exposed areas of soil that are susceptible to uncontrolled sheet flow. Compliance with an approved Water Quality Management Plan, as required by the mitigation measures recommended by the EIR, would mitigate this impact to a level of insignificance.

4.7 Hydrology and Water Quality

A. Potential Impacts

The Hydrology and Water Quality Analysis examines the potential for significant impacts to water resources in the form of impacts to water quality and storm drain capacity during construction (due to increased erosion and sedimentation caused by construction activity) and long-term impacts from the Project operations including increased surface runoff volumes (due to the elimination of permeable surfaces on the site) and permanent dewatering. These potential impacts are fully analyzed in the EIR.

B. Finding

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant hydrology and water quality impacts. Implementation of the identified mitigation measures and design changes will reduce both construction and operational hydrology and water quality impacts to a less than significant levels.

C. Facts in Support of Finding

1. Construction Impacts. Section 3G.4.3 notes that during construction, bare soil would be exposed to erosive forces that could result in erosion and sedimentation to surface waters. In addition, the EIR identifies the use of fuels, solvents and pants as a potential risk to surface water quality due to an increased potential for non-visible pollutants entering the storm drain system. If precautions are not taken to contain contaminants, the Project could result in contaminated storm water runoff. However, compliance with the City's standard conditions and uniform codes, incorporation of Project design features, and implementation of the mitigation identified in the EIR (which, among other things, requires the preparation and implementation of a drainage plan and a water quality management plan prior to

the commencement of construction activities), the Project's construction activities will result in no significant impacts to hydrology or water resources.

2. Project Runoff. The Project will convert a vacant lot with no impermeable surfaces to an urban city block with no permeable surfaces. Storm water generated on the Project site will be channeled directly to the storm drain within Wilshire Boulevard. To ensure that Project runoff does not cause a significant impact, the Project will be required to prepare and implement a drainage plan. Compliance with standard conditions and uniform codes and the implementation of Project design features and changes will further lessen any potential impacts from Project runoff.

3. Groundwater. The historic high groundwater level beneath the site is at a depth of between 47 and 54 feet below the surface. Thus, it is not anticipated that dewatering will be necessary. In the event that temporary dewatering is necessary during construction, any discharges (temporary or permanent) will be handled through the NPDES permitting process, as is done with all development involving water discharges. The NPDES permitting process is a mandatory federal regulatory process designed to safeguard against water quality problems. Compliance with NPDES requirements and City ordinances will ensure that any water discharges will not have a significant impact on the environment. If groundwater is encountered during excavation, temporary dewatering would not likely affect the nearest City well due to its distance.

4. Cumulative Impacts. The Project will not contribute to cumulative impacts because the drainage system is designed to accommodate build out of the projects on the cumulative projects list and, as mitigated, the Project won't contribute to water quality degradation.

4.8 Hazards and Hazardous Materials

A. Potential Impacts

Section 3H of the EIR analyzes the potential for the Project to result in significant impacts to the environment as the result of the presence of hazards and hazardous materials on the site from prior use of the site. These issues are fully analyzed in the EIR.

B. Finding

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant impacts. Implementation of the identified mitigation measures and design changes will reduce any potential impacts associated with hazards and hazardous materials to less than significant levels.

C. Facts in Support of Finding

1. The Project site previously supported automotive-related uses. An underground storage tank installation and removal resulted in contamination on the site which was remediated in 1988. The County of Los Angeles Department of Public Works granted final approval for the closure and removal of the underground storage tank in 1987. As a result of this

remediation, no release of hazardous materials is anticipated to occur during Project construction. To further ensure that the Project does not expose people to significant impacts related to the release of hazardous materials, the EIR identifies mitigation requiring the Project applicant to perform a Phase II soil investigation prior to the removal of soil from the site, and to comply with federal and state mandated regulations in the event contaminated soil is encountered, including (i) notifying the Building and Safety Department if, during construction, soil and/or groundwater contamination is detected on the Project Site; (ii) immediately ceasing construction activity in the affected area; (iii) retaining a qualified environmental consultant to investigate the extent of the contamination and recommend remediation alternatives; and (iv) comply with all remediation requirements imposed by any federal, state, or local regulatory agency with responsibilities for site clean-up and remediation. Additionally, the Project use will not use large quantities of hazardous materials or generate hazardous wastes. Therefore, the impacts due to hazardous materials will be less than significant.

