



AGENDA REPORT

- Meeting Date:** April 15, 2008
- Item Number:** D-1
- To:** Honorable Mayor & City Council
- From:** Vincent P. Bertoni, AICP Director of Community Development
Joyce Parker-Bozylinski, AICP, Consulting Planner
- Subject:** Consideration of Planning Commission's recommendation for approval of a General Plan Amendment, Zone Text Amendment, Zone Change, Specific Plan, Development Agreement and Environmental Impact Report for a Proposed Mixed use Project at 9876 Wilshire Boulevard(The Beverly Hilton Revitalization Project)
- Attachments:**
1. Council Questions/Answers (Updated)
 2. March 25, 2008 City Council Staff Report
 3. March 27, 2008 City Council Staff Report
 4. April 1, 2008 City Council Staff Report
 5. April 8, 2008 City Council Staff Report
 6. Draft Development Agreement recommended by the Planning Commission
 7. Memorandum: Alleged Building Restrictions on Beverly Hilton Site
 8. Applicant's Submittal Packet (Site Plans, Elevations, Floor Plans for 3 Scenarios)
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RECOMMENDATION

Staff recommends that the City Council:

1. Receive presentations from staff.
2. Receive a presentation from the applicant.
3. Take public testimony on the project and close the public hearing.
4. Ask any additional questions of staff.
5. Ask any additional questions of the applicant.
6. Deliberate on the project.
7. Provide direction to staff on the proposed project and direct staff to bring back draft Resolutions and Ordinances at the next meeting.
8. Continue the meeting until April 21, 2008.

BACKGROUND

The City Council held public hearings on the draft Environmental Impact Report and project on March 25th and March 27th and received extensive public testimony. On April 1st and April 8th the City Council received additional presentations from staff, the Planning Commission Chair and Commissioners, and the applicant and received additional public testimony.

At the April 8th hearing, the City Council heard presentations on several project scenarios discussed at the Ad Hoc Committee meetings held on the project. These scenarios consisted of several options for the residential portion of the project. The options included a scenario (Scenario A) with both Residence A and B and a scenario (Scenario B) without Residence A but with an expanded Residence B building. It was noted that a feasible project would need approximately 365,000 to 370,000 residential square feet and 90 to 110 condominium units. Both scenarios included the same amount of residential square footage. With Scenario A, the residential buildings would have a smaller footprint and there would be transition in height from Wilshire Boulevard. Scenario B which eliminates Residence A would create more open space on the corner of Wilshire Boulevard and Merv Griffin Way and would provide a view of the existing Hilton Tower. At the April 8th hearing, there was also discussion regarding the height of the proposed new Waldorf=Astoria hotel and whether condominium units should be included on the upper floors. Two options for the Waldorf-Astoria are presented below. The City Council discussed the various scenarios and asked additional questions of staff and the applicant. At the conclusion of the hearing, the City Council determined that the Ad Hoc Committee would meet again with the applicant to further refine the various scenarios.

The Ad Hoc Committee met with the applicant on April 9th and April 14th and will report on the results of these meetings at the hearing. In addition, staff has prepared answers to the Council questions asked at the hearing and these are included at Attachment 1. Scott Miller, the City's Chief Financial Officer, will also be providing additional information on the financial aspects of the project at the Council meeting.

DISCUSSION

Ad Hoc Committee Project Options

The purpose of this hearing is to 1) discuss the different scenarios that resulted from the most recent Ad Hoc Committee meetings, 2) discuss the terms of the Development Agreement, 3) ask any further questions and 4) provide direction to staff on the project so that staff can prepare draft Resolutions and Ordinances for City Council consideration.

Attachment 7 includes site plans and typical floor plans for the three options as well as related elevations that will be presented to the City Council at the April 15th hearing. Scenario B includes a 17 story Residence B building instead of the 16 story building preferred by Mayor Brucker. The applicant has indicated that in order to provide the same articulation for the expanded building that was provided for the original project, it was necessary to add an additional floor. This is because the building has already been built to the edge of the sidewalk on Merv Griffin Way and the property line on Santa

Monica Boulevard and the building must maintain a 30 foot setback from the Wilshire Tower by Code. The applicant has indicated that the only way to maintain a 16 story building with articulation would be to reduce the overall square footage of the building.

In addition to the options for Residence A and B, the applicant has presented two options for the Waldorf-Astoria. In one option the building would be 12 stories in height and in the other option the building would be 14 stories in height. In both options, there would be 170 hotel rooms. The 12-story option expands the floor plates (towards the intersection) of the building thus allowing the applicant to maintain 170 hotel rooms but at a height of 12 stories. Scenarios for the Residence A and B as well as the Waldorf=Astoria are summarized in the Table below.

Project Scenarios	Residence A	Residence B	Waldorf=Astoria	Conference Center	Poolside Cabana
Original Project	10 to 13 stories (42 units)	13 stories (48 units)	11 to 14 stories (120 rooms and 30 units)	3 stories (50 rooms)	1 story (no units or rooms)
Planning Commission approved Project	Eliminated	16 stories (60 units)	12 stories (140 rooms)	2 stories (no rooms)	3 stories (30 rooms)
Ad Hoc Committee Scenario A					
Option 1:	6 to 8 stories (26 to 36 units)	16 to 18 stories (64 to 74 units)	14 stories (170 rooms)	2 stories (no rooms)	1 story (no units or rooms)
Option 2:	6 to 8 stories (26 to 36 units)	16 to 18 stories (64 to 74 units)	12 stories (170 rooms)	2 stories (no rooms)	1 story (no units or rooms)
Ad Hoc Committee Scenario B					
Option 1	None	17 stories expanded building footprint (90 to 110 units)	14 stories (170 rooms)	2 stories (no rooms)	1 story (no units or rooms)

Development Agreement

Another item for Council discussion is the terms of the Development Agreement. The Development Agreement was distributed as part of the March 25th staff report as recommended by the Planning Commission for City Council consideration and is attached again as Attachment 6. As noted in the March 25th staff report, the proposed Development Agreement is intended to provide benefits to both the City and the applicant. The Agreement vests the project entitlements for a five year period and if a Vesting Tentative Tract Map is approved by the City, the term would be extended until the expiration of the vesting tentative map or approval and recordation of a final subdivision map for the project. The Agreement provides the City with infrastructure fees and additional fees that could not otherwise be required of the development.

The Development Agreement for the project would require the developer to make a "public benefit contribution" to the City of \$10,000,000. This contribution would address the project's impact on the City's infrastructure (streets, utilities, lights) and affordable housing. The Planning Commission recommended that a portion of the Public Benefit Contribution be placed in an affordable housing fund. The amount to be placed in the fund would be calculated by multiplying \$261,733 (the City's affordable housing impact fee) by ten percent (10%) of the number of dwelling units (60). This would result in \$1,570,398 being placed in an affordable housing fund. If the number of dwelling units were to change, the amount available to be placed in the fund would need to be adjusted accordingly. The Commission also recommended that a 10% (\$1,000,000) of the Public Benefit Contribution be used solely for the purpose of implementing improvements to address congestion at the intersection of Santa Monica Boulevard and Wilshire Boulevard.

In addition, an Environmental Mitigation and Sustainability Fee would be required. The fee would be paid concurrent with each condominium sales transaction. The amount of the EMS Fee would be \$4.50 for each \$1,000 of the sales price of the condominium. The EMS Fee would be paid from the escrow account set up for the sale. The fee would be paid upon the initial sale of the unit and for each subsequent sale of the unit by the current owner.

The Development Agreement includes an easement for future bus turn outs, an easement for a future subway portal, access for the City shuttle and the provision of a significant gateway feature which could consist of public art or significant architectural feature such as fountains along with a payment of \$500,000 into a fund established by the City for public art.

Staff is recommending the City Council provide direction to staff on the various project scenarios and the Development Agreement so that staff can prepare draft Resolutions and Ordinances for City Council consideration for the April 21st hearing.

Meeting Date: April 15, 2008

Meeting Schedule

April 15 Council Deliberations and Direction
April 21 Adopt Resolutions and 1st Reading of Ordinance
April 29 2nd Reading of Ordinances

Vincent P. Bertoni, AICP
Director of Community Development

 For VB

Approved By

Attachment 1

Council Questions/Answers (Updated)



**Beverly Hills City Council Questions and Responses
Beverly Hilton Revitalization Program
April 15, 2008 Hearing**

April 8, 2008 City Council Meeting Questions

Council Member Nancy Krasne Questions:

- 1. With regard to the photos taken by the applicant using a helicopter; was the helicopter in the location of the proposed Waldorf=Astoria?**

Due to the constraints of the location, the helicopter was tethered to the existing Hilton Tower and the photos were taken from that location. It was noted at the April 8, 2008 City Council meeting that this is actually closer to the single family neighborhood across Wilshire than the proposed Waldorf=Astoria hotel location. Please also see the response to Councilmember Krasne Question #24 on April 1, 2008.

- 2. Explain the Santa Monica Boulevard/Wilshire Boulevard intersection improvements proposed by this project as well as other projects in the City.**

Currently, traveling eastbound on Wilshire, there is one left turn lane onto Santa Monica Boulevard and one lane that allows a left turn onto Santa Monica Boulevard or allows traffic to continue straight through the intersection. This results in confusion affecting traffic flow. These lanes will be restriped so there will be two dedicated left-turn-only lanes and three through-lanes. This restriping will be funded by the Montage hotel project as a mitigation measure and by the William Morris office project as a condition of approval. If the Beverly Hilton Revitalization Project is approved, the project applicant will submit a revised civil drawing to the City for the improvements of the intersection. The Hilton Revitalization project proposes dedicating four feet along Wilshire Boulevard toward the Santa Monica intersection to allow the left turn lanes to be a standard width which was not possible without the land dedication. The proposed land dedication for street widening is part of the proposed project and not a mitigation measure because the EIR found the project does not have significant traffic impacts. The right-hand turn at the Santa Monica Boulevard intersection will be reconfigured to improve traffic flow. The Hilton also proposed, as part of its project, dedicating four feet along Santa Monica Boulevard, widening the right hand lane heading west and further improving traffic flow. (Please see attached Circulation Plan.)

3. Will the applicant be able come back and demolish the old Hilton tower building?

The City Attorney responded at the April 8, 2008 City Council meeting that the current City Council may place restrictions on the site or the building, including regulating demolition, but the current City Council may not tie the hands of a future City Council that may wish to allow the building to be demolished.

4. Is the applicant willing to designate this building (Hilton Tower) as historic?

The applicant has not indicated a willingness to designate the building historic, even though it is considered historic for CEQA purposes.

Section 10-3-3200 of the City's Municipal Code states the Architectural Commission shall serve in an advisory capacity to the Council on the preservation of historic and cultural landmarks in the City. The duties include identifying potential future landmarks; however, the City does not have an historic preservation ordinance so there is not a local process to formalize such designations or to address changes to or demolition of potential historic structures. Building owners may apply for state or federal historic designation and must meet the state and federal criteria to do so. Designation of a building as historic by the state or federal government does not preclude a building being demolished. The owner of such a building, wishing to demolish it, would need to do the required environmental review which would likely include an Environmental Impact Report (EIR). If the EIR found demolition to result in a significant impact, the governing body (in this case the City Council) would need to adopt a Statement of Overriding Consideration to approve demolition. It is noted that designation of a building as historic does not preclude major renovations so long as they meet certain standards.

5. Is there guest parking for the condominiums and would it be free?

The City's EIR traffic consultant stated at the April 8, 2008 meeting that the project provides additional parking spaces for the new construction and there are guest parking spaces provided for the condominiums pursuant to the City's Code. The applicant's attorney stated at the same meeting that the guest parking would be free.

6. What guarantees the hotel will remain a Hilton hotel?

The applicant's representative stated at the April 8, 2008 City Council meeting that the applicant and the Hilton have a 20-year management agreement with extension rights.

7. Is there adequate staging and loading areas for events?

The Planning Commission studied the staging and loading for the project and was satisfied with the applicants' plans. The applicant's representative stated at the April 8,

2008 meeting that the applicant has provided onsite vehicle staging and, for anomalous events like the Golden Globe Awards, the applicant arranges for off-site parking.

8. Is the applicant willing to have the City participate in condominium sales above a certain dollar level?

The applicant's representative stated at the April 8, 2008 meeting that the applicant believes it is offering a financial package that is lucrative to the City, appropriate and fair so the applicant is not willing to have the City participate in condominium sales.

Councilmember Jimmy Delshad Questions:

1. How much open space is there in the Applicant's Revised Project as compared to the existing project site?

If open space is defined as areas open to the sky and lot coverage is defined as areas with enclosed structures: it is estimated there is lot coverage of 67% on the existing Hilton site and the Applicant's Revised project has lot coverage of 46.7%, a reduction of 20%. According to these definitions, paving, balconies and walls would not be included in lot coverage and would be considered part of the open space. Staff is reviewing the percentage of the site that is actually landscaped or "green" as compared to paved and will have that information available at the April 15, 2008, City Council meeting.

