AGENDA REPORT

Meeting Date: October 16, 2007

Item Number: D-1

To: Honorable Mayor & City Council

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

Donna Jerex, Senior Planner

Subject: RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR A PROPOSED MIXED USE PROJECT GENERALLY LOCATED AT 8600 WILSHIRE BOULEVARD; MAKING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND ADOPTING A MITIGATION MONITORING PROGRAM.

RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS AMENDING THE BEVERLY HILLS GENERAL PLAN TO ACCOMMODATE MIXED USE DEVELOPMENT AT THE HEIGHT AND DENSITY PROPOSED FOR THE REAL PROPERTY LOCATED AT 8600 WILSHIRE BOULEVARD.

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 8600 WILSHIRE BOULEVARD. For Introduction.

AN APPLICATION FOR A PLANNED DEVELOPMENT APPROVAL AND VESTING TENTATIVE TRACT MAP FOR A MIXED USE PROJECT AT 8600 WILSHIRE BOULEVARD.

AN ORDINANCE OF THE CITY OF BEVERLY HILLS APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND WILSHIRE COLONIAL PARTNERS, LLC FOR CONSTRUCTION OF A MIXED USE PROJECT AT 8600 WILSHIRE BOULEVARD. For Introduction.

Attachments:
1. Ordinance Establishing Mixed-Use Overlay Zone
2. Ordinance Approving the Development Agreement.

RECOMMENDATION

Staff recommends that the City Council:

1. Introduce for First Reading an Ordinance Establishing a Mixed-Use Planned Development Overlay Zone And Regulations Pertaining Thereto.

2. Introduce for First Reading an Ordinance Approving a Development Agreement Between the City Of Beverly Hills and the Project Applicant for Development of a Mixed-Use Project.

INTRODUCTION

At its October 2, 2007 City Council meeting, the Council directed staff to prepare the above-listed documents to approve a 26-unit mixed-use development with 6,383 square foot of ground floor retail space and 9 parking spaces above the Code's requirements and return for review and approval and potentially first reading at the October 16, 2007 meeting .

Staff recommends that the City Council introduce for first reading the ordinance establishing the mixes-use overlay zone and the ordinance adopting the development agreement. If the documents meet with the City Council's approval, second reading on the Ordinances would occur on November 13, 2007. At that time, Staff would also bring for adoption the resolutions certifying the environmental impact report, adopting the general plan amendment and approving the planned development and vesting tentative map.

Vincent P. Bertoni, AICP
Director of Community Development

Fal VB.
Approved By

Attachment 1

Ordinance Establishing Mixed-Use Overlay Zone

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 8600 WILSHIRE BOULEVARD

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

Section 1. Article 19.8 is hereby added to Chapter 3, Title 10 of the Beverly Hills Municipal Code to read as follows:

"**Article 19.8**
Mixed-Use Planned Development Overlay Zone (M-PD-3)

10-3.1980. M-PD-3 Zone created.
10-3.1980.01 Application of M-PD-3 Zone.
10-3.1980.02 Objectives of the M-PD-3 Zone.
10-3.1980.03 Definitions.
10-3.1980.04 Uses permitted.
10-3.1980.05 Restrictions.
10-3.1980.06 Applicability of underlying zone regulations.
10-3.1980.07 Height limitations.
10-3.1980.08 Density.
10-3.1980.09 Parking, access & circulation.
10-3.1980.10 Setbacks.
10-3.1980.11 Loading and ancillary facilities.
10-3.1980.12 Outdoor living space required.
10-3.1980.13 Rooftop uses.
10-3.1980.14 Compatibility standards.
10-3.1980.15 Application of transitional operational standards.

10-3.1980. M-PD-3 Zone created.

There is hereby created an overlay zone designated as the Mixed-Use Planned Development Overlay Zone (M-PD-3).

10-3.1980.01. Application of M-PD-3 Zone.

The M-PD-3 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 located on the southwest corner of Wilshire Boulevard and Stanley Drive, bounded by Wilshire Boulevard on the north, Stanley Drive on the east, Charleville Boulevard on the South.

10-3.1980.02. Objectives of the M-PD-3 Zone.

The objectives of the M-PD-3 Zone shall be as follows:

(A) To ensure that mixed-use development in the M-PD-3 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 Stanley Drive between Wilshire Boulevard and Charleville Boulevard, and along Charleville Boulevard between Stanley Drive and Carson Road.

(D) To ensure that mixed-use development in the M-PD-3 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-3 Zone to ensure unified development in the overlay zone.

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

10-3.1980.03. 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.

10-3.1980.04. Uses permitted.

No lot, premises, building or portion thereof in the M-PD-3 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.

10-3.1980.05. Restrictions.

The following restrictions shall apply to mixed-use developments in the M-PD-3 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) 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.

(E) 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.

(F) Notwithstanding any other provision of this Title, the Planning Commission may permit the combination of residential uses and residential and commercial parking facilities on a lot in either the R-1 or C-3 Zone in conjunction with the approval of a mixed-use development through a planned development permit pursuant to Article 18.4 of this Chapter.

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

10-3.1980.06. Applicability of underlying zone regulations.

Except as otherwise specifically provided in this Article for mixed-use developments, development in an M-PD-3 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-3 overlay zone if the development fully conforms to the requirements of the underlying zone.

10-3.1980.07. Height limitations.

No mixed-use development shall be constructed, altered, or enlarged in the M-PD-3 zone except in accordance with the following height restrictions:

(A) Commercial Component. No building, structure, improvement, or any part thereof, erected constructed or maintain as part of the commercial component of a mixed-use development in the M-PD-3 Zone shall not exceed sixty-one feet (61') in height, measured as set forth in this Chapter, or five (5) stories, whichever is less.