4.9 Public Services and Utilities

A. Potential Impacts

Section 3I of the EIR examines the Project's potential to cause significant impacts in the areas of public services, including fire protection and emergency services, police protection, schools, and recreation and parks and the Project's potential to cause significant impacts in the areas of water supply, sewer and wastewater, storm water and drains, and solid waste disposal. These potential impacts are fully analyzed in the EIR.

B. Finding

The proposed Project will not result in a significant adverse environmental impact in areas of fire protection and emergency services, police protection, schools, recreation and parks or storm water, and no mitigation measures are required. Compliance with standard conditions and uniform codes, when applicable, will avoid or substantially lessen the potentially significant effects on the environment and reduce these potential impacts to a less than significant levels.

Further, changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the potentially significant impacts to water supply, wastewater and solid waste.

C. Facts in Support of Finding

1. Fire Protection and Emergency Services. The Project site is served by adequate fire flow for fighting fires and must comply with the City's adopted Fire Code standards. Further, the Project will meet current Fire Codes regarding building materials, circulation and access, fire flow requirements, and other aspects that would reduce the incidence of fires and improve the effectiveness of the Beverly Hills Fire Department's services, which represents an adequate and acceptable level of fire protection and emergency service. The small amount of growth from the Project will neither create the need for additional facilities nor increase response times to the extent that they would compromise public health or safety.

Accordingly, the Project will result in less than significant impacts on fire protection and emergency services.

2. Police Protection. The project will generate approximately 124 new residents, which will result in an incremental increase in demand for police services. However, this incremental increase in population will not generate the need for additional patrols or emergency response. The Beverly Hills Police Department concluded that any increase in calls for police services that result from this Project would not significantly reduce the Department's ability to provide police services. No significant impact to police services is expected.

3. Schools. The Project would add approximately 54 new multi-family residential units and is expected to generate 20 new students that would be matriculated into the City's schools - 11 in grades K through 8 and nine in grades 9 through 12. The existing capacity in area schools is more than sufficient to accommodate the Project-related increase in students. The Project will not result in the need to construct additional facilities. Moreover, the Project will be required to pay school impact fees in accordance with the most current rate schedule adopted by the school district. The school impact fees will be used to assist the school district in meeting the incremental costs associated with expanded enrollment. The Project's impacts on area schools are, therefore, expected to be less than significant.

4. Recreation and Parks. The proposed Project is expected to add approximately 54 dwelling units to the City. The proposed Project will place additional demands on the City's parks as a result of 124 additional persons residing at the Project. However, the City has adopted a park and recreation tax on development to ensure that additional development will pay the cost of meeting additional demand upon the City's existing park facilities and programs. The developer will be required to pay that tax. Additionally, the Project provides outdoor living area to serve the recreational needs of its residents. The Project meets the Code requirements for outdoor living area. By providing on-site open-space usable to the Project residents and by paying the applicable park fees, the Project will have a less than significant impact on the City's parks.

5. Water Supply. The City's water is supplied through a combination of groundwater extraction and purchasing of water from the Metropolitan Water District of Southern California. According to the Beverly Hills 2005 Water Quality Consumer Confidence Report, approximately ten percent of the City's water supply comes from its local groundwater resources. The proposed Project would result in development of new residential and commercial uses on property that is primarily undeveloped. The infrastructure to convey water to the Project site is in place, and no expansion or rehabilitation is anticipated to be necessary in order to supply water to the Project. The proposed Project would result in an increase in water demand of approximately 5.33 million gallons per year. The City's water supply sources are adequate to meet the projected ultimate demands for the City's service area, and the additional water demand resulting from the proposed Project will not result in the need for new water supplies. Nonetheless, mitigation is proposed to ensure that water delivery systems are sufficient. With mitigation, the Project will not have a significant impact on water supply or the City's ability to provide water to the community.