2. What is the square footage of the applicant's current proposed (Applicant's Revised project) as compared to the original project proposed?

The applicant's original project had a total floor area of 970,620 square feet. The Applicant's Revised project has a total floor area of 990,817 square feet which means the Applicant's Revised project is approximately 20,000 square feet larger than the original project. The difference is that the original project had fewer square feet in hotel rooms (56,388 fewer square feet) and more square feet in residential units (36,191 more square feet) which means the net gain of 20,000 square feet for Applicant's Revised project represents additional hotel room square footage. The confusion about square footage figures appears to stem from the fact that the Applicant's Revised project originally reported total square footage incorrectly by including square footage that had been eliminated from the revised project.

Mayor Barry Brucker Questions

- 1. The applicant was asked whether rooms in the Hilton Tower would be blocked by Residence A and whether this had been figured into future room rates.**

The applicant's representative stated at the April 8, 2008 meeting, that the applicant factors everything into the proposed design including views from rooms and how this affects room rates. The applicant's representative stated she believes a significant view corridor from the rooms on the north side of the Wilshire Tower will remain if Residence A is included in the design. The representative further stated that the Hilton is also trying to improve short-range views from the rooms with site improvements and landscaping.

- 2. If the City Council approved a project that eliminates Residence A will the applicant walk away from the project?**

Applicant's representative confirmed at the April 8, 2008 City Council meeting that the applicant would walk away from the project if Residence A is eliminated. Applicant's representative explained that Hilton's proposal including two condominium buildings with condensed footprints allows each condominium unit to have a corner condition and elevator service which is important in creating a luxury product. Applicant's representative stated that the extension of Residence B results in unmarketable units and in fewer landscaping possibilities around the building.

Vice Mayor Frank Fenton Questions:

- 1. Would Mayor Brucker's proposal that includes elimination of Residence A and a larger Residence B reduce construction time?**

Based on conversations with the construction management firm retained by the Hilton, they estimate a possible reduction of 6 months (overall) may be achieved. One reason there would not be a greater reduction in construction time is because the original plan was to start work on Residence A after the portion of the garage under Residence A was constructed. Work on Residence B cannot begin until the existing above ground parking garage is demolished. However, in order to provide parking for the existing Hilton operations, the above ground garage cannot be demolished until the underground garage under Residence A is completed. Another reason there would not be a greater reduction in construction time is the estimated time to construct Residence B will increase because the proposed building will have a larger footprint and will include two additional floors.

- 2. Is the financial impact to the City the same if the condominium units in Residence A are moved to Residence B?**

Staff will be providing a response at the April 15, 2008 meeting.

- 3. The applicant was asked to provide a visual representation of Mayor Brucker's proposed project revisions.**

The applicant is preparing visual representations of the proposed project revisions presented by Mayor Brucker and Councilmember Briskman at the April 8, 2008 City Council meeting. The items are Attachment 8 to the April 15, 2008 City Council Agenda Report.

April 1, 2008 City Council Meeting Questions

Council Member Nancy Krasne Questions:

- 1. What do we do with measures from the EIR that say no mitigation is possible with regard to Nitrogen Oxide? If the project is smaller will that help mitigate any of the problems or lessen them substantially? What level triggers no mitigation possible?**

The EIR found that the project has significant air quality impacts because the NO_x emissions during construction exceeded the SCAQMD's emission-based thresholds; however, the project's operational air quality impacts were found to be less than significant. Additionally, the estimated localized impacts for respirable particulate matter (PM₁₀) and fine particulate matter (PM_{2.5}) exceeded the SCAQMD Localized Significance Thresholds for both projects. Because the South Coast Air Basin currently exceeds the health-based standards for ozone (NO_x is an ozone precursor) and is currently designated as nonattainment for ozone, project emissions that exceed the SCAQMD emission-based NO_x threshold during construction are cumulatively considerable, and thus, are considered significant and unavoidable cumulative air quality impacts.

Based on these determinations, mitigation measures were imposed for both the construction-related NO_x emissions and PM₁₀ and PM_{2.5} emissions. The NO_x mitigation measures consist of requirements related primarily to the construction equipment, which is the main source of construction-related NO_x emissions. Nonetheless, there are no feasible mitigation measures available to reduce the NO_x emissions to a less than significant level, which would require a reduction in NO_x

emissions of up to 60 percent. The mitigation measures applicable to construction equipment will also reduce PM10 and PM2.5 emissions. In addition, several measures were imposed to reduce the generation of fugitive dust during demolition, excavation, and grading activities, as well as the new mitigation measures to require PM10 monitoring and appropriate corrective action.

As noted above, the project was also found to result in significant and unavoidable *cumulative* air quality impacts due to the project's construction-related NO_x emissions. While mitigation measures can be imposed to avoid or reduce a project's *contribution* to cumulative air quality impacts (as discussed above), no mitigation is possible to reduce the cumulative impacts, which, in this case, reflect the emissions in the South Coast Air Basin. Further mitigation is not required to reduce the cumulative impacts on regional air quality since the SCAQMD's Air Quality Management Plan is intended to reduce overall emissions in the air basin. Unlike some resource areas such as traffic, there is no fair-share contribution to reduce a project's contribution to cumulative air quality impacts.

A reduced project size would generally result in a shortened construction schedule. The emissions-based significance thresholds adopted by the Lead Agency and the South Coast Air Quality Management District (SCAQMD) are daily emission limits; therefore, a smaller project may not necessarily result in less than significant air quality impacts if the same level of daily construction activity is maintained. For example, the same amount of daily demolition and associated mobile equipment would be required to remove the existing building and parking structure regardless of the ultimate size of the project. Similarly, the same daily excavation activity would be required for the underground parking structure, even if the aboveground buildings were smaller.

When an impact has been identified and mitigation is not available to mitigate the impact to less than significant levels, a Lead Agency (the City) may consider and adopt a Statement of Overriding Considerations in compliance with CEQA (Section 21081) and the *CEQA Guidelines* (Section 15093) finding that there are overriding considerations which outweigh and make acceptable the unavoidable significant adverse impacts in conjunction with its final project approvals.

2. Which of the four projects for 9867 Wilshire are we evaluating?

In making its decision, the City Council is considering everything that has been presented in the public record in the Planning Commission and City Council proceedings including all four project scenarios presented at the April 1, 2008 meeting: Applicant's Original project, Planning Commission Recommended project, Applicant's Revised project and Staff's Recommended project.

- 3. When has staff ever overridden the Planning Commission or recommended a project at a larger size than the PC approved for the same project? Why would staff override the PC approval?**

The City's professional staff provides its professional analysis and recommendations with regard to any project presented to the decision makers. Staff's recommendation to the City Council on this project is similar to the recommendation staff made to the Planning Commission, although it does not have the effect of overriding the Commission's recommendation. The Planning Commission considers staff's analysis and recommendations and includes in its analysis community issues that may lead the Planning Commission to a different recommendation than staff's as is the case with this project. The City Council then has the benefit of both points of view. The Planning Commission does not look at the fiscal impacts of a project while the City Council does analyze such issues and this may result in a City Council determination that is different from both the Planning Commission and staff recommendations on a project.

- 4. Regardless of how much money is spent, how will you mitigate the intersection of Wilshire and Santa Monica Boulevards, when the traffic is stopped on the other side of the street?**

A new eastbound lane will be provided on Wilshire Boulevard which will improve the flow of traffic. Several projects in the City (Montage and William Morris) have already been required to participate in this improvement and civil drawings for the improvements have been submitted to the City. Work on the intersection will be scheduled only during evening hours and weekends when the traffic volume is low and temporary lane closures will be feasible (please see attached Circulation Plan).

- 5. How would construction impacts be mitigated while construction is going on at the intersection of Santa Monica and Wilshire and Santa Monica/Wilshire and Merv Griffin Way?**

Similar to many projects in the City (Barney's, Crescent Project and Montage) intersection improvements along with other exterior improvements of the site will be scheduled after the interior building skeletons have been completed and parking garages are usable for construction workers. In addition, work could be completed during nights and weekends.

- 6. How can the City position these projects at such a critical intersection when we are about to adopt the Metro rapid transit subway line?**

The EIR found that there would be no significant traffic impacts from this project and no mitigation is required. With regard to a proposed subway line, the subway stops planned by Metro (MTA) closest to this project would be on Beverly Drive or in Century City. an exact route has not been set by Metro but the City's Mass Transit Committee recommended extending a subway route west down Wilshire Boulevard with stops at

Wilshire/La Cienega and Wilshire/Beverly Drive. Since a subway alignment has not yet been chosen and Metro is also studying a Santa Monica Boulevard alignment, staff has recommended that this project and the 9900 Wilshire project include a subway portal to be dedicated to the City in case such portal is needed for a subway extension. To that end, the proposed Development Agreement for this project requires an offer of dedication for a subway portal if needed in the future. Expanded Metro bus service including a bus stop in front of the Waldorf=Astoria is planned to run along the project frontage on Wilshire Boulevard.

With regard to Metro bus service, there are two existing Metro bus stops near the Hilton site at the intersection of Santa Monica Boulevard and Wilshire Boulevard, one along Wilshire and one on Santa Monica Boulevard. The Hilton project is proposing to replace these bus stops with two new stops with one along Wilshire Boulevard and one along Santa Monica Boulevard. These new stops would be moved away from the intersection by about 50 feet and would be approximately 130 feet long, accommodating two Metro articulated buses.

7. Why would you stage the development and disrupt the community for longer periods of time? Is the construction going to be staged over a period of time, or all at once?

Construction of the proposed project would involve several construction phases including site preparation (mobilization) and demolition of existing buildings, hardscape and landscaping; excavation and grading for subterranean parking and building footings and construction of new buildings, hardscape and landscaping. Construction is anticipated to occur over an approximately two to four-year (24-48 month) period, with project build-out expected by year 2012. The maximum duration for each stage is provided as follows:

- Mobilization and Demolition of existing building: 10 months
- Excavation and Grading: 18 months
- Construction: 20 months
- The Beverly Hilton is expected to remain operation during the phased construction.

Applicant's representatives further responded at the April 1, 2008 City Council meeting and stated that the hotel would remain open with key events such as the Golden Globes still taking place. The Waldorf=Astoria would be built first. Construction of the condominium buildings would involve tearing down the Oasis Court, then building the subterranean parking structure at Wilshire and Santa Monica, then demolishing the existing garage and building the condominium buildings.

Allowing the phased development allows the hotel to remain in operation which would be beneficial to the City since the Transit Occupancy Tax (TOT) would continue to be generated.

8. Are there efficiency units tied as maids' rooms to other units or that anyone could purchase as a "pied-a-terre" and use as a corporate hotel room?

There are no efficiency units and no intent that rooms would be used as "pied-a terre" or corporate hotel rooms in the manner suggested by the question.

9. Have we studied all affected roads in the EIR? Carmelita, Elevado?

While there is existing cut-through traffic on roadways like Whittier Drive as evidenced by existing data which were collected for this project analysis, there is also anecdotal evidence that there is cut-through traffic on other residential streets such as Trenton, Elevado and Carmelita Drives. The analysis prepared for the project and provided in the Draft EIR determined that this project created no significant traffic impacts on these residential streets.

The analysis in the Draft EIR assessed impacts on residential streets by first focusing on Whittier Drive, which is the residential street closest to the project site. Based on the estimated trip generation and likely trip distribution, the traffic analysis found that the incremental trips on Whittier Drive were limited (less than 5 peak hour trips) during the AM Peak Hour and no incremental trips were added in the daily period for any other peak hour. Given the limited increase on Whittier Drive, the traffic analysis determined that the incremental trips on Carmelita Drive would be even fewer, thereby eliminating the need to specifically analyze Carmelita Drive. Additionally, there are numerous streets parallel to Carmelita Drive which would further disperse any project traffic that might use the streets in this area.

10. Why are we rushing this project? Should the General Plan be first?

This project has been going through the review process since 2005 and has not been placed on hold until the General Plan Update is complete. This project and the adjacent 9900 Wilshire project are geographically unique in the City and could be studied separately from the General Plan Update. The General Plan Topic Committees studied this location and made recommendations on the site. These recommendations were considered by the Planning Commission as part of their review of the project.

11. Have we checked the hydrology water table to see if there is usable ground water at a low enough extraction level for the garden area of the grounds so that we do not have to use potable drinking water? (I realize we are using grey water from the project- but in addition to the grey water.)

As discussed in the DEIR, the project's operation must adapt to the shallow groundwater contours present at the project site. The DEIR concluded that pumping of groundwater

was necessary during the operation of the project. A determination will be made by the project applicant, in consultation with consultants, as to whether designing the underground elements of the project to withstand the hydrostatic pressures of the groundwater would be advisable. The project applicant will also consider whether some combination of hydrostatic construction and pumping would be advisable. However, the water would need to be treated to bring it up to grey water standards, and the source of water may be unreliable.