(B) Residential Component. No building, structure, improvement, or any part thereof, erected constructed or maintain on any part of the project in the R-1 Underlay Zone shall exceed thirty three feet (33') in height, with a pitched roof, measured as set forth in this Chapter, or three (3) stories, whichever is less.

(C) Unoccupied Architectural Features. Notwithstanding any other provision of this Code, unoccupied architectural features in portions of the project subject to the C-3 underlying Zone such as skylights and clerestories may exceed the height limits established by 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 thirty-three percent (33%) of the 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 degrees (45°) from the horizontal.

10-3.1980.08. Density.

(A) Maximum Floor Area Ratio. Notwithstanding any other provision of this Code, a mixed-use development in the M-PD-3 Zone, including all components, shall have a maximum aggregate floor area ratio no greater than 2.0:1. Above-grade parking facilities shall not be considered when calculating the floor area ratio of a mixed-use development pursuant to this Section, provided the parking complies with the requirements of Section 10-3.1980.09(C) of this Article.

(B) Maximum Commercial Floor Area. The maximum permitted floor area devoted to commercial uses in the M-PD-3 Zone shall be six thousand, three hundred and sixty-three (6,383) square feet.

(C) Maximum Number of Residential Units. The number of residential units that may be included in a mixed-use development in the M-PD-3 Zone shall not exceed three dwelling units in an area with an underlying zone of R-1, and twenty-one (21) dwelling units in an area with an underlying zone of C-3. Notwithstanding, in the area with an underlying zone of C-3, a project may incorporate two additional residential units, if those residential units are deed restricted units available for moderate income households for the longest term feasible, with a minimum size of 750 square feet per affordable unit, for a total number of 23 units in 33,230 square feet of area in the underlying zone of C-3.

10-3.1980.09. Parking, Access & Circulation.

Notwithstanding any other provision of this Code, parking for mixed-use developments located in the M-PD-3 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 permit, as part of a Planned Development, access between parking facilities for the commercial and residential components if it finds that such access would advance the objectives of the M-PD-3 Zone as set forth in Section 10-3.1980.02 of this Article.

(B) Parking for all uses in a mixed use development shall be provided in accordance with the applicable provisions of this Chapter, unless otherwise modified by the Planning Commission through a Planned Development.

(C) 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 through a Planned Development.

(D) The parking component of a mixed-use development in the M-PD-3 Zone shall be as approved as part of a Planned Development.

10-3.1980.10. Setbacks.

Mixed-use developments in the M-PD-3 Zone shall maintain the following setbacks:

(A) Wilshire Boulevard (front) setback. No minimum setback shall be required from the property line along the Wilshire Boulevard frontage of the commercial component of a mixed-use development in the M-PD-3 Zone. Any encroachment into the public right-of-way for planters or architectural features shall require approval from the City Council.

(B) Stanley Drive (street side) setback. A minimum setback of nine feet, eleven and 7/8 inches (9' 11-7/8") shall be required from the street side property line along the Stanley Drive frontage of the residential (R-1 underlay zone) component of a mixed-use development in the M-PD-3 Zone, and there shall be no minimum setback required along the Stanley Drive frontage of the commercial component of the mixed use development.

(C) Charleville Boulevard (street side) setback. A minimum setback of eleven feet five and 1/4 inches (11' 5-1/4") shall be required from the street side property line along the Charleville Boulevard frontage of a mixed-use development in the M-PD-3 Zone.

(D) Side setback fronting Charleville. The side setback for any residential uses fronting Charleville adjacent to R-1 property to the west shall be a minimum of 30'-3 inches from the western property line.

10-3.1980.11. Loading Facilities.

Except as otherwise provided in this Section, loading facilities for mixed-use developments in the M-PD-3 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.

10-3.1980.12. Outdoor living space required.

The residential components of all mixed-use developments in the M-PD-3 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.

10-3.1980.13. Rooftop Uses.

Roof top uses shall be prohibited.

10-3.1980.14. Compatibility Standards.

The following design standards shall be incorporated into all mixed-use developments in the M-PD-3 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.

10-3.1980.15. 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. The proposed 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 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. _____, including adopting a Mitigation Monitoring Program, and those findings are 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-3) to the property known as 8600 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-3) 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 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:

ROXANNE M. DIAZ
Chief Assistant City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager

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

EXHIBIT A

[Legal Description]

Attachment 2

Ordinance Approving the Development Agreement

ORDINANCE NO. 07-O-_____

AN ORDINANCE OF THE CITY OF BEVERLY HILLS APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND WILSHIRE COLONIAL PARTNERS, LLC, FOR CONSTRUCTION OF A MIXED-USE PROJECT AT 8600 WILSHIRE BOULEVARD

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

Section 1. The City of Beverly Hills ("City") and Wilshire Colonial Partners, 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 6,383 square feet of ground floor retail/commercial space and a maximum of 26 residential condominium units, two of which will be affordable, at property located at 8600 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-_____, adopted by the City Council on November 13, 2007. That Resolution is incorporated herein by reference, and made a part hereof as if fully set forth herein.

Section 3. On March 8, 2007, the Planning Commission conducted a duly noticed public hearing to consider the Development Agreement and the Project. Notices of the time, place and purpose of public hearing were duly provided in accordance with California Government Code Sections 65867, 65090 and 65091.