6. Wastewater. The Project will generate approximately 4.63 million gallons of wastewater per year. The infrastructure needed to transport and treat sewage is in place and is not anticipated to require expansion or rehabilitation because of the Project. Nevertheless, the Applicant shall conduct a flow study and pay its fair share of any cost to upgrade capacity to meet Project demand. Therefore, the Project's impact on wastewater will be less than significant.

7. Solid Waste Disposal. The Project will increase the amount of solid waste generated by the site. The Project is anticipated to generate approximately 265 pounds of solid waste per day (101 tons per year). However, compared to the thousands of tons of remaining capacity in the landfills serving the City, there is sufficient capacity to serve the proposed Project's solid waste generation. The increased solid waste generation attributable to the Project will not significantly affect the estimated life of the landfills. Therefore, the Project's impact on solid waste services will be less than significant.

8. Electricity and Natural Gas. The Project's projected demand would not exceed the capacity of either the electrical or natural gas utility to serve the Project.

4.10 Growth Inducing Impacts. The Project would bring growth to the area through provision of new housing and commercial opportunities. However, given the small size of the commercial area and limited number of residential units in the context of the urbanized area in which the Project is located, the Project does not have the potential to induce further significant growth.

4.11 Irreversible Adverse Environmental Impacts. Construction and operation of the Project would rely on the use of nonrenewable resources. Nonetheless, the amount of resources consumed would not be of an extraordinary nature, particularly in the context of the region in which the Project is located.

Article V. Project Alternatives

The EIR analyzed the following alternatives to the Project:

Alternative 1: No Project, No Development

Alternative 2: No Project, Code-Conforming

Alternative 3: Alternate Land Use

Alternative 4: Alternate Access

Alternate 5: Reduced Project

The alternatives evaluated constitute a reasonable range of alternatives that have the potential to avoid or substantially lessen one or more of the significant effects of the proposed Project.

As discussed below, the alternatives identified in the EIR either would not sufficiently achieve the basic objectives of the Project or would do so only with unacceptable adverse environmental

impacts. For the reasons discussed below, the City Council finds that specific economic, social, or other considerations make infeasible each of the Project alternatives identified in the EIR and each is hereby rejected. The City Council further finds that a good faith effort was made to incorporate alternatives into the preparation of the EIR, and that a reasonable range of alternatives were considered in the review process of the EIR and the ultimate decision on the Project.

The EIR analyzed a total of five (5) alternatives to the proposed Project.

A. Alternative 1: No Project, No Development

Under the No Project Alternative the Project would not be constructed and the site would remain vacant and unutilized. The No Project Alternative would avoid all impacts associated with the Project but would not meet any of the objectives of the Project for development of the site. This alternative is rejected for failing to meet the Project objectives and because it is socially infeasible due to the fact that it conflicts with the City's housing goals which call for development of "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 such as ...[the] South side of Wilshire Blvd., east of Beverly Dr." and the study of the "feasibility of allowing mixed commercial/residential uses to expand the variety of housing types available and, in certain areas, to improve commercial/residential transitions." This alternative is also legally infeasible as it would require the City to prohibit any development on this property, which would result in a taking of the property.

B. Alternative 2: No Project, Code-Conforming

Under Alternative 2, the Project site would be developed with a project that conforms to the existing Zoning Code. The alternative would consist of a 45-foot tall, three-story building with 82,000 square feet of commercial office space and 249 parking spaces. This alternative would have reduced height and floor area. However, based on the analysis in the EIR, this alternative would have comparable land use, aesthetic, air quality, noise, geology, seismicity, and hydrology impacts. Traffic impacts, however, would be greater during the peak hours likely leading to significant and unavoidable traffic impacts on residential streets adjacent to the project.

Although this alternative would reduce height and floor area, it would not be environmentally superior to the Project because it would have greater traffic impacts on residential streets. Increasing traffic through residential neighborhoods is also an unacceptable social impact and makes this Alternative socially infeasible. Finally, this Alternative would not fulfill the project objectives and General Plan goals of encouraging mixed use housing and expanding the variety of housing types available in the City. For this reason also, the alternative is socially infeasible.