It is further noted that Municipal Code Section 9-4-610 requires unless impracticable, that persons “place all extracted ground water to reasonable and beneficial use rather than causing the dewatering of the basin. For purposes of this section, ‘impracticable’ shall mean technically infeasible or requiring the expenditure of a greater amount than the replenishment fee described in subsection G of this section. The beneficial purposes to which extracted ground water may be placed include:

1. Recharging the ground water to the basin;
2. Placing the ground water to reasonable and beneficial use on the property, including irrigation or other non-potable use, subject to the permitting requirements of section 9-4-603 of this article; or
3. Delivering the ground water to the city for treatment and use by the city, including the design, construction, operation, maintenance, repair and replacement of all facilities necessary for conveyance of the water to the city’s water treatment plant, at no cost to the city.”

12. Will the old Hilton project meet current parking requirements?

The existing Beverly Hilton Hotel currently has 569 rooms, 68,860 square feet of meeting space, 20,523 square feet of restaurant space, 13,030 square feet of non-hotel office, 12,810 square feet of retail space and 145,329 square feet of hotel office/support areas. Under this existing condition, 818 parking spaces are provided. If a new hotel with the same characteristics (same number of rooms, same event space, same restaurant space, etc) were to be built in the City today, 3,037 parking spaces would be required by current Code. The project is considered legal non-conforming regarding the required number of parking spaces because when the Wilshire Tower was built in the 1950’s and adjacent Cabana/Lanai Rooms and Palm/Oasis Court in the 1960’s, the Code only required 818 spaces. All new construction at the site will exceed parking requirements (please see the responses to #13 and #29 below).

13. Will the applicant consider adding additional parking above code for the new structures?

Under all project scenarios (project as proposed and alternatives) the project's parking supply for the new buildings exceeds both the municipal code requirements and the demand estimates; the project's parking supply is sufficient and would not increase off-site parking demand (to a level that could not be provided) above that which is provided in the immediate project area. Therefore, parking impacts associated with the proposed project are less than significant.

14. Please list all square footage and its usage, including hallways, elevators loading docks, screening rooms, party rooms, wine cellars, and storage facilities? How much square footage will be in this project?

Square footage charts were provided as part of the April 1, 2008 staff report to the City Council and are attached. It is noted that the table for Applicant's Revised project shows ten luxury poolside units that are no longer part of that project scenario. At the April 1, 2008 meeting, the applicant noted that poolside units or hotel rooms may not be feasible.

15. How many tandem parking spaces will there be? (Please include the space behind a tandem space.) Are there any compact spaces? Are there any extra wide spaces for Hummers or SUVs? How many Limo parking spaces are there?

Tandem parking spaces - 1,269 (this includes the outside space, the inside space, and both spaces (under and over) when using vertical lifts).

Compact parking spaces - 813, including tandem spaces (the outside space, the inside space, and both spaces (under and over) when using vertical lifts). The hydraulics for vertical lifts take a bit of space on the sides of the parking space, meaning that spaces with vertical lifts will technically be compact spaces.

Extra wide spaces for Hummers or SUVs - There are 1,047 standard parking spaces that can accommodate any standard car, including Hummers and SUVs.

Limousine parking spaces - None. There will, however, be staging areas for limousines.

16. Where are the freight elevators located? How many are there?

- Wilshire Tower Beverly Hilton Hotel: Three (3) freight elevators
- Pool Guest rooms: One (1) freight elevator
- New meeting rooms at Beverly Hilton: One (1) freight elevator
- Residence "A": One (1) freight elevator on Applicant's Original project (Planning Commission recommended eliminating Residence A).
- Residence "B": One (1) freight elevator
- Waldorf Astoria Hotel: Two (2) freight elevators

17. When the final project is proposed, does the final EIR need to be recirculated for the School District to see?

Recirculation of the Draft (or Final) EIR is not required based on the standards defined in Section 15088.5 of the *CEQA Guidelines*. This section of the *CEQA Guidelines* states that a lead agency is required to recirculate an EIR when significant new information is added to the EIR. This information can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. Significant new information requiring recirculation could include a new significant environmental impact or a substantial increase in the severity of an environmental impact. The changes to the project are designed to reduce impacts. Because no new significant impacts would be identified with any project revisions, recirculation is not necessary.

18. What will be the cumulative impact of both the Hilton and the 9900 Wilshire projects on Air Quality running side by side if both are approved? The EIR's do not give a cumulative effect of both projects for air quality so close to the school, so how do I differentiate between the two projects?

Both the 9900 Wilshire and Hilton Revitalization projects are consistent with regional growth projections; therefore, the cumulative impacts with respect to regional air quality during operation of both the 9900 Wilshire and Hilton Revitalization projects are less than significant.

However, the mitigated construction-related nitrogen oxide (NO_x) emissions exceed the SCAQMD's recommended daily emission threshold of significance for both projects. Additionally, localized impacts for respirable particulate matter (PM₁₀) and fine particulate matter (PM_{2.5}) may exceed the SCAQMD Localized Significance Thresholds for both projects. As the South Coast Air Basin currently exceeds the health-based standards for ozone (NO_x is an ozone precursor), PM₁₀, and PM_{2.5}, and is currently designated as nonattainment for these pollutants, project emissions that exceed the SCAQMD thresholds during construction are cumulatively considerable, and thus, are considered significant and unavoidable cumulative air quality impacts.

With regard to the 9900 Wilshire project there has been recent consideration of avoidance of potential impacts at El Rodeo School by requiring that demolition, grading, and excavation activities be conducted during the summer. Although the overlap between the construction phases of the two projects would have to be known before quantification of combined air quality impacts could occur, nonetheless, the two projects individually and cumulatively would result in significant air quality impacts for NO_x, PM₁₀, and PM_{2.5} during construction, which has been disclosed in both EIRs. Accordingly, mitigation measures have been required to reduce the impacts to the maximum extent feasible as required by CEQA.

During the actual construction of the two projects, fugitive dust concentrations and wind velocities will be measured using a series of upwind and downwind monitors and at least one on-site anemometer. The on-site environmental monitor will also be aware of the location, type, and intensity of construction activity taking place on both the 9900 Wilshire and Beverly Hilton Revitalization project sites. Using this information and data from the on-site wind and fugitive dust monitors, the environmental monitor will be able to determine the source of any air quality impacts that exceed the established thresholds outlined in the mitigation measures and corrective measures will be applied at the appropriate source.

19. AIR QUALITY – the EIR states, “No Mitigation Available.” What do we do?

The EIR does not identify mitigation measures that are specific only to cumulative air quality impacts. Mitigation is not required to reduce the cumulative impacts on regional air quality since the South Coast Air Quality Management District’s Air Quality Management Plan is intended to reduce overall emissions in the air basin. Unlike some resource areas such as traffic, there is no fair-share contribution to reduce a project’s contribution to cumulative air quality impacts. Nonetheless, as discussed in the EIR, project-level construction-related mitigation measures identified in the EIR would also reduce any cumulative air quality impacts. Additionally, all other subsequent project-level mitigation measures adopted would apply for cumulative impacts. The operational impacts of the two projects were found to result in less than significant cumulative air quality impacts; thus, no mitigation is required for their operational impacts.

20. SIGNIFICANT AND UNAVOIDABLE- Do we have the ability to close El Rodeo and move those children to other locations until the noisiest part of the construction is over or put them on a different time schedule that the other schools? All construction vehicles must be moved via Santa Monica Blvd.

The BHUSD responded to this question with regard to 9900 Wilshire project at the March 25 Hilton hearing, and indicated that they have the ability to move some, but not all students. This is in part because they do not have the facilities on other campuses to accommodate all of the students.

The City is currently considering requiring that demolition and excavation take place during the summer vacation for El Rodeo School. In addition, the Construction Management Plan submitted by the applicant specifies that all hauling trucks and other construction vehicles will use Santa Monica Boulevard. This will further reduce impacts to El Rodeo School.

21. Will there be a vibration impact in addition to the noise at the school and on the residents?

The outdoor areas of El Rodeo School, located approximately 100 feet from the project site, are considered noise sensitive. Since project construction is anticipated to generate vibration levels of approximately 75 VdB at 100 feet, ground vibrations from

project construction activities would meet the City's vibration threshold of 75 VdB for institutional land uses (i.e., the school) and would potentially exceed the threshold of 72 VdB at residential land uses located immediately east of the school across Whittier Drive. It should be noted that such significant vibration impacts would occur at the playground of the school campus and not at the school buildings, which are located farther than 100 feet from the project site. Consequently, off-site vibration impacts to sensitive receptors are considered significant. No other significant project-level or cumulative off-site noise or vibration impacts would occur.

The majority of the time, construction vibration levels experienced at the school would be well below the City's vibration thresholds. Furthermore, mitigation measures would be implemented as part of a finalized Construction Management Plan to reduce project-related construction vibration impacts to the extent feasible. These impacts would not be reduced to a level that is less than significant.

When an impact has been identified and mitigation is not available to mitigate the impact to less than significant levels, a Lead Agency (the City) may consider and adopt a Statement of Overriding Considerations in compliance with CEQA (Section 21081) and the *CEQA Guidelines* (Section 15093) finding that there are overriding considerations which outweigh and make acceptable the unavoidable significant adverse impacts in conjunction with its final project approvals.

- 22. At the last City Council meeting the Mayor indicated that he will extend construction hours and do whatever is necessary to ensure that as much construction is completed over the summer. The EIR's air quality analysis, however, is based on an 8:00 am to 5:00 pm construction schedule. Extending the construction hours over the summer increases air quality impacts that should be disclosed to the public in a revised EIR. Did we do that calculation and send it out to all the neighbors?**

Small changes in the hours of construction activities, such as starting and ending an hour or two earlier than 8:00 AM and later than 5:00 PM, would not result in substantially different results from those shown in the EIR, provided the amount of equipment in use, volume of daily earthmoving activity, and daily equipment operating hours did not change. The EIR assumed that all equipment involved in a particular activity (e.g., demolition, grading, excavation, and building construction) would operate 8 hours per day. This assumption is considered conservative since (1) not all equipment on a construction site generally operates concurrently and (2) not all equipment is used for a full, continuous 8-hour period. Furthermore, it has been stated by SMAQMD and SCAQMD staff in training sessions for the URBEMIS2007 model that it provides a conservative (that is, overly high) estimate of emissions analysis for construction and operation. Additionally, it should be noted that URBEMIS2007 (the revised model) does not assume 8 hours of continuous operation for all pieces of equipment, since construction is not necessarily continuous. Therefore, extending the hours by a small

amount would not be expected to increase the emissions above what was conservatively estimated in the EIR.

Recirculation of the Draft (or Final) EIR is not required, based on the standards defined in Section 15088.5 of the *CEQA Guidelines*. This section of the *CEQA Guidelines* states that a lead agency is required to recirculate an EIR when significant new information is added to the EIR. This information can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. Significant new information requiring recirculation could include a new significant environmental impact or a substantial increase in the severity of an environmental impact. The changes to the project are designed to reduce impacts. Because no new significant impacts would be identified with the project revisions, recirculation is not necessary.

23. How do we separate the development agreement differences and financial differences for each of the four proposals?

At the March 25, 2008 and April 21, 2008 City Council hearings, the City's Chief Financial Officer, Scott Miller, showed the different financial impacts of the following three project scenarios: Planning Commission Recommended project, Applicant's Revised project and Staff's Recommended project. Mr. Miller has been focusing on the Applicant's Revised project to show revenue comparisons and he will be providing information at the April 8, 2008, City Council meeting.

24. Requested clarification of photos seen at a Planning Commission meeting that appeared to show backyard swimming pools.

At a Planning Commission meeting the applicant showed photos taken at a height of approximately 155 feet from a helicopter tethered to the Hilton tower. There were a number of views into the backyards that showed swimming pools. The photos referenced are attached to this document for the City Council's information and staff will present these photos to clarify the issue of whether there would be views into the backyards of homes north of Wilshire Boulevard. The Commission indicated it did not want to create any additional privacy impact which was also one of the reasons the Commission initially recommended a smaller Residence A building before ultimately recommending its elimination. The Commission felt the tree canopy blocked views of backyards at 100 feet but at 155 feet it is above the tree canopy so there are some backyard views.

25. Why should the Council downgrade a commercial zone to allow condominiums?

This question was asked of the applicant who responded at the April 1, 2008 City Council meeting by describing the benefits of the project to the City. In addition as part of the Development Agreement proposed for the project, the City will receive a Public Benefit Fee and an Environmental Mitigation Fee.

26. How does the Hilton Revitalization Project affect the 9900 Wilshire building with regard to visual issues in the EIR?

Both the Hilton and 9900 Wilshire EIR's considered the other project in analyzing cumulative impacts of aesthetics and views. Issues related to views looked at only the views from the existing Wilshire Tower since the hotel was designed to take advantage of the views. Neither EIR identified important views from the 9900 Wilshire project.