Section 4. On June 19, 2007, July 24, 2007, October 2, 2007 and October 16, 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:

ROXANNE M. DIAZ
Chief Assistant City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager

For V.B.
VINCENT P. BERTONI, AICP
Director of Community Development

EXHIBIT A

DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY:
CITY OF BEVERLY HILLS

AND WHEN RECORDED MAIL TO:

City of Beverly Hills
Attention: City Attorney's Office
455 North Rexford Drive, Room 220
Beverly Hills, CA 90210

DEVELOPMENT AGREEMENT

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 Wilshire Colonial Partners, LLC, a California Limited Liability Company (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; and

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

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; and

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, planned development, zone change and vesting tentative tract map; and (ii) application for a development agreement for the Project under the Development Agreement Act; and

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

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

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; and

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; and

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, including two affordable units for Moderate Income Households, the development of a mixed-use project on four lots, three of which are vacant, and a monetary contribution to the City; and

J. On March 8, 2007, pursuant to the requirements of the Development Agreement Act, the Planning Commission of the City of Beverly Hills conducted a hearing on the Developer's application for this Agreement; and

K. On June 19, 2007, July 24, 2007, October 2, 2007 and October 16, 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 November 13, 2007, the City Council adopted Ordinance No. _____ approving this Agreement, and such ordinance became effective on _____, 2007;

N. By Resolution No. _____, adopted by the City Council on November 13, 2007, the City Council reviewed and certified, after making appropriate findings, a Final Environmental Impact Report for the Project dated April 2006, including the Supplement to the EIR dated June 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) "Affordable Housing Agreement" means an agreement between Developer and City for the provision of two Designated Units in the form attached hereto as Exhibit B, incorporated herein by this reference.

(b) "Affordable Housing Cost" means a housing cost which is calculated pursuant to California Health and Safety Code Section 50052.5, as amended from time to time, and the regulations adopted by the California Department of Housing and Community Development pursuant to Section 50052.5, as such regulations may be amended from time to time.

(c) "Affordable Sales Price" " means a price that does not exceed an amount such that the Qualified Purchaser's aggregate monthly payment for Housing Costs does not exceed the Affordable Housing Cost.

means a sale price such that the Total Housing Costs paid by an Eligible Household does not exceed the Affordable Housing Cost.

(d) "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.

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

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

(g) "Designated Units" shall mean a dwelling unit that will be offered for sale exclusively to an Qualified Purchaser at an Affordable Sales price pursuant to the Affordable Housing Agreement.

(h) "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.

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

(j) "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.

(k) "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.

(l) "Effective Date of this Agreement" shall mean the date this Agreement is fully executed by the Parties, provided the ordinance adopting this Agreement is in effect, fully executed, and is recorded in the official records of the Los Angeles County Recorder.

(m) "EIR" shall mean the final Environmental Impact Report (State Clearing House No. 2005101081), which was prepared, circulated and certified in accordance with applicable law, including, without limitation, CEQA, including the Supplement to the Environmental Impact Report dated June 2007. "EIR Mitigation Measures" shall mean the mitigation measures imposed upon the Project pursuant to the EIR and the Conditions of Approval.

(n) "Environmental Mitigation and Sustainability Fee" shall mean the fee defined in Section 10(g) and, in addition to the amount set forth in Section 10(g), 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.

(o) "Excess Parking Spaces" shall mean the nine (9) spaces to be granted to the City for its own exclusive use or that of its tenants, invitees and/or general public ("designees") as set forth in this Agreement and the easement set forth in Exhibit C.

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

(q) "Housing Cost" shall have the meaning ascribed in Section 6920 of Title 25 of the California Code of Regulations, as such regulation may be amended from time to time.

(r) "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.

(s) "Moderate Income Households" means households whose income is between eighty percent (80%) and one hundred twenty percent (120%) of the area median income, adjusted for family size, as determined by regulations adopted by the California Department of Housing and Community Development pursuant to Health and Safety Code Sections 50052.5 and 50093, as such statutes and regulations may be amended from time to time.

(t) "Processing Fees" means all processing fees and charges required by the City and applied uniformly to all construction or development related activity including, but not limited to, fees for land use applications, building permit applications, building permits, grading permits, 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.

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

(v) "Project Approvals" shall include, collectively, a General Plan Amendment, Zoning Code Amendment, Planned Development Permit, Vesting Tentative Tract Map ("Tract Map"), architectural review and encroachment permit(s), approved by the City with respect to the Project, including the CEQA actions and all conditions of approval, and shall include any Subsequent Project Approvals (as hereinafter defined).

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

(x) "Qualified Purchaser" means an individual whose household is a Moderate Income Household.

(y) "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 of this Agreement.

(z) "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.

(aa) "Subsequent Land Use Regulations" means any change in or addition to the Applicable Rules adopted after the Effective Date of the 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.

(bb) "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.

(cc) "Total Housing Costs" means the total monthly or annual recurring expenses required of a household to obtain shelter, and includes the mortgage payment (principal and interest, based on a thirty year term), parking amenities such as a garage or carport, utilities, homeowner's association dues, taxes, mortgage insurance and any other related assessments as further defined in Title 25 of the California Code of Regulations Section 6920

(dd) "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 and the EIR subject to the Applicable Rules, the Project Approvals, and 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 Effective Date of this Agreement, 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 vesting 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, the obligation to provide two Designated Units and the obligation to provide Excess Parking Spaces shall continue indefinitely as provided for in this Agreement.

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 or Subsequent Project Approvals. The Developer shall not cause or permit any use of the Property that is not permitted by the Project Approvals, and shall not cause or permit the construction of any building or improvement that exceeds the maximum density, building heights, and/or building sizes, set forth in or otherwise required by the Project Approvals and 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 and/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 California Building Code and other similar or related uniform codes.

(c) Changes Mandated by Federal or State Laws or Regulations. Changes in, or additions to, the Applicable Rules adopted or made operative on or after the Effective Date of this Agreement shall apply to the Project, if such changes or additions are specifically mandated to be applied to developments such as the Project, by applicable State or Federal laws or regulations. Where City or Developer believes that such a change or addition exists, that Party shall provide the other Party hereto with a copy of such State or Federal law or regulation and a statement of the nature of its conflict with the provisions of the Applicable Rules and/or of this Agreement. The City's determination 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. 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) Infrastructure Fee. Prior to the issuance of a building permit for the Project, Developer shall pay to City an infrastructure fee in the amount of Two-Hundred Six Thousand and Two Hundred and Fifty Seven Dollars ($206,257.00).