C. Alternative 3: Alternate Land Use

Alternative 3 is similar to the Project except that it provides all restaurant uses in the 14,000 square foot commercial component, rather than a mixture of restaurant and retail as proposed by the Project. Based on the analysis in the EIR, this alternative would have comparable land use, aesthetic, air quality, noise, geology, seismicity, and hydrology impacts. Traffic impacts,

however, would be greater throughout the day, on Sundays and during the peak hours, leading to significant and unavoidable traffic impacts on residential streets adjacent to the project. Alternative 3 would result in significant unavoidable impacts to two residential street segments for which there is no feasible mitigation.

Although this alternative would achieve the Project's primary objectives, it would result in more traffic in the adjacent residential neighborhood than the Proposed Project and would result in significant unavoidable impacts to adjacent residential streets. Alternative 3 is not environmentally superior to the Project. Additionally, the creation of significant traffic impacts on residential streets is a socially unacceptable impact and therefore this Alternative is infeasible for social reasons.

D. Alternative 4: Alternate Access

Alternative 4 would be equivalent to Alternative 3 except that all access would be provided from Palm Drive in order to avoid traffic conflicts with the Lexus dealership and service entrance across Maple Drive from the Project. Based on the analysis in the EIR, this alternative would have comparable land use, aesthetic, air quality, noise, geology, seismicity, and hydrology impacts. Traffic impacts, however, would be greater throughout the day, on Sundays and during the peak hours, leading to significant and unavoidable traffic impacts on residential streets adjacent to the project. Alternative 4 would result in significant unavoidable impacts to residential street segments for which there is no feasible mitigation.

Although this alternative would achieve the Project's primary objectives, it would result in more traffic in the adjacent residential neighborhood than the Proposed Project and would result in significant unavoidable impacts to adjacent residential streets. Alternative 4 is not environmentally superior to the Project. Additionally, the creation of significant traffic impacts on residential streets is a socially unacceptable impact and therefore this Alternative is infeasible for social reasons. Furthermore, even if Alternative 4 contained the same uses as the proposed Project, didn't generate additional traffic, but merely distributed a greater share of traffic to Palm Drive, the City Council finds that Alternative 4 would be socially infeasible because it would disproportionately affect residents on Palm Drive rather than spread traffic more evenly on the residential streets surrounding the Project.

E. Alternative 5: Reduced Project

The Reduced Project Alternative is identical to the Project but reduces the commercial component to approximately 11,000 square feet and reduces the number of condominiums from 54 to 43. The reduced scale of Alternative 5 would result in incrementally less impacts than the Project in the areas of traffic, noise and air quality. Although this alternative would reduce impacts in several areas, those impacts were already less than significant. Therefore, the environmental benefits of this alternative are very minor. In contrast, the social consequences of this alternative are more substantial. The alternative will be less effective in implementing the General Plan goal to produce mixed use housing. In addition, this alternative will be less effective in helping the City meet its Regional Housing Needs Assessments goals. The City Council finds that the provision of housing and the expansion of different types of housing are important general plan goals and that it would be socially unacceptable to reduce the Project's

effectiveness in achieving these goals in order to realize small environmental benefits in impact areas where no significant environmental impact will occur. For this reason, this alternative is socially unacceptable.

The City Council has carefully considered the attributes and environmental impacts of all of the alternatives analyzed in the EIR and has compared them with those of the proposed Project. The City Council finds that each of the alternatives is infeasible for any one of the various environmental, social and other reasons set forth above for each alternative.