27. What is the threshold of significance with regard to visual impacts?

The applicant's attorney responded but deferred to the City Attorney to define a significant impact under CEQA. The City Attorney clarified that what is or is not a significant environmental impact is determined by each community. The threshold of significance is the point at which an impact goes from being insignificant or less than significant to significant as determined by the City. The EIR states the thresholds of significance being used to analyze impacts. The thresholds of significance regarding visual character and views can be found on page 4.1.1-8 of the Draft EIR.

28. With the Residence A building rotated to be parallel to the Hilton Hotel motor court in the Staff Recommended version of the project, what are the light and glare impacts along Wilshire Boulevard?

The City's environmental consultant, Impact Sciences Inc., has provided a memorandum on this issue, dated April 3, 2008, which is attached. The memorandum found that light and glare impacts due to the proposed rotation of Residence A would remain less than significant from a CEQA analysis standpoint.

29. The existing hotel has 818 parking spaces and the proposed project requires 3,429 spaces. Does this include employee parking?

The hotel provides parking for its employees currently and would provide parking for its employees in the future. It should be noted that the proposed project does not require 3,429 parking spaces. A total of 3,037 spaces would be required if the entire project were to be rebuilt as a new use under the City's code.

There is no evidence that the Beverly Hilton doesn't provide parking for its employees or provide enough parking for its employees. Employee parking is included in all of the

analysis and projections provided by Fehr & Peers, the traffic consultant working for the City on the EIR.

A parking demand study was conducted by Fehr & Peers as part of the Draft EIR that indicated an additional 456 parking spaces would be needed to meet the demand of the new uses which at the time was 120 units and 12,000 sq. ft. of restaurant for a total of 1,274 (818 plus 456) parking spaces. Utilizing Code requirements for net new uses, a total of 1,181 spaces would be required. Since this analysis was completed the project approved by the Planning Commission was reduced in size and the Planning Commission required an additional level of parking. A total of 1,733 marked parking spaces would be provided with the capacity for 2,183 vehicles utilizing valet parking under the Planning Commission approved project.

30. Are there full time residents in the Beverly Hilton Hotel?

Any of the hotels in the City, including the Beverly Hilton Hotel may have full time residents. The Beverly Hilton Hotel has been known to have full time residents.

31. Was a revised property tax calculated for the last renovations?

A revised property tax was calculated for the last renovations at the Hilton site. It is noted that it is up to the Los Angeles County Tax Assessor's Office as to when a reassessment is reflected in the property tax rolls.

Vice Mayor Frank Fenton Questions:

1. What is the difference in impact between 12 floors and 14 floors at the Waldorf=Astoria?

A 12 story building would be 136 feet as measured from the datum point and 150 feet from adjacent grade and a 14 story building would be 152 feet as measured from the datum point and 166 feet from adjacent grade. Please see the Response to Commissioner Krasne Question #24 regarding why the Planning Commission felt there would be privacy impacts from a 14 story building.

Councilmember Jimmy Delshad Questions

1 Noted the Planning Commission unanimously approved the project without Residence A. Is it true that the Planning Commission has not had an opportunity to weigh in on Applicant's Revised Project or the Staff Recommended Project?

The Planning Commission vote was unanimous and the Planning Commission as a body did not review Applicant's Revised project or Staff's Recommended project as these

were introduced after the Planning Commission had concluded its deliberations and made its recommendations to the City Council.

2. Requested clarification of the impact of the various versions of the project on visual character and quality and the impact on views.

The City's environmental consultant, Impact Sciences Inc., has provided memoranda dated April 3, 2008, addressing these issues and which are attached.

3. Does the project still have a right turn lane from Wilshire to Santa Monica

The project does not have a separate right turn lane from eastbound Wilshire Boulevard to westbound Santa Monica Boulevard. Instead, the right lane eastbound on Wilshire would be widened four feet to allow one right hand lane for both through traffic on Wilshire and right hand turns onto Santa Monica Boulevard. This would result in a better transition from Wilshire to Santa Monica and will allow traffic to flow more smoothly. A proposed circulation plan is attached to this document.

4. Is Residence A as presented in Staff's Recommended Project a practical building?

Residence A as presented in Staff's Recommended project would be an eight-story building with a width of 96 feet (same as Applicant's proposed Residence B) and a length of 144 feet. It would have a common area ground floor and seven floors of units with 28 or 35 units depending on the applicant's preferred unit size. Staff believes this is a viable and practical building.

5. Should all Waldorf hotel rooms be in the same building? What are the different ways to accomplish the number of hotel rooms needed by the applicant?

The Applicant's attorney responded at the April 1, 2008 City Council meeting. Staff's response is that there are many options as to where hotel rooms may be located on the site although the applicant maintains the best option is for all hotel rooms to be located in the Waldorf=Astoria, five-star hotel building. The City Council Ad Hoc Committee will be having meetings on this issue and will be reporting back to the City Council at the April 8, 2008 City Council meeting.

6. What are the privacy impacts of adding floors 13 and 14 to the Waldorf=Astoria building?

A 12 story building would be 136 feet as measured from the datum point and 150 feet from adjacent grade and a 14 story building would be 152 feet as measured from the datum point and 166 feet from adjacent grade. Please see the Response to Commissioner Krasne Question #24 regarding why the Planning Commission felt there would be privacy impacts from a 14 story building.

- 7. Can staff verify the so-called “halo effect” that would allow the existing Hilton to charge higher rates if a new luxury hotel is built adjacent to it? Is the existing Hilton Hotel vulnerable if a new hotel is not built?**

Pursuant to staff’s research, it is staff’s belief that without any future renovations or changes to the Beverly Hilton hotel site, room rates and occupancy rates would decrease over time due to the presence of more luxurious five-star quality hotel accommodations in the area and this may make the hotel vulnerable. Staff will be available to address any questions at the April 8, 2008 City Council meeting.

- 8. Can staff verify that luxury hotels require offsets (e.g. condo units included or public subsidies) to be viable?**

Staff and its economic consultant, Keyser Marston, reviewed this issue, concur that the hotel requires offsets, and will be available for questions at the April 8, 2008 City Council meeting.

Councilmember Linda Briskman Questions

- 1. Asked staff to review the impacts of Residence A being retained and set back. The setback should equal or exceed the setback proposed for the south building of the 9900 Wilshire project. The building should be rotated to a position that has the least impact.**

The City Council Ad Hoc Committee will be having meetings on this issue and will be reporting back to the City Council at the April 8, 2008 City Council meeting.

- 2. Would Residence A provide view screening of the 9900 Wilshire project? Why wouldn’t Residence B screen the 9900 Wilshire building?**

Re-introducing Residence A will provide some screening of the 9900 Wilshire project from inside the Beverly Hilton project. However, since the 9900 Wilshire project consists of a much longer building, the entire building would not be screened.

- 3. For Residences A and B, is a thinner and taller building better than a thicker and shorter building?**

The City Council Ad Hoc Committee will be having meetings on this issue and will be reporting back to the City Council at the April 8, 2008 City Council meeting.

- 4. Was a version of the project considered that includes a taller Waldorf=Astoria building with a 2-story restaurant and condominiums at the top of the building?**

The Applicant’s original proposal to the Planning Commission included a 14-story Waldorf=Astoria Hotel with the top two floors luxury condominiums. The Planning

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Commission expressed concerns about privacy impacts and reduced the Waldorf=Astoria to 12 floors as noted in the answer to Question #24 from Councilmember Krasne's questions.

5. How many employees does the Hilton currently have? What is the total number by shift? How many park in the on-site structure? How many carpool? How many drive to work by themselves? How many use mass transit?

The following information is based on AQMD Rule 2202 Transportation Survey form submitted by the Hilton to AQMD for 2007.

Total Number of Hilton Employees = 731

Peak Hour Shift = 460 Employees
(Employees who report to work between 6:00 a.m. and 10:00 a.m. on weekdays)

Off-Peak Hour Shift = 271 Employees (Employees who report to work any hours except between 6:00 a.m. and 10:00 a.m. on weekdays)

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	Peak Average Daily	Off Peak Average Daily
Drive to work alone	191	196
Motorcycle	2	1
Total Drive Alone	193	197
2 persons per vehicle	36	7
3-5 persons per vehicle	4	2
15 persons per vehicle	0	1
Total Carpool	40	10
Bus	76	34
Rail/Plane	2	0
Walk	4	3
Bicycle	1	1
Compressed Work Week	2	0
Vacation	3	4
Sick	3	2
Day Off	52	55
No Survey or Errors	42	7
*Mixed Schedule	*42 Off-Peak Trips	*29 Peak Trips
Subtotal	460	342
TOTAL	460	271 (342 minus 71 mixed schedule trips)

*The Mixed Schedule trips are each counted in the opposite column and need to be subtracted from one column so there is not a double count. They are conservatively subtracted from the Off Peak column.

- 6. Modify the applicant’s model to produce a removable massing model piece of Residence A that can be moved around the existing model. Can you provide one that represents the size you are proposing and one that represents staff’s recommended size?**

A modified model will be provided by the applicant.

- 7. Provide a CD that has all the photos taken from the roof of the Beverly Hilton.**

Color copies of the photos are provided as an attachment to this document and will be presented by staff at the April 8, 2008 hearing.

Mayor Barry Brucker Questions:

- 1. If Residence A is rotated per Staff's Recommendation so the longer side faces Wilshire, how is the visual impact reduced with this building?**

The City's environmental consultant, Impact Sciences Inc., has provided memoranda dated April 3, 2008, addressing these issues and which are attached.

- 2. What is the number of condominium units that makes this project economically feasible?**

The City's Chief Financial Officer, Scott Miller, will be providing information at the April 8, 2008 City Council meeting.

- 3. Can condominium units be placed in a location other than Residence A?**

The City Council Ad Hoc Committee will be having meetings on this issue and will be reporting back to the City Council at the April 8, 2008 City Council meeting.

- 4. How firm is the 14-story Waldorf? Are 14 stories needed to make the project economically feasible?**

The City Council Ad Hoc Committee will be having meetings on this issue and will be reporting back to the City Council at the April 8, 2008 meeting. In addition, the City's Chief Financial Officer, Scott Miller, will be available at the April 8, 2008 City Council meeting.

March 27, 2008 City Council Questions

Mayor Barry Brucker Questions:

- 1. Based on the Planning Commission testimony, free employee parking was discussed at the Planning Commission hearings, but not included in the Planning Commission resolution recommending approval to the City Council due to the applicant's request for compliance with the TDM program. Please clarify.**

Each employer with over 250 employees must develop a TDM program that reduces the number of single vehicle occupancy trips made to the site. There are a variety of strategies that can be employed to achieve this goal including charging for parking to discourage employees from driving to work, providing incentives for car pooling, providing subsidies for utilizing mass transit, and providing an employee ride share matching program. One of the methods utilized by the Beverly Hilton is to discourage employees from driving to work is by charging for parking. Employees park at the Hilton and are charged a modest amount with subsidies provided for transit to encourage

employees to use mass transit as part of the Hilton's integrated transportation demand program (TDM).

Also see response to Question #5 in Councilmember Briskman's questions.

March 25, 2008 City Council Questions

Councilmember Jimmy Delshad Questions:

- 1. Does the City have any experience with any high rise fires in the past and does the Fire Department find it necessary to install helicopter pads above the proposed buildings?**

The Fire Marshall provided a response at the April 1st hearing and indicated that the Fire Department has adequate resources to fight fires in high rise buildings and a helipad would not be required for either the 9900 Wilshire project or the Beverly Hilton project.

Mayor Barry Brucker Questions:

- 1. Will the City support a helicopter pad on the roof top during emergencies?**

Please see the response to Councilmember Delshad's Question #1 above.

Councilmember Nancy Krasne Questions:

- 1. Is it proper to assume that the helicopter pad should be required for life safety/medical emergency purposes?**

The City's Fire Marshall was present and responded that the helicopters are limited in amounts of weight that they can carry and they are not commonly used for emergency situations in the City.

- 2. What is the construction timeline for the 9900 Wilshire and Beverly Hilton projects and can they be coordinated?**

The 9900 Wilshire project has a construction timeline of 33 months and the Beverly Hilton project has a construction timeline of 48 months. Construction on the Beverly Hilton site will be phased in order for the hotel to remain operational during the phased construction.

City staff and the Environmental Compliance Monitor, who will be hired to work for the City to oversee both projects, will ensure that construction activities for both projects are

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coordinated. Detailed construction management plans will need to be approved by the City prior to the issuance of a building permit.