(e) Public Benefit Contribution. Prior to the issuance of a building permit for the Project, Developer shall pay to City a public benefit contribution of Nine Hundred Thousand Dollars ($900,000.00).

(f) Affordable Housing. Developer shall address affordable housing needs by constructing two (2) Designated Units within the portion of the Project located in the C-3 underlying zone, and within the 33,230 square feet otherwise approved for residential units in the C-3 Zone. The sale and resale of the Designated Units shall be limited to Moderate Income Households at a price that does not exceed the Affordable Housing Cost in accordance with the Affordable Housing Agreement. Prior to issuance of any building permit for the Project, Developer shall execute, acknowledge and deliver to the City the Affordable Housing

Agreement, in the form attached hereto as Exhibit B. This restriction shall run with the land in perpetuity or for the longest period of time permissible under law. Prior to the sale of any residential unit within the project or prior to certificate of occupancy, whichever comes first, Developer and City shall cause to be recorded the Affordable Housing Agreement, in form and content approved by the City Attorney, implementing and consistent with this Section 10(f). The regulatory agreement shall be recorded on title to the two Designated Units.

Developer hereby covenants, represents and warrants that Developer will obtain and deliver to the City a recordable subordination of any lien that is prior or superior to the Affordable Housing Agreement and will cause said lienholder(s) to subordinate its lien to the Affordable Housing Agreement prior to issuance of any building permit for the Project and at the time of recordation of the Affordable Housing Agreement. Developer shall cause a title company reasonably acceptable to the City to issue CLTA policy of title insurance (at no cost to the City) insuring that the Affordable Housing Agreement is superior to all liens and conflicting encumbrances, with a policy amount equal to the fair market value of the two Designated Units as determined in good faith by the City.

(g) Environmental Mitigation and Sustainability Fee.

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

(ii) Adjustment of EMS Fee. If, after the Effective Date of this Agreement, the City adopts or increases a real estate transfer tax or documentary transfer tax for Beverly Hills, so that the combined total of the City's taxes and the County of Los Angeles Documentary Transfer Tax exceeds the current $1.10 per $1000 of City and County documentary transfer taxes, then the EMS Fee imposed upon all subsequent Sales Transactions shall be reduced by the amount of the combined taxes that exceeds $1.10 per $1000. For example, if City adopts a real estate transfer tax of $2.20 per $1000, thus increasing the combined City and County real estate transfer taxes and documentary transfer taxes to $3.30 per $1,000 of sales price, then the EMS Fee on all subsequent Sales Transactions would be $2.30 per $1000 of sales price ($4.50-$2.20= $2.30). If the City increases the documentary transfer tax or adopts a real estate transfer tax so that the combined taxes exceed $5.60 per $1000 of sales price, then no further EMS Fee shall be due or payable.

(iii) Liens for EMS Fee Payable Upon Sale. Developer hereby grants to the City, with power of sale, a lien on the Property to secure the payment of the EMS Fee payable upon each Sales Transaction. In the event that the EMS Fee secured by such lien is not paid concurrently with and as a condition to the closing of a Sales Transaction by Developer or any successor-in-interest to Developer, then City may enforce such lien by sale by City, its attorney or any other person or entity authorized by the City Manager to conduct the sale. Any

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

(h) Excess Parking Spaces. The Project contains the Excess Parking Spaces. Prior to issuance of any building permit for the Project, Developer shall execute, acknowledge and deliver an easement to the City, in the form attached hereto as Exhibit C, granting the City an easement for the use of the Excess Parking Spaces by the City, its lessees, invitees and/or the general public (the "Easement"). The Excess Parking Spaces shall: (i) be constructed by the Developer at its sole cost; (ii) be in a location reasonably selected by the City; (iii) be clearly striped and marked for sole use by the City or its designees; (iv) be maintained in a good condition; and (v) display signs acceptable to the City to allow City or its designees the right to tow unauthorized users of said spaces. Developer shall cause any association formed that adopts covenants, conditions and restrictions ("CCR's") to maintain the parking and common areas of the commercial portion of the Project, include these provisions and that said CCR's implementing this section shall not be amended without prior notice and approval of the City.

Developer hereby covenants, represents and warrants that Developer will obtain a recordable subordination of any lien that is prior or superior to the Easement and will cause said lienholder(s) to subordinate its lien to the Easement prior to issuance of any building permit for the Project and at the time of recordation of the Easement. Developer shall cause a title company reasonably acceptable to the City to issue CLTA policy of title insurance (at no cost to the City) insuring that the Easement is not subordinate to any lien or conflicting encumbrance (however the Easement may be junior to the Affordable Housing Agreement) with a policy amount equal to the replacement cost of the Excess Parking Spaces as determined in good faith by the City.

(i) Notwithstanding 9(d) and (e), if, after the Effective Date, 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), 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 fees set forth in paragraphs (d) and (e) of this Section. The determination of

whether a Developer Fee addresses a project's impact on the City's infrastructure (such as streets, utilities, lights), or whether a Developer Fee is adopted to offset the loss of business taxes, shall be determined by the City in its sole discretion.

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

(k) Nothing in this section shall excuse the Developer from paying any increases in existing Developer Fees provided the Developer Fee was adopted prior to the Effective Date.

(l) Developer covenants and agrees that neither tenants nor other occupants of the Project shall qualify to participate in any preferential parking district that may be established by the City.

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 Sections 9 and 10 (except for the EMS fee) have been fully paid to City and Developer has fulfilled all other obligations that are required to be performed before issuance of a building permit.

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 thirty 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 thirty (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 Developer's obligations under Section 10, subsections (f), (g) (h) and (l) nor the obligation to pay any claim of any Party hereto, arising out of the provisions of this Agreement, prior to the effective date of such termination. The obligations under Section 10, subsections (f), (g) (h) and (l) and the obligations to pay any claim arising before the effective date of termination shall continue after termination in perpetuity or until completed.