EXHIBIT B

"Mitigation Monitoring Plan"

9200 Wilshire Boulevard Mixed Use Project
Mitigation Monitoring Program

Completed	Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
	Aesthetics			
☐	**Measure 3B.1:** During construction, a security fence, the height of which shall be determined by the City of Beverly Hills, shall be maintained around the perimeter of the site. The construction site shall be kept clear of trash, weeds, etc.	Department of Community Development	The Construction Management Plan cited in Measure 3C.1 shall include and address Measure 3B.1.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.
☐	**Measure 3B.2:** All exterior lighting shall be limited to ground level and the third floor private courtyard to accent project landscaping areas. Minimal security lighting shall be located on the south façade and in the courtyard of the building limited to project entrances, landscaping and loading areas. All lighting shall be shielded to prevent "spillover."	Department of Community Development	Measure 3B.2 shall be addressed in the plans submitted for plan check in the Department of Community Development. No building permits shall be issued in violation of this measure.	This measure shall remain in effect throughout the life of the project.
	Traffic, Circulation, and Parking			
☐	**Measure 3C.1:** The project applicant shall develop and submit for approval by the City a Construction Staging and Traffic Management Plan that shall include the following:	Department of Community Development Public Works Department, Engineering Division	A Construction Management Plan shall be filed with the Department of Community Development. Such Construction Management Plan shall address for construction staging and construction traffic and be reviewed by the Department of Community Development and City's Engineering Division prior to issuance of grading permits. All mitigation measures will be enforced by the City's Plan Check Engineers, Inspectors, and Code Enforcement Officers.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.
	Haul Truck Routes, Queue Areas, and Deliveries. The designated truck route for the site shall be Wilshire Boulevard for trucks coming from the east or the west. The primary entry point to the site shall be off of Palm Drive at the southeast corner of the site. Trucks will access this entry point on Palm Drive from the north to and from Wilshire Boulevard. No construction traffic shall be permitted to utilize Palm Drive or Maple Drive. Flag men shall be provided to control trucks access to the site to minimize traffic delays and enhance safety.			

9200 Wilshire Boulevard Mixed Use Project
Mitigation Monitoring Program

Completed	Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
	Construction Transportation/Circulation. General site access and egress shall be located on Palm and Maple Drive. There shall be no site access/egress points on Wilshire Boulevard. Flag men will be provided as necessary to minimize delays.			
	Traffic, Circulation, and Parking (continued)			
	Pedestrian Safety. The contractor shall install a construction fence around the site perimeter, complying with City requirements, before excavation begins. The contractor shall be required to maintain a minimum sidewalk width of five feet on Wilshire Boulevard during the construction period. The contractor shall also erect protective sidewalk canopies on Palm Drive, Maple Drive and Wilshire Boulevard to enhance pedestrian safety along the construction site. A flag man shall be provided whenever trucks entering or leaving the project site may impede the flow of pedestrian or automotive traffic.	See previous page.	See previous page.	
	Parking. Worker parking shall be provided in an off-site parking lot, nearby, and workers will be shuttled to and from the site. The shuttle shall load and un-load near the main gate, which would be on Palm Drive near the southeast corner of the site. The shuttle shall run during the morning starting time and afternoon quitting time. Occasionally, additional trips may be operated between he construction site and parking lot. These trips are expected to have negligible effect to the surrounding street systems within the study area.			
☐	**Measure 3C.3:** A loading dock management plan shall be developed to ensure that loading dock deliveries to the project site are not made from the curb.	Department of Community Development	The Loading Management Plan shall be filed with the Department of Community Development for review and approval. The approved Plan shall be maintained on file in the Department. Any violations will be addressed by the City's Community Preservation Program.	The Loading Management plan is effective immediately upon issuance of certificate of occupancy for the project. The plan shall remain effective throughout the life of the project