Attachment 2

March 25, 2008 City Council Staff Report



AGENDA REPORT

Meeting Date: March 25, 2008

Item Number: D-1

To: Honorable Mayor & City Council

From: Vincent P. Bertoni, AICP, Director of Community Development
Rita Naziri, Senior Planner
Joyce Parker-Bozylinski, AICP, Planning Consultant

Subject: Consideration of Planning Commission's recommendation for approval of a General Plan Amendment, Zone Text Amendment, Zone Change, Specific Plan, Development Agreement and Environmental Impact Report for a Proposed Mixed use Project at 9876 Wilshire Boulevard (The Beverly Hilton Revitalization Project)

Attachments:

1. Planning Commission Environmental Impact Report Resolution with Attachments (Findings of Fact, Statement of Overriding Considerations and Mitigation Measures)
2. Planning Commission General Plan and Zoning Amendment Resolution
3. Planning Commission Specific Plan Resolution with Attachments (Conditions of Approval and Beverly Hilton Specific Plan)
4. Planning Commission Development Agreement Resolution with Attachment (Development Agreement)
5. Correspondence
6. Planning Commission Staff Reports and Minutes
7. Final Environmental Impact Report
8. Project Plans
9. Applicant's Submittal Packet

RECOMMENDATION

Staff recommends that the City Council:

1. Receive presentations from staff and the applicant.
2. Take public testimony and consider the Planning Commission recommendations for the project.
3. Provide direction to staff on the proposed project and continue the hearing until March 27, 2008 to receive any additional public comments.

INTRODUCTION

The project site occupies the eastern end of the 17-acre "Robinsons-May/Beverly Hilton Triangle" which is considered the western gateway to Beverly Hills because of its location at the Beverly Hills-Los Angeles city boundary. Comprising three separate parcels, the site totals 8.97 acres and is currently developed with The Beverly Hilton and ancillary facilities including an executive conference center, hotel administrative offices, professional offices, a five-story parking structure with one subterranean level, retail uses, hotel restaurant, and the former Trader Vic's Restaurant.

Under the proposed project, as recommended by the Planning Commission, the project site would be redeveloped and reconfigured through the addition of 30 poolside guestrooms to the Beverly Hilton hotel as well as new hotel support, retail and office facilities, a conference center, outdoor landscaped areas, a new five-star 140-room Waldorf Astoria Hotel, and a separate 60-unit condominium building.

The existing Wilshire Tower and its 352 guestrooms would be retained with upgrades and renovations, including hotel guestrooms, public meeting spaces, restaurants, and spa/salon/fitness facilities, all of which have been recently remodeled. The existing ballrooms and meeting rooms would also be retained.

The proposed project as recommended by the Planning Commission is described in further detail in the staff report under Planning Commission Recommendation and is shown in Attachment 8 – Project Plans. Attachment 9 which is the Applicant's Submittal Packet includes revised plans that were submitted by the applicant prior to the City Council hearing. These plans propose changes to the project as recommended by the Planning Commission. A detailed description of these changes can be found under the heading Applicant's Revised Project.

DISCUSSION

Project History

Over the course of seven months, the Planning Commission held ten hearings to consider the project. Early in the hearing process, as the Planning Commission listened to the testimony of the applicant and the public, the Commission provided its guidance on how the project needed to address its concerns and those of the community. After staff had reviewed the project as modified through the hearing process and made its recommendations to the Planning Commission, the Planning Commission further considered the project and made its independent recommendation which included the elimination of Residence A building.

The staff report is organized as outlined below:

1. Original Submittal
2. Staff Recommendation (Based upon original submittal)
3. Revised Project
4. Planning Commission Recommendation
5. Applicant's Revised Project
6. Staff Recommendation (Based upon most recent submittal)
7. Requested Entitlements
 - a) General Plan and Zoning Text Amendment

Meeting Date: March 25, 2008

- b) Specific Plan
- c) Development Agreement
- 8. Environmental Impact Report

Original Submittal

The original project submitted by the applicant consisted of a 10/13 story condominium building with 42 units (Residence A building), a 13-story condominium building with 48 units (Residence B building), a 11/14 story Waldorf=Astoria with 120 hotel rooms and 30 condominium units with a 2-story element including a restaurant, a 3-story Beverly Hilton conference center with 50 hotel rooms and a one story cabana pool area.

Staff's Original Recommendation

During the Planning Commission review of the project staff made several recommendations on the various project components. One of the main discussion items was the appropriate height of the proposed buildings. Staff recommended that the Planning Commission recommend approval the following building heights to the City Council:

Waldorf=Astoria	12 stories
Conference Center	2 stories
Residence A Building	9 stories
Residence B Building	18 stories
Cabana Rooms	3 stories

Revised Project

During the Planning Commission review, the project was revised several times with the final applicant submittal consisting of a 9-story Residence A building with 32 units, a 18-story Residence B building with 68 units, a 14-story Waldorf=Astoria with 140 rooms and 8 condominium units with a 2-story element including a restaurant, a 2-story Beverly Hilton conference center with no hotel rooms and a 3-story cabana pool areas with 30 hotel rooms.

Planning Commission Recommendation

The Planning Commission resolutions recommending approval of the project are included as Attachments 1 through 4. The Commission recommended approval of the project on a 5-0 vote. The Planning Commission approval was contingent upon the removal of Residence A and the Waldorf=Astoria building height remaining at 12-stories or lower.

During the review of the project, the Planning Commission recommended several changes to the project as submitted by the applicant. These included, among other items:

1. Elimination of Residence A building (32 units) which results in an increase of ground level landscaping of approximately 24,600 square feet.
2. Increase of the setback of the Waldorf=Astoria from the Wilshire Boulevard from 10.5 feet to 30 feet for the restaurant and from 33.7 feet to 64.9 feet for the hotel. The 12 story portion of hotel was moved 121.7 feet further west

(83.2 feet to 165.3 feet) of the Wilshire and Santa Monica Boulevard intersection.

3. Redesign of the Waldorf=Astoria driveway entrance to move the driveway further from the Wilshire and Santa Monica Boulevard intersection. The driveway entrance was moved from approximately 346 feet to 575 feet (229 feet further west).
4. Increase of the amount of ground level landscaping on the project to a total of 2.7 acres (120,700 square feet).
5. Added additional parking by building out the 4th level of the parking structure for the full footprint of the site. This increased the amount of parking spaces from the original proposal of 1,422 to 1,733. And required valet parking spaces to increase the amount of available parking spaces to 2,183 spaces.

Under the proposed project, as recommended by the Planning Commission, the project site would be redeveloped and reconfigured through the addition of 30 poolside guestrooms to the Beverly Hilton hotel as well as new hotel support, retail and office facilities, a conference center, outdoor landscaped areas, a new five-star 140-room Waldorf Astoria Hotel, and a separate 16-story 60-unit condominium building. Portions of the existing Beverly Hilton Hotel would be demolished, including the Palm/Oasis Court (a decrease of 181 hotel rooms); Cabana/Lanai Rooms (a decrease of 36 hotel rooms); pool terrace and pool; hotel entry drive and valet entrance; Wilshire Boulevard "Edge" building containing the conference center, hotel support space, hotel and professional offices, and retail uses; a portion of the lobby and lobby bar; the former Trader Vic's Restaurant and adjacent surface parking lot; the parking structure; and existing landscaping. The proposed project would result in a net reduction of 47 rooms.

The existing Wilshire Tower and its 352 guestrooms would be retained with upgrades and renovations, including hotel guestrooms, public meeting spaces, restaurants, and spa/salon/fitness facilities, all of which have been recently remodeled. The existing ballrooms and meeting rooms would also be retained.

Proposed building heights, setbacks and number of hotel rooms and condominium units are shown on the following table:

(SEE NEXT PAGE)

Project as Recommended by the Planning Commission					
	Units/ Rooms	Floors	Height (From Adjacent Grade)	Height (From Datum)	Setback (From Property Line)
Residence B	60 units	16 floors	194/207 feet	189 feet	19.5 feet from SM 17 feet from MGW
Waldorf=Astoria with Restaurant	140 rooms	2 / 12 floors	38 / 150 feet	21 / 136 feet	30 – 64.9 feet from Wilshire 83.2 – 165.3 feet from Intersection
Hilton Conf. Ctr. Located on Wilshire Boulevard	0 rooms	2 floors	38 feet	29 feet	30 – 45 feet from Wilshire
Hilton Cabana Rooms Located on Santa Monica Boulevard	30 rooms	3 floors	31 - 32 feet	14 feet	17 feet from SM

Parking would be provided in two, three, and four level subterranean parking structures connected by an underground vehicle access tunnel. One subterranean structure would be centrally located to serve Beverly Hilton hotel guests, staff, and residents of the Residence B building, and would be accessed via the hotel driveway and motor court off Merv Griffin Way and private driveway adjacent to the condominium building. A second subterranean structure at the eastern end of the project site would serve the Waldorf Astoria Hotel building. A total of 1,733 marked parking spaces would be provided with the capacity for 2,183 vehicles utilizing valet parking.

Several circulation improvements are proposed as part of the project. These include the following improvements:

- Wilshire Boulevard improvements would widen the street to provide a new right-turn only lane at Santa Monica Boulevard, improve the curb radius at this location, and a reconstructed traffic signal.
- The curb line would be setback to accommodate a new southbound lane along Santa Monica Boulevard
- Contributing a "fair-share" towards the cost of realigning Merv Griffin Way and providing a northbound left-turn, through, and right-turn lane at the intersection of Wilshire Boulevard and Merv Griffin Way.
- Contributing a "fair share" towards the cost of signaling the intersection of Santa Monica Boulevard and Merv Griffin Way.

Meeting Date: March 25, 2008

Applicant's Revised Project

The applicant has submitted plans for City Council consideration that propose the following changes to the project as recommended by the Planning Commission:

- Waldorf=Astoria would be increased to 14 stories with 170 hotel rooms and no condominiums. Restaurant would remain at 2 stories.
- Thirty (30) proposed hotel rooms at the Beverly Hilton Cabana Poolside area would be eliminated and replaced with 10 condominium units. The height of the building would remain at 3 stories.
- Residence B building would remain at 16 stories and 60 units.
- Residence A building would be added back into the project at 9 stories and 40 units with an increased setback from Wilshire Boulevard. The increased setback would be accommodated by reducing the size (length) of the building. The building would increase in width by 10 feet which would reduce the Merv Griffin Way setback from the original proposed location. In addition, the driveway would be moved from the west side of the building to the south side of the building. These changes are proposed to accommodate more landscaping.
- Fourth level of the subterranean garage would be redesigned and lifts would be provided. The same number of parking spaces (2,183) could be accommodated but there would be 1,523 marked spaces and 210 spaces on lifts (1,733) and 450 valet parking spaces.

The applicant intends to orally review the various exhibits with the City Council at the meeting. A summary of the project as submitted by the applicant are provided in the following table:

(SEE NEXT PAGE)

Project as Revised by the Applicant					
	Units/ Rooms	Floors	Height (From Adjacent Grade)	Height (From Datum)	Setback (From Property Line)
Residence A	40 units	9 floors	110-112 feet	108 feet	84.9
Residence B	60 units	16 floors	194 - 207 feet	189 feet	19.5 feet from SM 17 feet from MGW
Waldorf=Astoria with Restaurant	170 rooms	14 floors with 2 story restaurant	166 feet 38 feet	152 feet 21 feet	30 – 64.9 feet from Wilshire 83.2 – 165.3 feet from Intersection
Hilton Conf. Ctr. Located on Wilshire Boulevard	0 rooms	2 floors	38 feet	29 feet	30 – 41 feet from Wilshire
Hilton Cabana Poolside Located on Santa Monica Boulevard	10 units	3 floors	31 - 32 feet	14 feet	17 feet from SM

Staff Recommendation

Staff recommends the City Council approve the applicant's revised proposal with the following changes:

Residence A 8 stories
Reduce footprint and rotate the building to be parallel with the Hilton driveway entrance

Waldorf=Astoria 12 stories
140 hotel rooms

Cabana Poolside 3 stories
30 hotel rooms

Staff recommends that the height of Residence A building be reduced to below the height of the existing Hilton Tower, which is 95 feet to the roof for the datum point and 105 feet to roof from the adjacent grade. Staff also recommends that the Waldorf=Astoria remain at 12 stories as recommended by the Planning Commission. These changes will improve the view corridor along Wilshire Boulevard, preserve the view of the Hilton Tower and minimize view impacts to the residential single family homes to the north. In addition, reducing the footprint of the Residence A building and

rotating it to be parallel to the Hilton's main driveway will provide more visible open space at the corner and along Merv Griffin Way consistent with the design of the 9900 Wilshire project which was one of the goals of the Planning Commission when they recommended eliminating Residence A. In order to maintain the same number of hotel rooms, staff is recommending that the hotel rooms planned in the cabana/poolside area remain as part of the project.