14. Transfers of Interests in Property or Agreement.

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

(b) 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 a form reasonably satisfactory to the City Attorney.

(c) 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, or a combination thereof, referred to in this Section 16, regardless of whether or not City prepared, supplied, or approved plans or specifications, or both. In the event of litigation, City agrees, at no cost to City, to cooperate with Developer. This indemnification, hold harmless and defense requirement shall survive the termination or expiration of this Agreement. City reserves the right, in cases subject to this indemnity, to reasonably approve the attorney selected by Developer to defend Developer and City in any such action.

(b) In the event of any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the EIR prepared and certified for the Project,

Developer shall defend, at its own expense, the action or proceeding. In addition, Developer shall reimburse City for City's 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 the City for its costs to defend any challenge to this Agreement, the Project Approvals or the EIR, City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 12 above. In all events, City shall have the right to resolve any challenge in any manner, in its sole discretion.

(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, but shall have the right to resolve any challenge, in any manner, in its sole discretion.

(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 Sections 2, 8 and 10 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 Director of Community Development 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 Director of Community Development 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 Director of Community Development such information as the Developer deems relevant to such review. In addition, upon the written request of the Director of Community Development, the Developer shall furnish such documents or other information as requested by the Director of Community Development.

(d) Result of Review. If, following such a review, the Director of Community Development finds good faith compliance by the Developer with the terms and conditions of this Agreement, the Director of Community Development 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 Director of Community Development, finds that the Developer has not complied in good faith with the terms and conditions of this Agreement, the Director of Community Development shall specify in writing the respects in which the Developer has failed to so comply. The Director of Community Development shall provide the Developer with written notice of such noncompliance in the manner provided in Section 30, 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 Director of Community Development pursuant to this Section 23 shall be appealable to the City Council within thirty (30) days after the Developer's receipt of the Director of Community Development'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 Director of Community Development 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 Director of Community Development'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 and alls liens must be junior and subordinate to the Affordable Housing Agreement and the Easement. 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: Wilshire Colonial Partners, LLC
11601 Wilshire Boulevard, Suite 700
Los Angeles, California 90025

with copy to: Mitchell Dawson
Dawson Tilem & Gole
9454 Wilshire Boulevard, PH
Beverly Hills, California 90212
Fax: (310) 285-0807

To the City: City Manager
City of Beverly Hills
455 North Rexford Drive
Beverly Hills, California 90210

with copy to: City Attorney
City of Beverly Hills
455 North 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.

[Purposely Left Blank]

"City"
CITY OF BEVERLY HILLS, a municipal corporation

_____
JIMMY DELSHAD
Mayor of the City of Beverly Hills, California

[SIGNATURES TO BE ADDED]

"Developer"
WILSHIRE COLONIAL PARTNERS, LLC,
a California limited liability company

_____
Name:
Title:

_____
Name:
Title:

[Add Exhibits]

EXHIBIT A

Property Description

EXHIBIT B

Affordable Housing Agreement

RECORDING REQUESTED BY AND)
WHEN RECORDED MAIL TO:)
)
City of Beverly Hills)
Beverly Hills City Hall)
455 North Rexford Drive)
Beverly Hills, California 90210)
Attn: City Clerk)

This document is exempt from the payment of a recording fee pursuant to Government Code Sections 27383 and 6103

AFFORDABLE HOUSING AGREEMENT

INCLUDES LIMITATIONS ON RESALE

This Affordable Housing Agreement (the "Agreement") is entered into as of this _____ day of _____, 2007 by and between the CITY OF BEVERLY HILLS, a California municipal corporation ("City"), and WILSHIRE COLONIAL PARTNERS, LLC, a California Limited Liability Company ("Developer"), as follows:

RECITALS

A. Developer is the owner of certain real property located in the City of Beverly Hills, County of Los Angeles, State of California, commonly known as 8600 Wilshire Boulevard (the "Property"), and legally described in Exhibit "A" attached hereto and incorporated herein by reference; and

B. City and Developer entered into a Development Agreement effective as of _____ for the development of a mixed-use project with 6,383 square feet of ground-floor commercial space, 23 residential condominium units, three townhouses and parking located in a multi-level subterranean garage ("Development Agreement"). Pursuant to the Development Agreement, Developer has agreed that two of the 23 condominium units ("Designated Units"), will be sold at an Affordable Sales Price to Moderate Income Households.

C. The Development Agreement further requires the Developer to enter into this Agreement with the City to regulate the Designated Units to ensure that they remain restricted to sale at an Affordable Sales Price to Moderate Income Households in perpetuity or for as long as the law allows.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties agree as follows:

AGREEMENT

1. Recitals. The Recitals set forth above are true and accurate, and incorporated herein.

2. Definitions. All defined terms, as indicated by initial capitalization, shall have the meanings set forth in the Development Agreement, except as expressly indicated otherwise. In addition, the terms listed below shall have the meanings thereafter specified:

(a) Affordable Housing Cost means a housing cost which is calculated pursuant to California Health and Safety Code Section 50052.5, as amended from time to time, and the regulations adopted by the California Department of Housing and Community Development pursuant to Section 50052.5, as such regulations may be amended from time to time.

(b) Affordable Sales Price means a price that does not exceed an amount such that the Qualified Purchaser's aggregate monthly payment for Housing Costs does not exceed the Affordable Housing Cost. A sample calculation of the Affordable Sales Price is shown on Exhibit "C". The figures shown on Attachment No. X are for the purpose of illustrating the methodology of calculating the prices; the actual maximum Affordable Sales Prices will be determined at the time of Project completion.

(c) City's Buyer List means a list maintained by the City of Qualified Purchasers.