Completed	9200 Wilshire Boulevard Mixed Use Project Mitigation Monitoring Program			
	Mitigation Measures	**Responsible Agency**	**Monitoring Procedure and Reporting Mechanism**	**Implementation Schedule**
	Geology and Soils			
☐	**Measure 3F.1:** Design and construction of proposed structures should be in conformance with current building codes and engineering practices.	See following page.	See following page.	See following page.
	Geology and Soils (continued)			
☐	**Measure 3F.2:** Where the planned depth of excavation does not extend below the existing fill soils, the existing fill soils shall be removed and recompacted in accordance with the requirements of the appropriate governmental agencies.	Department of Community Development	The construction plans filed with the Building & Safety division shall comply with all mitigation measures. City Plan Check Engineers will review such plans to ensure compliance with all mitigation measures. City inspectors will ensure that all temporary and permanent structures are in compliance with all measures. The Construction Management Plan cited with Measure 3C.1 will address Measures 3F.1 through 3F.13.	All measures shall be in effect until the issuance of the Certificate of Occupancy. Measure 3F.1, which addresses the design of the permanent structures, shall remain in effect throughout the life of the project.
☐	**Measure 3F.3:** A temporary shoring system with lagging shall be required during project excavation.			
☐	**Measure 3F.4:** Temporary and permanent retaining walls shall be designed for the recommended lateral earth pressures and shall be provided with a good drainage system.			
☐	**Measure 3F.5:** A registered geotechnical engineer or his representative shall be present on-site to observe grading operations and foundation excavations.			
☐	**Measure 3F.6:** On-site grading shall be performed in such a manner that alteration of stormwater runoff or erosion of graded areas will not occur. All areas of construction shall be fine-graded to direct water away from foundation and basement areas and direct water to the nearest available storm drain or to the street. Runoff at the project site shall not be allowed to flow in an uncontrolled manner, especially over any permanent or temporary slopes.			

Completed	Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
☐	**Measure 3F.7:** Where there is sufficient space for sloped excavations, temporary cut slopes may be made at 1.5:1 or 1:1 (horizontal to vertical) gradient with the 1.5:1 slope made adjacent to existing structures. However, the stability of the graded slopes shall be addressed when grading plans are completed for the proposed development. Excavation sup to four feet in height may be cut vertically.			
	Geology and Soils (continued)			
☐	**Measure 3F.8:** If temporary excavation slopes are to be maintained during the rainy season, all drainage shall be directed away from the top of the slope. No water shall be allowed to flow uncontrolled over the face of any temporary or permanent slope.	See previous page.	See previous page.	See previous page.
☐	**Measure 3F.9:** Water shall not be allowed to pond at the top of the excavation or allowed to flow into the excavation.			
☐	**Measure 3F.10:** Where sufficient space for sloped excavations is not available, shoring shall be used. The shoring system may consist of soldier piles and lagging.			
☐	**Measure 3F.11:** Final shoring plans, specifications, and designs for walls below grade shall be reviewed and approved by a geotechnical engineer.			
☐	**Measure 3F.12:** A drainage system shall be placed at the bases of building walls below grade.			
☐	**Measure 3F-13:** Prior to the issuance of a grading permit by the City, the applicant shall have an approved Water Quality Management Plan (WQMP). The WQMP shall identify the site design, source control and treatment control BMPs that will be implemented on the site to control predictable pollutant runoff.			
	Hydrology and Water Quality			

9200 Wilshire Boulevard Mixed Use Project
Mitigation Monitoring Program

Completed	Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
☐	**Measure 3G.1:** Prior to submission of project plans for approval, the applicant shall prepare a drainage plan for submittal to the City. The drainage plan shall identify storm water runoff volumes for the entire site and shall identify the capacity of local storm sewers. The drainage plan shall provide the necessary detention and conveyance infrastructure to ensure that the existing storm sewer capacity would not be exceeded during a design flood.	Department of Public Works, Engineering Division Department of Community Development	Pursuant to Section 9-4-506 of the Beverly Hills Municipal Code, the project is required to have an Urban Runoff Mitigation Plan filed with the Department of Public Works. Such Plan shall include and address Measures 3G.1 and 3G.2.	No grading or construction permits shall be issued prior to the approval of the Urban Runoff Mitigation Plan by the Department of Public Works.
	Hydrology and Water Quality (continued)			
☐	**Measure 3G.2:** Prior to the issuance of a grading permit by the City, the applicant shall have an approved Water Quality Management Plan. The WQMP shall identify the site design, source control and treatment control BMPs that will be implemented on the site to control predictable pollutant runoff.	See previous page.	See previous page.	See previous page.
	Hazards and Hazardous Materials			
☐	**Measure 3H.1:** A Phase II soil investigation shall be conducted by a qualified geologist in soil areas near the former UST and automotive repair facilities to determine whether contaminates remain in the soils. If contaminates are identified at hazardous levels, affected soils will be removed and disposed of in accordance with applicable hazardous materials handling, transportation, and disposal regulations.	Department of Community Development Fire Department	A Phase II soil investigation shall be submitted to the Department of Community Development. If the investigation reveals contamination and the need for remediation, all remediation shall be conducted accordance with the recommendations of the investigation, the requirements of the County of Los Angeles (as administered by the Fire Department), the requirements of the Los Angeles Regional Water Quality Control	No grading permits shall be issued prior to the submittal of the Phase II soil investigation other than those that might be necessary to conduct the investigation. In the event that soil remediation is deemed necessary, no grading permits
☐	**Measure 3H.2:** If contained soils are detected during in site excavation, the RWQCB and DTSC will be notified and a quality geologist will be retained to assess contamination and determine a course of action in coordination with RWQCB and DTSC.			