RECOMMENDATION SUMMARY TABLE			
	Planning Commission Recommendation	Applicant Submittal	Staff Recommendation
Residence A	Eliminated	9 stories 40 units	8 stories Reduce footprint & rotate building
Residence B	16 stories 60 units	16 stories 60 units	16 stories 60 units
Waldorf=Astoria	12 stories 140 hotel rooms	14 stories 170 hotel rooms	12 stories 140 hotel rooms
Conference Center	2 stories No hotel rooms	2 stories No hotel rooms	2 stories No hotel rooms
Cabana/Poolside	3 stories 30 hotel rooms	3 stories 10 units	3 stories 30 hotel rooms

The remainder of the staff report discusses the project entitlements.

Requested Entitlements

General Plan and Zoning Amendment

As part of the project, the applicant is proposing a General Plan Amendment that would change the land use designation for the entire project site from "Low Density General Commercial" to "Beverly Hilton Specific Plan" and to make the following text changes (shown in underline and strikeout format) to the Housing Element.

The text of Program 4.3 of Objective 4.3 of the Housing Element of the General Plan, as that Program is set forth in Section 1.3 (Summary of Housing Program) and Section 3 (Statement of Goals, Objectives and Policies Relative to Maintenance, Preservation, Improvement and Development of Housing for the Next Five Years) of the Housing Element would be amended to read as follows:

"Program 4.3 Develop standards for mixed residential-commercial structures developments, with and without low income housing components, including additional height, in areas currently zoned for commercial use and consider appropriateness of various areas, such as:

Meeting Date: March 25, 2008

-South side of Wilshire Blvd., east of Beverly Dr. (Between Stanley Dr. and LeDoux Rd., extend to north side of Charleville Blvd.)

-Eastern area of Business Triangle.

-South side of Burton Way (commercially zoned parcels).

-Olympic Boulevard (commercially zoned parcels).

-La Cienega Boulevard north of Wilshire Boulevard.

-City-owned property where some or all of the residential units would be for lower income households.

-East side of South Beverly Drive.

-9876 Wilshire Boulevard (The Beverly Hilton site)."

In addition, the applicant is proposing to change the zoning designation for the entire project site from "C3" to the "Beverly Hilton Specific Plan" zone. The floor area ratio (FAR) allowed under the C3 zone is 2 to 1 and the project as recommended by the Planning Commission would have an FAR of 2.16 to 1.

Beverly Hilton Specific Plan

The proposed Beverly Hilton Specific Plan would establish land uses and development, design, and operational standards for the project and the project site. The draft specific plan is included as Exhibit A in Attachment 3.

Chapter 1 of the Specific Plan provides information on the purpose and intent and goals and objectives of the Specific Plan. Chapters 2 and 3 provide the planning context and various components of the Plan. Chapter 4 includes a list of uses that would be permitted on the site as well as requirements for parking, building height, outdoor lighting, signage, and green building standards. Chapter 5 includes provisions for administering the Specific Plan and includes the process and reviewing authority for amendments and modifications to the Plan. Chapter 6 includes items such as standards for the outdoor dining facilities, outdoor living areas and recreational facilities.

Attached to the Specific Plan (Exhibit A in Attachment 3) are the proposed conditions of approval for the project. The mitigation measures from the EIR will also be conditions of approval but they are included with Attachment 1 (EIR Resolution).

Development Agreement

The proposed Development Agreement is intended to provide benefits to both the City and the applicant. The Agreement vests the project entitlements for a five year period and if a Vesting Tentative Tract Map is approved by the City, the term would be extended until the expiration of the vesting tentative map or approval and recordation of a final subdivision map for the project. The Agreement provides the City with infrastructure fees and additional fees that could not otherwise be required of the development.

The Development Agreement (Exhibit A of Attachment 4) for the project would require the developer to make a "public benefit contribution" to the City of \$10,000,000. This contribution would address the project's impact on the City's infrastructure (streets, utilities, lights) and affordable housing. The Planning Commission recommended that a portion of the Public Benefit Contribution be placed in an affordable housing fund. The amount to be placed in the fund would be calculated by multiplying \$261,733 by ten percent (10%) of the number of dwelling units (60). This would result in \$1,570,398 being placed in an affordable housing fund. The Commission also recommended that a 10% (\$1,000,000) of the Public Benefit Contribution be used solely for the purpose of implementing improvements to address congestion at the intersection of Santa Monica Boulevard and Wilshire Boulevard.

In addition, an Environmental Mitigation and Sustainability Fee would be required. The fee would be paid concurrent with each sales transaction. The amount of the EMS Fee would be \$4.50 for each \$1,000 of the sales price of the property. The EMS Fee would be paid from the escrow account set up for the sale. The fee would be paid upon the initial sale of the unit and for each subsequent sale of the unit by the current owner.

The Development Agreement requires an easement for future bus turn outs, an easement for a future subway portal, access for the City shuttle and the provision of a significant gateway feature which could consist of public art or significant architectural feature such as fountains along with a payment of \$500,000 into a fund established by the City for public art.

Environmental Impact Report (EIR)

The purpose of preparing an EIR for a project is to provide the City and the public in general with detailed information about the effects the proposed project is likely to have on the environment and to list ways in which the significant effects might be minimized. An EIR must also identify and analyze alternatives to the proposed project.

A Draft EIR was prepared and circulated on August 8, 2007 for a 52-day comment period. Copies of the Draft EIR and the Appendices were provided to the City Council at that time and are not included as attachments to the staff report. Copies of these documents are available upon request. At the end of the comment period, a Final EIR which consists of Response to Comments and Changes to the Draft EIR was prepared and is included as Attachment 7.

Significant and Unavoidable Environmental Impacts

Six significant, unavoidable impacts were identified in the Environmental Impact Report. Of these six, three impacts related to air quality, noise and ground vibration would only occur during the project construction. The six significant, unavoidable impacts are as summarized as follows:

- Aesthetics and Views – Implementation of the project and the project in combination with the 9900 Wilshire project would create impacts related to consistency with Land Use Element objectives that are significant and unavoidable. Project implementation would also adversely affect views of the Beverly Hilton from the intersection of Wilshire and Santa Monica Boulevards.
- Air Quality – During project construction, oxides of nitrogen (NO₂) emissions would exceed SCAQMD established significance thresholds such that significant

unavoidable impacts would result, even after incorporation of mitigation. The Localized Significance Threshold (LST) analysis shows that maximum 24-hour PM₁₀ and PM_{2.5} concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the project site during construction.

- Cultural Resources – Demolition of portions of The Beverly Hilton, including the Wilshire Edge building, pedestrian entry area, pool, and former Trader Vic's restaurant, and the introduction of four new buildings to the project site, would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the *CEQA Guidelines*, even after incorporation of mitigation.
- Land Use and Planning – Implementation of the project and the project in combination with the 9900 Wilshire project would result in inconsistencies or conflicts with the goals related to landmark preservation in the General Plan Conservation Element and objectives related to transitional conflict and scale in the Land Use Element.
- Noise – For construction activities performed outside the hours specified within the City's noise ordinance, the project would result in significant project-level and cumulative noise impacts.
- Groundborne Vibration – Due to the proximity of sensitive receptors, ground vibrations from project construction would exceed the Federal Railway Administration (FRA) groundborne vibration threshold such that significant unavoidable impacts would result.

Environmental Impacts Less than Significant

The EIR found that the following areas were less than significant either with or without mitigation: Aesthetics (Light and Glare, Shade and Shadow), Air Quality (Criteria Pollutants – Operations, Localized Carbon Monoxide Emissions – Operations, Consistency with SCAG/AQMP Population Projections, Odors and Hazardous Materials), Cultural Resources (Street Lights, Archaeological Resources, and Paleontological Resources), Geology and Soils, Hazardous and Hazardous Materials, Hydrology and Water Quality, Noise (Other than Construction), Population and Housing, Public Services, Transportation, Traffic, Parking and Circulation, and Utilities and Service Systems.

A list of the Mitigation Measures for the project is included as Exhibit C to Attachment 1 (Planning Commission EIR Resolution). As a point of information, some of the Mitigation Measures in the Final EIR were changed by the Planning Commission and while these changes were incorporated into the Mitigation Monitoring and Reporting Program in Exhibit C, they have not been changed in the Final EIR which had already been printed. An appendix will be added to the Final EIR which discusses these changes.

Findings of Fact and Statement of Overriding Considerations

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

Meeting Date: March 25, 2008

1. Changes or alterations have been required in, or incorporated into the project that avoid or substantially lessen the significant environmental effects as identified in the EIR
2. Such changes or alterations are within the responsibility and jurisdiction of another public agency, not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.
3. Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the EIR.

Findings of Fact for the project are provided as Exhibit A to Attachment 1.

As noted in number 3 above, CEQA also requires the decision-making agency to balance the economic, legal, social, technological or other benefits of a project against its unavoidable environmental risks when determining whether to approve a project. If the benefits of the project outweigh the unavoidable adverse effects, those effects may be considered acceptable. CEQA requires the agency to provide written findings supporting the specific reasons for considering a project acceptable when significant impacts are unavoidable. Such reasons must be based on substantial evidence in the EIR or elsewhere in the administrative record. A Statement of Overriding Considerations has been prepared for the proposed project and is included as Exhibit B to Attachment 1.

Meeting Schedule

March 25	Staff Presentation Applicant Presentation Public Comments
March 27	Public Comments
April 1	Council Questions
April 8	Council Deliberation
April 15	Council Deliberation and Direction
April 22	Adopt Resolutions and 1 st Reading of Ordinance
April 29	2 nd Reading of Ordinances

FISCAL IMPACT

See discussion under "Development Agreement" above which addresses the potential fiscal impacts to the City resulting from a change from commercial to residential uses at the project site.

Meeting Date: March 25, 2008

Vincent P. Bertoni, AICP
Director of Community Development


Approved By

Attachment 3

March 27, 2008 City Council Staff Report



AGENDA REPORT

Meeting Date: March 27, 2008
Item Number: C-1
To: Honorable Mayor & City Council
From: Vincent P. Bertoni, AICP, Director of Community Development
Michele McGrath, Senior Planner
Joyce Parker-Bozylinski, AICP, Planning Consultant
Subject: Consideration of Planning Commission's recommendation for approval of a General Plan Amendment, Zone Text Amendment, Zone Change, Specific Plan, Development Agreement and Environmental Impact Report for a Proposed Mixed use Project at 9876 Wilshire Boulevard (The Beverly Hilton Revitalization Project)

RECOMMENDATION

Staff recommends that the City Council continue receiving public comment and continue the meeting to April 1, 2008.

SUMMARY

The City Council held an initial public hearing on this project on March 25, 2008 at which presentations were made by City staff, the Planning Commission Chair and the project applicant and public testimony was heard. The purpose of this meeting is to take any additional public testimony. Staff, consultants and the applicant's team will be prepared to answer questions at the April 1, 2008 City Council meeting.

The City Council is in receipt of the agenda report and attachments for this project as provided at the March 25, 2008 City Council meeting.

Vincent P. Bertoni, AICP
Director of Community Development

Approved By

Attachment 4

April 1, 2008 City Council Staff Report



AGENDA REPORT

Meeting Date: April 1, 2008

Item Number: D-1

To: Honorable Mayor & City Council

From: Vincent P. Bertoni, AICP, Director of Community Development
Michele McGrath, Senior Planner
Joyce Parker-Bozylinski, AICP, Planning Consultant

Subject: Consideration of Planning Commission's recommendation for approval of a General Plan Amendment, Zone Text Amendment, Zone Change, Specific Plan, Development Agreement and Environmental Impact Report for a Proposed Mixed use Project at 9876 Wilshire Boulevard (The Beverly Hilton Revitalization Project)

Attachments:

1. Site Plans:
 - Planning Commission Recommended Project
 - Applicant's Revised Project
 - Staff Recommended Project
2. Project Tables
3. City Council Staff Reports

RECOMMENDATION

Staff recommends that the City Council:

1. Receive presentations from staff and the applicant;
2. Take public testimony;
3. Ask questions of staff, applicant and Planning Commission Chair;
4. Continue the meeting to April 8, 2008.

INTRODUCTION

The project site occupies the eastern end of the 17-acre "Robinsons-May/Beverly Hilton Triangle" which is considered the western gateway to Beverly Hills because of its location at the Beverly Hills-Los Angeles city boundary. Comprising three separate parcels, the site totals 8.97 acres and is currently developed with The Beverly Hilton and ancillary facilities including an executive conference center, hotel administrative offices, professional offices, a five-story parking structure with one subterranean level, retail uses, hotel restaurant, and the former Trader Vic's Restaurant.

Meeting Date: April 1, 2008

There are four different versions of the project that have been presented to the City Council: Applicant's Original, Planning Commission Recommended, Applicant Revised and Staff Recommended. In response to a City Council request at the March 25, 2008 City Council meeting, the Staff Recommended project will be more fully described and compared to the Planning Commission Recommended project and the Hilton revised project. Color tables with square footage information about each version of the project are attached.

DISCUSSION

Over the course of seven months, the Planning Commission held ten hearings to consider the Hilton Original project. After staff had reviewed the project as modified through the hearing process and made its recommendations to the Planning Commission, the Planning Commission further considered the project and made its independent recommendation which included the elimination of the Residence A condominium building. The applicant presented a revised project to the City Council at its March 25, 2008 meeting. Staff reviewed the applicant's revised plans and made a recommendation to the City Council. These four versions of the project are reviewed below.