(c) Housing Cost shall have the meaning ascribed in Section 6920 of Title 25 of the California Code of Regulations, as such regulation may be amended from time to time.

(d) Moderate Income Household means households whose income is between eighty percent (80%) and one hundred twenty percent (120%) of the area median income, adjusted for family size, as determined by regulations adopted by the California Department of Housing and Community Development pursuant to Health and Safety Code Sections 50052.5 and 50093, as such statutes and regulations may be amended from time to time.

(c) Qualified Purchaser means an individual whose household is a Moderate Income Household.

(d) "Designated Units" means two of the dwelling units to be constructed on the Property as authorized by the Development Agreement, specifically the units designated on Exhibit "B".

(e) "Property" shall" have the meaning defined in Recital "A".

3. Provision of Affordable Units

(a) Developer hereby agrees to provide two one-bedroom units, 750 square feet in size, at the location set forth in Exhibit "B" attached hereto and incorporated herein by this reference, to be sold exclusively to Moderate Income Households at an Affordable Sales Price ("Designated Units"). The location of the Designated Units shall not be changed without the prior written approval of the Director of Community Development. The Designated Units shall be equal to the Project's residential development's base plan in terms of design, appearance, materials, finished quality and interior and exterior amenities. Completion of the construction of the Designated Units shall occur concurrently with the remainder of the proposed Project.

(b) The Designated Units are reserved for Moderate Income Households at an Affordable Sales Price. The applicable income limits and maximum Affordable Sales Price in effect as of the date of this Agreement are shown on Exhibit "C". The income limits, and therefore the maximum Affordable Sales Prices, are adjusted annually. It shall be the obligation of Developer to obtain from City the applicable income limits and maximum Affordable Sales Prices in effect at the time of initial sale of the Designated Units.

(c) The maximum number of persons that may occupy a Designated Unit shall not exceed three (3) persons.

4 Ineligible Purchasers of Designated Unit

(a) The following individuals, by virtue of their position or relationship, are ineligible to purchase a Designated Unit:

(i) All employees and officials of the City or its agencies, authorities, or commission who have, by virtue of their position, policy-making authority or influence over the implementation of the City's housing program or the City's zoning and land use decisions, as well as the immediate relatives of such employees or officials, including spouse, children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, sister in-law and brother-in-law.

(ii) The members of Developer and their owners, officers, and employees, and their immediate families, including spouse, children, parents, grandparents, brother, sister, father-in-law, mother-in-law, son-in-law, daughter-in-law, aunt, uncle, niece, nephew, sister in-law and brother-in-law.

5 Initial Sale of Designated Units.

(a) Developer agrees to sell the Designated Units solely to a Qualified Purchaser from the City's Buyer List, at not more than the applicable Affordable Sales

Price. In the event City cannot or does not refer a Qualified Purchaser from the Buyer List to Developer within the time period established for sale, each Designated Unit may be sold to a Qualified Purchaser selected by Developer who meets the income and affordability requirements provided herein, subject to the approval of the proposed Qualified Purchaser by Director of Community Development.

(b) As a condition of the close of escrow of the sale of a Designated Unit, Developer shall certify to City the income of the initial purchaser. The certification shall be on a form provided by the City. Developer may request an income certification from the proposed purchaser of the Designated Unit in one or more of the following methods:

(i) Obtain from the proposed purchaser paycheck stubs from the three (3) most recent months;

(ii) Obtain a true copy of an income tax return from the proposed occupant for the most recent tax year in which a return was filed;

(iii) Obtain an income verification certification from the employer of the proposed occupant;

(iv) Obtain an income verification certification from the Social Security Administration and/or the California Department of Social Services if the proposed buyer receives assistance from such agencies; or

(v) Obtain an alternate form of income verification acceptable to the Director of Community Development.

6 Purchaser Affordability Agreement

(a) Each Designated Unit shall be subject to the covenants, restrictions and option to purchase contained in the "Purchaser Affordability Agreement" in the form attached hereto as Exhibit "D". Provisions governing resale of a Designated Unit are set forth in the Purchaser Affordability Agreement.

(b) At the close of escrow for the sale of a Designated Unit, the Purchaser Affordability Agreement shall be recorded among the land records in the Office of the County Recorder for Los Angeles County, subordinate only to the grant deed conveying the Designated Unit to the Purchaser. A request for notice of default under any Deed of Trust, in favor of the City, shall also be recorded.

(c) Upon the recordation of a Purchaser Affordability Agreement for a Designated Unit in a position subordinate only to the grant deed conveying the Designated Unit to the Purchaser, this Agreement shall be of no further force or effect as to that Designated Unit. The parties shall execute, acknowledge and record such further documentation as is reasonably necessary to evidence the release of the Designated Unit from the provisions of this Agreement.

7. Covenants Running with the Land. It is the express intent that the Designated Units be offered for sale at an Affordable Sales Price in perpetuity or the longest period allowed by law. This covenant and restrictions set forth herein regarding the Designated Units shall be deemed covenants running with the land and shall pass to and be binding upon all parties having any interest in the Designated Units, as the case may be. Each and every contract, deed, lease or other instrument covering, conveying or otherwise transferring a Designated Unit or any interest therein, as the case may be, (a "Contract") shall conclusively be held to have been executed, delivered and accepted subject to the this restriction regardless of whether the other party or parties to such Contract have actual knowledge of this restriction.

The Developer and the City hereby declare their understanding and intent that (a) the covenants and restrictions contained in this restriction shall be construed as covenants running with the land pursuant to California Civil Code Section 1468 and not as conditions which might result in forfeiture of title by Developer; (b) the burden of the covenants and restrictions set forth in this restriction touch and concern the Designated Units in that the Developers' legal interest in the Designated Unit and all improvements thereon may be rendered less valuable thereby; and (c) the benefit of the covenants and restrictions set forth in this restriction touch and concern the land by enhancing and increasing the enjoyment and use of the Designated Units by Qualified Purchasers, the intended beneficiaries of such covenants and restrictions.