Completed	Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
☐	**Measure 3H.3:** While no UST was detected by magnetic investigation, there is a remote possibility that a tank may have been missed and may still exist. Prior to the start of construction, the applicant shall undertake another search for an underground tank. If a tank is found it shall be removed in accordance with local regulations.		Board, and the California Department of Toxic Substances Control.	shall be issued other than those necessary for the removal of USTs and soil remediation until the remediation has been completed. Measures 3H.1, 3H.2, and 3H.3 remain in effect until all grading is completed.
	Public Services & Utilities.			
☐	**Measure 3I.1:** The applicant shall undertake a flow monitoring study to assess the capacity of the local pipes to accommodate water demand. If insufficient capacity is available, the applicant shall pay their fair share as reasonably determined by the city to correct this deficiency.	Department of Public Works Department of Community Development	All flow studies shall be conducted as directed by the Department of Public Works.	Permits to commence construction shall not be issued unless approval is received from the Department of Public Works.
☐	**Measure 3I.2:** The applicant shall undertake a flow monitoring study to assess the capacity of the local sewers to accommodate project flow. If insufficient capacity is available, the applicant shall pay their fair share as reasonably determined by the city to correct this deficiency.			

ATTACHMENT 6

Letters from the Public:
Slocums
Frances Schloss

9200 Wilshire Boulevard
City Council Meeting
September 17, 2007

Vince-fyi
cc, RW, KL

MR. AND MRS. JERRY SLOCUM
257 SOUTH PALM DRIVE
BEVERLY HILLS, CALIFORNIA 90212

RECEIVED
CITY OF BEVERLY HILLS
2007 SEP -6 AM 7:55
CITY CLERK'S OFFICE

9200 Wilshire Blvd

Proposal of 9200 Wilshire LLC & Legacy Partners 248 LLC

We oppose the project as proposed.

We live a block south, in the 200 block of Palm Drive.

The constant traffic and noise and air pollution would destroy the quality of life of this single family residential neighborhood.

Mr. and Mrs. Jerry Slocum

Vince-file
cc, RW, KL

FRANCES M. SHLOSS

ARCHITECT A.I.A.

124-A SOUTH MAPLE DRIVE
BEVERLY HILLS, CA 90212
(310) 276-3345

RECEIVED
CITY OF BEVERLY HILLS

2007 SEP -6 AM 8:02

CITY CLERK'S OFFICE

RECEIVED
CITY OF BEVERLY HILLS

SEP 11 2007

PLANNING & COMMUNITY
DEVELOPMENT DEPARTMENT

City Council
c/o City Clerk
455 N. Rexford Drive
Beverly Hills, CA 90212

Re: Legacy Partners
9200 Wilshire Blvd.

Notice of the Sept. 4th meeting just reached me in Iowa, having been forwarded from Beverly Hills. I am sorry I can not attend the meeting but just want to restate my objections to the project, which you have heard me say in previous meetings.

My main objection is the 70 foot height. I think the building should be reduced by one story. I also am upset by the fact that in order to make the Wilshire facade more acceptable by stepping part of the building back thereby leaving a rear set back, I believe, less than two feet, I think it is too close to the apartments toward the south.

Over all, I think the project is too big for the site.

Thank you for listening to my concerns.

Sincerely,

Frances M. Shloss

Frances M. Shloss

September 1, 2007

Box 103
Okoboji, Iowa 51355