Applicant's Original Project

The original project submitted by the applicant consisted of:

- 13-story condominium building with 42 units (Residence A building);
- 13-story condominium building with 48 units (Residence B building);
- 14-story Waldorf=Astoria with 120 hotel rooms and 30 condominium units that included a 2-story element with a restaurant;
- 3-story Beverly Hilton conference center with 50 hotel rooms and a one-story cabana pool area.
- Total square footage = 970,620 SF

During the Planning Commission review, the project was revised several times with the final applicant submittal consisting of a 9-story Residence A building with 32 units, a 18-story Residence B building with 68 units, a 14-story Waldorf=Astoria with 140 rooms and 8 condominium units with a 2-story element including a restaurant, a 2-story Beverly Hilton conference center with no hotel rooms and a 3-story cabana pool areas with 30 hotel rooms.

Planning Commission Recommended Project

The Planning Commission recommended approval of the project on a 5-0 vote. The Planning Commission approval was contingent upon the removal of Residence A and the Waldorf=Astoria building height remaining at 12-stories or lower.

During the review of the project, the Planning Commission recommended several changes to the project as submitted by the applicant. These included, among other items:

- Elimination of Residence A building (32 units) which results in an increase of ground level landscaping of approximately 24,600 square feet.

Meeting Date: April 1, 2008

- Increase of the setback of the Waldorf=Astoria from the Wilshire Boulevard from 10.5 feet to 30 feet for the restaurant and from 33.7 feet to 64.9 feet for the hotel. The 12 story portion of hotel was moved 121.7 feet further west (83.2 feet to 165.3 feet) of the Wilshire and Santa Monica Boulevard intersection.
- Redesign of the Waldorf=Astoria driveway entrance to move the driveway further from the Wilshire and Santa Monica Boulevard intersection. The driveway entrance was moved from approximately 346 feet to 575 feet (229 feet further west).
- Increase of the amount of ground level landscaping on the project to a total of 2.7 acres (120,700 square feet).
- Added additional parking by building out the 4th level of the parking structure for the full footprint of the site. This increased the amount of parking spaces from the original proposal of 1,422 to 1,733. And required valet parking spaces to increase the amount of available parking spaces to 2,183 spaces.

Under the project recommended by the Planning Commission, the project site would be redeveloped and reconfigured through the addition of 30 poolside guestrooms to the Beverly Hilton hotel as well as new hotel support, retail and office facilities, a conference center, outdoor landscaped areas, a new five-star 140-room Waldorf Astoria Hotel, and a separate 16-story 60-unit condominium building. Portions of the existing Beverly Hilton Hotel would be demolished, including the Palm/Oasis Court (a decrease of 181 hotel rooms); Cabana/Lanai Rooms (a decrease of 36 hotel rooms); pool terrace and pool; hotel entry drive and valet entrance; Wilshire Boulevard "Edge" building containing the conference center, hotel support space, hotel and professional offices, and retail uses; a portion of the lobby and lobby bar; the former Trader Vic's Restaurant and adjacent surface parking lot; the parking structure; and existing landscaping. The proposed project would result in a net reduction of 47 rooms.

The existing Wilshire Tower and its 352 guestrooms would be retained with upgrades and renovations, including hotel guestrooms, public meeting spaces, restaurants, and spa / salon / fitness facilities, all of which have been recently remodeled. The existing ballrooms and meeting rooms would also be retained.

Proposed building heights, setbacks and number of hotel rooms and condominium units are shown on the following table:

(SEE NEXT PAGE)

Planning Commission Recommended Project					
	Units/ Rooms	Floors	Height (From Adjacent Grade)	Height (From Datum)	Setback (From Property Line)
Residence B	60 units	16 floors	194/207 feet	189 feet	19.5 feet from SM 17 feet from MGW
Waldorf=Astoria with Restaurant	140 rooms	2 / 12 floors	38 / 150 feet	21 / 136 feet	30 – 64.9 feet from Wilshire 83.2 – 165.3 feet from Intersection
Hilton Conf. Ctr. Located on Wilshire Boulevard	0 rooms	2 floors	38 feet	29 feet	30 – 45 feet from Wilshire
Hilton Cabana Rooms Located on Santa Monica Boulevard	30 rooms	3 floors	31 - 32 feet	14 feet	17 feet from SM
Total Square Footage for this Project = 842,625 SF					

Parking would be provided in two, three, and four level subterranean parking structures connected by an underground vehicle access tunnel. One subterranean structure would be centrally located to serve Beverly Hilton hotel guests, staff, and residents of the Residence B building, and would be accessed via the hotel driveway and motor court off Merv Griffin Way and private driveway adjacent to the condominium building. A second subterranean structure at the eastern end of the project site would serve the Waldorf Astoria Hotel building. A total of 1,733 marked parking spaces would be provided with the capacity for 2,183 vehicles utilizing valet parking.

Several circulation improvements are proposed as part of the project. These include the following:

- The curb line would be setback to accommodate a new southbound lane along Santa Monica Boulevard
- Contributing a "fair-share" towards the cost of realigning Merv Griffin Way and providing a northbound left-turn, through, and right-turn lane at the intersection of Wilshire Boulevard and Merv Griffin Way.
- Contributing a "fair share" towards the cost of signaling the intersection of Santa Monica Boulevard and Merv Griffin Way.

Applicant's Revised Project

The applicant submitted plans for City Council consideration at the March 25, 2008 meeting that propose the following changes to the project as recommended by the Planning Commission:

Meeting Date: April 1, 2008

- Waldorf=Astoria would be increased to 14 stories with 170 hotel rooms and no condominiums. Restaurant would remain at 2 stories.
- Thirty (30) proposed hotel rooms at the Beverly Hilton Cabana Poolside area would be eliminated and replaced with 10 condominium units. The height of the building would remain at 3 stories.
- Residence B building would remain at 16 stories and 60 units.
- Residence A building would be added back into the project at 9 stories and 40 units with an increased setback from Wilshire Boulevard. The increased setback would be accommodated by reducing the size (length) of the building. The building would increase in width by 10 feet which would reduce the Merv Griffin Way setback from the original proposed location. In addition, the driveway would be moved from the west side of the building to the south side of the building. These changes are proposed to accommodate more landscaping.
- Fourth level of the subterranean garage would be redesigned and lifts would be provided. The same number of parking spaces (2,183) could be accommodated but there would be 1,523 marked spaces and 210 spaces on lifts (1,733) and 450 valet parking spaces.

At the March 25, 2008 meeting, staff provided two tables with detailed breakdowns of the square footage figures for the Planning Commission Recommended project and the Applicant's Revised project. The table for the Planning Commission Recommended project is correct but the table for the Applicant's Revised project inadvertently included the square footage for the 30 Hilton poolside hotel rooms that the applicant had eliminated. This square footage was included in addition to the square footage for 30 additional hotel rooms at the Waldorf=Astoria and ten residential condominiums poolside at the Hilton. That table has now been corrected and the tables for all four versions of the project are provided as an attachment to this report. should be accurate except for the Staff Recommended project. That table may have a slight discrepancy in the hotel square footage figures as noted. Staff will provide an updated version of that table before or at the April 1st City Council meeting.

(SEE NEXT PAGE)

Project as Revised by the Applicant					
	Units/ Rooms	Floors	Height (From Adjacent Grade)	Height (From Datum)	Setback (From Property Line)
Residence A	40 units	9 floors	110-112 feet	108 feet	84.9
Residence B	60 units	16 floors	194 - 207 feet	189 feet	19.5 feet from SM 17 feet from MGW
Waldorf=Astoria with Restaurant	170 rooms	14 floors with 2 story restauran t	166 feet 38 feet	152 feet 21 feet	30 – 64.9 feet from Wilshire 83.2 – 165.3 feet from Intersection
Hilton Conf. Ctr. Located on Wilshire Boulevard	0 rooms	2 floors	38 feet	29 feet	30 – 41 feet from Wilshire
Hilton Cabana Poolside Located on Santa Monica Boulevard	10 units	3 floors	31 - 32 feet	14 feet	17 feet from SM
Total Square Footage for this project = 990,817 SF					

Staff Recommended Project

Staff recommends the City Council approve the applicant's revised proposal with the following changes:

- Residence A 8 stories
Reduce footprint and rotate the building to be parallel with the
Hilton driveway entrance
- Waldorf=Astoria 12 stories
140 hotel rooms
- Cabana Poolside 3 stories
30 hotel rooms

Project as Recommended by Staff					
	Units/ Rooms	Floors	Height (From Adjacent Grade)	Height (From Datum)	Setback (From Property Line)
Residence A	28 units (estimate)	8 floors	95 feet	105 feet	32' setback at Merv Griffin Way; 104' minimum setback from Wilshire Blvd.
Residence B	60 units	16 floors	194/207 feet	189 feet	19.5 feet from SM 17 feet from MGW
Waldorf=Astoria with Restaurant	140 rooms	2 / 12 floors	38 / 150 feet	21 / 136 feet	30 – 64.9 feet from Wilshire 83.2 – 165.3 feet from Intersection
Hilton Conf. Ctr. Located on Wilshire Boulevard	0 rooms	2 floors	38 feet	29 feet	30 – 45 feet from Wilshire
Hilton Cabana Rooms Located on Santa Monica Boulevard	30 rooms	3 floors	31 - 32 feet	14 feet	17 feet from SM
Total Square Footage for this project = 964,267 SF					

This Staff Recommended version of the project is the same as the Planning Commission Recommended version except the Residence A building has been introduced back into the project but with a reduced height of eight floors and reduced building footprint. Staff recommends the height of Residence A building should be reduced so that it is below the height of the existing Hilton Tower, which is 95 feet to the roof for the datum point and 105 feet to roof from the adjacent grade. Staff also recommends that the Waldorf=Astoria remain at 12 stories as recommended by the Planning Commission. In addition, reducing the footprint of the Residence A building and rotating it to be parallel to the Hilton's main driveway will provide more visible open space at the corner and along Merv Griffin Way consistent with the design of the 9900 Wilshire project which was one of the goals of the Planning Commission when it recommended eliminating Residence A. In order to maintain the same number of hotel rooms, staff is recommending that the hotel rooms planned in the cabana/poolside area remain as part of the project.

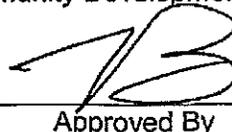
RECOMMENDATION SUMMARY TABLE			
	Planning Commission Recommendation	Applicant Submittal	Staff Recommendation
Residence A	Eliminated	9 stories 40 units	8 stories Reduce footprint & rotate building
Residence B	16 stories 60 units	16 stories 60 units	16 stories 60 units
Waldorf=Astoria	12 stories 140 hotel rooms	14 stories 170 hotel rooms	12 stories 140 hotel rooms
Conference Center	2 stories No hotel rooms	2 stories No hotel rooms	2 stories No hotel rooms
Cabana/Poolside	3 stories 30 hotel rooms	3 stories 10 units	3 stories 30 hotel rooms

Attached are three conceptual site plans showing the location of the Residence A building in the Planning Commission Recommended project, the Applicant's Revised project and Staff's Recommended project. The site plan for Staff's Recommended project illustrates how the relocation of the building provides an opportunity to create a large open space at the corner of Wilshire Boulevard and Merv Griffin Way that mirrors the open space proposed across Merv Griffin Way adjacent to the proposed buildings at 9900 Wilshire Boulevard. The relocation also preserves and enhances the view corridor between Residence A and the Hilton Tower.

Meeting Schedule

- March 25 Staff Presentation
Applicant Presentation
Public Comments
- March 27 Public Comments
- April 1 Council Questions
- April 8 Council Deliberation
- April 15 Council Deliberation and Direction
- April 22 Adopt Resolutions and 1st Reading of Ordinance
- April 29 2nd Reading of Ordinances.

Vincent P. Bertoni, AICP
Director of Community Development



Approved By

Attachment 5

April 8, 2008 City Council Staff Report



AGENDA REPORT

Meeting Date: April 8, 2008

Item Number: C-1

To: Honorable Mayor & City Council

From: Vincent P. Bertoni, AICP Director of Community Development
Joyce Parker-Bozylinski, AICP, Consulting Planner

Subject: Consideration of Planning Commission's recommendation for approval of a General Plan Amendment, Zone Text Amendment, Zone Change, Specific Plan, Development Agreement and Environmental Impact Report for a Proposed Mixed use Project at 9876 Wilshire Boulevard(The Beverly Hilton Revitalization Project)

Attachments:

1. Council Questions/Answers (to be provided prior to the meeting)
2. March 25, 2008 City Council Staff Report
3. March 27, 2008 City Council Staff Report
4. April 1, 2008 City Council Staff Report
5. Correspondence
6. Proposed Residence A Building: Aesthetic Impacts Memo
7. Proposed Residence A Building: Light and Glare Memo

RECOMMENDATION

Staff recommends that the City Council:

1. Receive presentations from staff.
2. Receive a presentation from the applicant.
3. Take public testimony on the project and close the public hearing.
4. Ask any additional questions of staff.
5. Ask any additional question of the applicant.
6. Deliberate on the project.
7. Provide direction to staff on the proposed project and direct staff to bring back draft Resolutions and Ordinances at the next meeting.
8. Continue the meeting until April 21, 2008.