All covenants and restrictions contained herein without regard to technical classification or designation shall be binding upon Developer for the benefit of the City and Qualified Purchasers and such covenants and restrictions shall run in favor of such parties for the entire period during which such covenants and restrictions shall be in force and effect, without regard to whether the City is an owner of any land or interest therein to which such covenants and restrictions relate.

Developer shall attach a copy of this restriction to any purchase and sale contract with respect to the Designated Unit in the form approved by the City Attorney.

8. Utilization of Designated Units. All Designated Units required by this Agreement shall be sold and fully utilized in accordance with this Agreement; no Designated Unit shall be withdrawn from the market or otherwise held vacant. No Designated Unit shall be leased or rented without the written permission of City. The City shall not grant permission to lease, rent, or sublet the Designated Unit if it finds that the prospective tenant or occupant is not a Qualified Purchaser.

9. Maintenance of Units. Developer or any successors, including but not limited to any homeowners association that may be formed, shall provide the Designated Units with the same levels of services and maintenance as is provided to the other dwelling units on the Property. The Developer shall cause the convenants, conditions and restrictions governing the rsidential units at the Project provide that there shall be no discrimination in benefits and services to the Designated Units.

10. Federal and State Laws. Nothing contained herein with regard to the Designated Units shall require Developer or City to do anything contrary to or refrain from doing anything required by Federal and State laws and regulations promulgated thereunder applicable to the construction, management, maintenance and sale of the Designated Units.

11. Prohibition Against Discrimination. Developer shall not discriminate against any tenant or potential tenant on the basis of sex, color, race, religion, ancestry, national origin, age, pregnancy, marital status, family composition, sexual orientation, or the potential or actual occupancy of minor children. Developer further agrees to take affirmative action to ensure that no such person is discriminated against for any of the above-mentioned reasons.

12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of City and Developer, and their respective successors, owners and assigns. Developer shall not assign this Agreement without the prior written approval of City.

13. Attorney's Fees. In any action brought to declare the rights granted herein or to enforce or to interpret any of the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees in an amount determined by the court.

14. Entire Agreement. The text herein, consisting of _____ pages and four (4) exhibits, constitutes the entire agreement between the parties. Each party to this Agreement acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that any other agreement, statement or promise not contained in this Agreement shall not be valid or binding. This Agreement may be amended only by written instrument signed by both City and Developer.

15. Non-Waiver. Failure to exercise any right City may have or be entitled to, in the event of default hereunder shall not constitute a waiver of such right or any other right in the event of a subsequent default.

16. Indemnification. Developer shall defend, indemnify and hold harmless the City of Beverly Hills and its elected officials, officers, agents, employees, representatives, and volunteers from and against any loss, liability, claim or judgment relating in any manner to the Project, any Designated Unit, or this Agreement.

17. Default. Failure or delay by either party to perform any term or provision of this Agreement, which is not cured within thirty (30) days after receipt of notice from the other party, constitutes a default under this Agreement. The party who so fails or delays must immediately commence to cure, correct or remedy such failure or delay, and shall complete such cure, correction or remedy with due diligence. The injured party shall give written notice of default to the party in default specifying the default complained of by the injured party. Except as required to protect against further damages, the injured party may not initiate proceedings against the party in default until 30 days after giving such

notice. Failure or delay in giving such notice shall not constitute a waiver of any default, nor shall it change the time of default

18. Remedies regarding Designated Units.

(a) Any individual who sells or rents (including subleasing) a Designated Unit in violation of the provisions of this Agreement shall be required to forfeit to City all monetary amounts so obtained.

(b) City may institute any appropriate legal actions or proceedings necessary to ensure compliance with this Agreement, including but not limited to: (i) actions to revoke, deny or suspend the Project Approvals, building permit, and/or certificate of occupancy; and (ii) actions for injunctive relief or damages.

19. Further Assurances and Recordation. Developer shall execute any further documents consistent with the terms of this Agreement, including documents in recordable form and do such further acts as may be necessary, desirable or proper as City shall from time to time find necessary or appropriate to effectuate its purpose in entering this Agreement.

20. Governing Law. The laws of the State of California shall govern this Agreement. Any legal action brought under this Agreement must be instituted in the Superior Court of the County of Los Angeles, State of California, in an appropriate municipal court in that County, or in Federal District Court in the Central District of California.

21. Notices. All notices required herein shall be sent by certified mail, return receipt requested or express delivery service with a delivery receipt and shall be deemed to be effective as date received or the date delivery was refused as indicated on the return receipt, as follows:

To Developer:	Wilshire Colonial Partners, LLC 11601 Wilshire Boulevard, Suite 700 Los Angeles, California 90025
To City:	Director of Community Development City of Beverly Hills 455 North Rexford Drive Beverly Hills, California 90210
With a copy to:	City Attorney City of Beverly Hills 455 North Rexford Drive Beverly Hills, California 90210

The parties may subsequently change addresses by providing written notice of the change in address to the other parties in accordance with this Section 21.

22. City's Right to Inspect Units and Documents. The City may inspect the Designated Units and any documents or records relating thereto, at any reasonable time to determine Developer's compliance with this Agreement.

24. Implementation. The City hereby authorizes the Mayor to execute this Agreement and the Director of Community Development to take all necessary action to implement this Agreement.

[Purposely Left Blank]

"City"
CITY OF BEVERLY HILLS, a municipal corporation

_____

JIMMY DELSHAD
Mayor of the City of Beverly Hills, California

"Developer"
WILSHIRE COLONIAL PARTNERS, LLC, a California limited liability company

_____
Name:
Title:

_____
Name:
Title:

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

[to be added]

EXHIBIT B

MAP DEPICTING LOCATION OF DESIGNATED UNITS

[to be added]

EXHIBIT C

SAMPLE CALCULATION OF AFFORDABLE SALES PRICE

[to be added]

EXHIBIT D

FORM OF PURCHASER AFFORDABILITY AGREEMENT

[to be added]

EXHIBIT C

Easement for Excess Parking Spaces

Exempt from Documentary Transfer Tax

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

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

[Space above this line for Recorder's use]

AGREEMENT AND GRANT OF EASEMENTS

This Agreement and Grant of Easements (the "Agreement"), dated _____, 200____, is entered into by and between Wilshire Colonial Partners, LLC, a California Limited Liability Company ("Developer"), and the City of Beverly Hills, a California municipal corporation ("City"), with reference to the following facts and objectives:

A. Developer is the owner of certain real property located in the City of Beverly Hills, County of Los Angeles, State of California, which is more particularly described in Exhibit 1, attached hereto and incorporated herein (the "Property").

B. Developer and City have entered into a Development Agreement, effective on _____, for the construction of a mixed-use development generally consisting of 6,383 square feet of ground floor retail/commercial space and a maximum of 26 residential condominiums units, as is more particularly described therein ("Development Agreement").

C. Pursuant to the Development Agreement, the Developer has an obligation to grant to the City for its own exclusive use or that of its designees, nine parking spaces referred to as the "Excess Parking Spaces" and to execute, deliver and grant to the City an easement for said Excess Parking Spaces.

D. The Excess Parking Spaces are located with the subterranean parking garage on the Property and are more particularly depicted in terms of location and spaces in Exhibit 2, attached hereto and incorporated herein. ("Easement Area")

E. The parties now desire to enter into this Agreement to provide for the grant of easement rights described above under the terms and conditions of this Agreement.

NOW, THEREFORE, for valuable consideration, the parties agree as follows:

1. Accuracy of Recitals. The City hereby acknowledges and confirms the accuracy of the Recitals in this Easement, which Recitals are hereby incorporated into and made part of this Easement.

2. Grant of Easement. Developer hereby grants to City a perpetual and exclusive easement on, over and under Easement Area for the respective purposes described in Paragraph 3. Developer shall not install or construct any structure in such a manner as to adversely affect the City's use of the Easement Areas as permitted by this Agreement, nor shall Developer operate the parking garage so as to prevent the City from having access to the Easement Area.

3. Purpose/Use of Easement Area A. City shall have the right of ingress and egress to and from Stanley Drive (or such other location from which access is provided from the public street to the Property) through the parking garage to the Easement Area for the purposes of parking vehicles in said Excess Parking Spaces. City and its designees shall have the right to park exclusively in the Easement Area. City shall have the sole right to determine who may park in the Easement Area.

4. Property Taxes. The fee owner of the Easement Area shall be solely responsible for the payment of all real property taxes and assessments, with respect to the Easement Area, if any.

5. Developer Obligations of Easement Area. Developer shall have the obligations over the Easement Area as is described in the Development Agreement and those obligations are incorporated herein by this reference.

5. Indemnity. Developer shall indemnify, defend and hold City and all successors and assigns harmless from any and all claims, demands (including demands by any governmental agency), costs, expenses, penalties, damages, losses, or judgments and liens, including without limitation, reasonable attorneys' fees (collectively, "Liabilities") arising or which are alleged to arise from any breach of Developer's obligations under this Agreement. Such indemnity shall survive the expiration or termination of this Agreement.

6. Miscellaneous.

6.1 This Agreement shall be binding upon the successors and assigns of the Developer and shall inure to the benefit of the successors and assigns of the City. This easement is intended to burden the parking garage and land on which the parking garage is located and shall "run with such land" and shall benefit property owned by the City in the City of Beverly Hills and property owned by any of City's designees who are permitted by the City to enter the Property and use and park in the Excess Parking Spaces.

6.2 This Agreement shall be governed by and interpreted under the laws of the State of California. The parties' respective rights and remedies under this Agreement

are cumulative with and in addition to all other legal and equitable rights and remedies which the parties may have under applicable law. The invalidity of any term or provision of this Agreement, as determined by a court of competent jurisdiction, shall in no way affect the validity of any other term or provision hereof.

6.3 If any action or proceeding is commenced by any party to enforce the terms or provisions of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees and costs in addition to any other relief awarded by the court.

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

GRANTOR:

WILSHIRE COLONIAL PARTNERS, LLC,
a California limited liability company

_____
Name:
Title:

_____
Name:
Title:

STATE OF)
) ss.
COUNTY OF _____)

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

WITNESS my hand and official seal.

_____
Notary Public

STATE OF)
) ss.
COUNTY OF _____)

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

WITNESS my hand and official seal.

_____
Notary Public

GRANTEE:

CITY OF BEVERLY HILLS, a California municipal corporation

By:_____

Title:_____

STATE OF)
) ss.
COUNTY OF _____)

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

WITNESS my hand and official seal.

_____
Notary Public

EXHIBIT 1

Legal Description of Property and Parking Garage

EXHIBIT 2

Map Depicting Location of Excess Parking Spaces

EXHIBIT 3

FORM OF ACCEPTANCE CERTIFICATION

CERTIFICATE OF ACCEPTANCE
(California Government Code Section 27281)

This is to certify that interests in real property conveyed to or created in favor of the City of Beverly Hills by that certain Grant Deed dated _____, 200___, executed by the _____is hereby accepted by the undersigned officer on behalf of the City of Beverly Hills pursuant to the authority conferred by resolution of the City Council of the City of Beverly Hills adopted on _____, 200___, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 200___

_____
Print Name: _____
Title: _____

STATE OF CALIFORNIA)
)
COUNTY OF LOS ANGELES)

On _____, 200___, before me, _____
_____, a Notary Public in and for the State of California, personally appeared _____ _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument, the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

_____
Notary Public in and for the State of California

(SEAL)