DISCUSSION

The City Council held public hearings on March 25th and March 27th to hear presentations on the project and receive public testimony. On April 1st, the City Council received additional presentations from staff, the Planning Commission Chair, and the applicant and received additional public testimony. At the conclusion of the public testimony the City Council asked questions of staff and the applicant and directed staff to bring back answers to the questions raised.

There were four variations of the project that have been presented to the City Council: Applicant's Original Project, Planning Commission Recommended Project, Applicant Revised Project and Staff Recommended Project. These different variations are described in detail in the attached City Council staff reports. At the conclusion of the April 1st hearing, it was determined that the Ad Hoc Committee consisting of Mayor Brucker and Councilmember Briskman would meet with the applicant to discuss potential revisions to the project and the Development Agreement. The Ad Hoc Committee met with the applicant on April 4th and April 7th and will report on the results of the meeting at the hearing.

The purpose of this hearing is to answer any further questions the City Council may have and for the Council to provide direction to staff on the project so that staff can prepare draft Resolutions and Ordinances for City Council consideration. Attachment 1 to the staff report contains answers to all of the City Council questions received to date. Attachment 1 will be provided under separate cover prior to the City Council hearing.

In addition, based on discussions regarding the aesthetic impact of adding Residence A back into the project, two memorandums (Attachments 6 and 7) were prepared that discuss impacts to Visual Character, View, and Light and Glare.

At the April 1 hearing there was a discussion on whether the back yards of the homes north of Wilshire Boulevard would be visible from the Waldorf=Astoria at 12 and 14 stories in height. To clarify this issue, staff will be presenting photos the project taken from the roof of the existing Hilton Tower at the 155 foot elevation. Scott Miller, the City's Chief Financial Officer, will also be providing additional information on the financial aspects of the project prior to the Council meeting.

Staff is recommending the City Council to provide direction to staff on the project so that staff can prepare draft Resolutions and Ordinances for City Council consideration for the April 21st hearing. If the City Council needs additional time to deliberate on the project, April 15th has been reserved as a potential hearing date.

Meeting Date: April 8, 2008

Meeting Schedule

April 15 Council Deliberation and Direction (If Needed)
April 21 Adopt Resolutions and 1st Reading of Ordinance
April 29 2nd Reading of Ordinances.

Vincent P. Bertoni, AICP
Director of Community Development



Approved By

Attachment 6

**Draft Development Agreement
recommended by the Planning
Commission**

DRAFT Development Agreement

RECORDING REQUESTED BY:
CITY OF BEVERLY HILLS

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 **(WITH LIENS SECURING EMS FEES AND MUNICIPAL SURCHARGES)**

THIS DEVELOPMENT AGREEMENT (WITH LIENS SECURING EMS FEES AND MUNICIPAL SURCHARGES) (this "Agreement") is made by and between THE CITY OF BEVERLY HILLS, a California municipal corporation (the "City"), and Oasis West Realty, LLC, a Delaware 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.

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

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

D. In anticipation of the development of the Project, Developer has made or will make 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: (1) a general plan amendment, (2) a specific plan, (3) a zoning code amendment, (4) a vesting tentative tract map, and (5) a development agreement for the Project under the Development Agreement Act.

E. The City Council has specifically considered the advantages and impacts of this Project upon the welfare of the City and believes that the Project will benefit the City.

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

G. To provide such certainty, the City desires, by this Agreement, to provide Developer with assurance that Developer can proceed with development of the Project with the uses, density and other land use characteristics specified in the Project Approvals. Developer would not enter into this Agreement, or agree to provide the public benefits and improvements described herein, 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.

H. 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.

I. On [DATES] pursuant to the requirements of the Development Agreement Act, the Planning Commission of the City of Beverly Hills conducted a hearing on Developer's application for this Agreement.

J. On [DATES] , 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 Developer's application for this Agreement.

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

L. On [DATE] , 2008, the City Council adopted Ordinance No. approving this Agreement, and such ordinance became effective on [DATE] , 2008.

M. By Resolution No. adopted by the City Council on [DATE] , the City Council reviewed and certified, after making appropriate findings, the EIR (as hereafter defined) 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 of the mutual promises and covenants herein contained and other valuable consideration, the receipt and adequacy of which are 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 set forth below:

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

(b) "Beverly Hills Public Art Ordinance" means the requirements set forth in Title 3, Chapter 1, Article 8 of the Beverly Hills Municipal Code.

(c) "Building Permit" means a permit issued by the City pursuant to Title 9 of the Beverly Hills Municipal Code to authorize construction of a building or other structure. "Building Permit" shall not include a demolition permit or excavation and shoring permit, but shall include a foundation permit.

(d) "Business Day" means any day other than a Saturday, Sunday or California or Federal holiday on which banks in the City are customarily closed.

(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) "Change of Control" shall refer to a transaction whereby a transferee acquires a beneficial ownership interest in Developer (or in an Existing Owner) such that after such transaction there is a change of identity of the person or entity that has the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of voting securities, by contract or otherwise, but not including a Foreclosure Transaction or an Affiliate Transaction.

(g) "Conditions of Approval" shall mean those conditions of approval imposed by the City in connection with the Project Approvals.

(h) "Developer Fees" shall mean those fees established and adopted by the City pursuant to Section 66000 et seq., of the Government Code of the State of California to offset the impact of development on the City's capital facilities, including, without limitation, parking impact fees, affordable housing fees, traffic fees, infrastructure fee, linkage fees, exactions, assessments or fair share charges or other similar impact fees imposed on or in connection with new development by the City. Developer Fees do 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 (as the same may be amended and/or re-codified from time to time).

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(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 a Ministerial Permit or Ministerial Approval (as hereafter defined).

(l) "Effective Date" shall mean the date this Agreement, fully executed, is recorded in the official records of the Los Angeles County Recorder.

(m) "EIR" shall mean the final Environmental Impact Report (SCH No. 2006091053) that addresses the Project.

(n) "EMS Fee" means the fee paid pursuant to the provisions of Section 10(e) of this Agreement.

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

(p) "Gross Room Revenue" means revenue that is or would be subject to the transient occupancy tax imposed by the City pursuant to Title 3, Chapter 1, Article 3 of the Beverly Hills Municipal Code as that Article exists on the Effective Date.

(q) "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.

(r) "Mortgage" means any mortgage, deed of trust, encumbrance, sale leaseback or other security interest encumbering all or any portion of the Property, given by Developer for the purpose of securing funds to be used for financing the acquisition of the Property or any portion thereof, the construction of improvements thereon and/or any other expenditures reasonably necessary and appropriate to develop the Project.

(s) "Mortgagee" means the holder of the beneficial interest under any Mortgage.

(t) "Municipal Surcharge" means the fee paid pursuant to Section 10(g) of this Agreement.

(u) "Processing Fees" means all processing fees and charges required by the City that are 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, hauling permits, encroachment permits, demolition permits, subdivision or parcel maps, lot line adjustments, street vacations, inspections, certificates of occupancy and plan check. Processing Fees shall not mean or include Developer Fees.

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(v) "Project" means the development project as described in the final EIR, as modified by the Project Approvals.

(w) "Project Approvals" shall include, collectively, a General Plan Amendment, specific plan, zone change, zoning code amendment, and vesting tentative tract map approved by the City with respect to the Project and shall include any Subsequent Project Approvals (as hereafter defined).

(x) "Property" means the real property described in Exhibit "A" attached hereto.

(y) "Public Benefit Contribution" means the payment from the Developer to the City pursuant to Section 10(d) of this Agreement.

(z) "Reserved Powers" means the power and authority of the City to enact regulations and/or take Discretionary Action if the same is expressly found by the City to be necessary to protect residents of the City, those employed in the City, or visitors to the City, from a condition that is dangerous to public health or safety or if the same is required to comply with California or federal laws (whether enacted previous or subsequent to the Effective Date of this Agreement).

(aa) "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: (i) 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, shall not be deemed a Sales Transaction (a "Foreclosure Transaction") and (ii) a conveyance of the Property between affiliated entities where the same person or entity possesses, directly or indirectly, more than fifty percent (50%) of the beneficial ownership interest in both entities and the power, directly or indirectly, to direct or cause the direction of the management and policies of both entities, shall not be deemed a Sales Transaction (an "Affiliate Transaction") for the purposes of triggering the EMS Fee. For the purposes of triggering the EMS Fee only, a Sales Transaction shall include (i) any sale, assignment, or transfer, directly or indirectly, 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.

(bb) "Subsequent Land Use Regulations" means any change in or addition to the Applicable Rules adopted after the Effective Date of this Agreement, including, without limitation, any change in any applicable general or specific plan, zoning, subdivision, or building

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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.

(cc) "Subsequent Project Approvals" shall mean all further Discretionary Actions or Discretionary Approvals, Ministerial Permits and Ministerial Approvals required or requested with respect to the Project, including, without limitation, any tentative subdivision map, whether vesting or non-vesting. Following adoption or approval, a Subsequent Project Approval shall become a Project Approval.

(dd) "Waldorf=Astoria Hotel" shall mean the hotel permitted to be constructed by the Project Approvals, and identified on the site plan set forth on Exhibit E, whether or not operated under the "Waldorf=Astoria" name.

(ee) "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.

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(b) The Project. The Developer intends to develop the Property as described in the Project Approvals and the final plans submitted to the City, subject to the Applicable Rules, the Project Approvals, and the Conditions of Approval. The Parties hereby agree that, for the term of this Agreement, the permitted uses, the density and intensity of use, 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.

3. Property Subject to Agreement. This Agreement shall apply to all of the Property.

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

5. Term of Agreement. The initial term of this Agreement shall commence on the Agreement Effective Date, and shall continue for five (5) years. If a vesting tentative subdivision map is approved in connection with the Project, then, upon approval of such map, the term of this Agreement shall be extended until expiration of the tentative map or approval of a final subdivision map for the Project, whichever is earlier. If a final subdivision map is approved in connection with the Project, then the term of this Agreement shall be extended until the expiration of the vested rights that accompany the vesting tentative tract map for the Project. In addition to the above, at any time, the term may be extended for one year or more provided that the total extension period does not exceed five (5) years. An extension pursuant to the prior sentence shall be effective upon written request of Developer provided to the City at least ten (10) days before the expiration of the term (including any previous extension) and a concurrent payment to the City of the following amounts: for the first and second years of extension, Developer shall pay two hundred fifty thousand dollars (\$250,000), for the third year of extension, Developer shall pay five hundred thousand dollars (\$500,000) and for the fourth and fifth years of extension, Developer shall pay seven hundred fifty thousand dollars (\$750,000).

Notwithstanding the term set forth above, the obligation to pay the Environmental Mitigation and Sustainability Fee and the Municipal Surcharge pursuant to Section 10 shall continue indefinitely as provided in Sections 10 and 13.

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 that 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, (the Pardee Case) 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, except as provided below, 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 Developer deems appropriate within the exercise of its sole and subjective business judgment during the term of this Agreement. This provision shall be broadly construed to provide

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Developer the greatest amount of time and flexibility (in light of the Pardee Case and/or any other similar or distinguishing cases) as necessary or appropriate to permit Developer to complete the development of the Project irrespective of later adopted rules, regulations or initiatives which would otherwise restrict the Developer's time to complete the Project.

Notwithstanding the above, Developer shall begin construction on the Waldorf=Astoria Hotel either before beginning construction of, or contemporaneously with, the condominium building permitted by the Project Approvals and shown on the site plan set forth in Exhibit E. Additionally, if Developer does not obtain a certificate of occupancy (or temporary certificate of occupancy) for the Waldorf=Astoria Hotel before occupancy of the condominium tower, then, upon request by the City, Developer shall provide security, reasonably satisfactory to the City, to ensure completion of the Waldorf=Astoria Hotel.

7. Permitted Uses; Density; Building Heights and Sizes; Required Dedications. The City and 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, if any, required in connection with the development of the Property shall be as set forth in and consistent with the Project Approvals, as they may be lawfully amended by Developer from time to time. 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, as they may be lawfully amended by Developer from time to time. In addition, Developer shall not permit the use of the Property for an Adult Entertainment Business or Sexual Encounter Center as defined in the zoning regulations of the City of Beverly Hills. Further, no hotel on the Property shall permit occupancies in excess of thirty days; provided, however, nothing in this Agreement shall prohibit consecutive thirty day occupancies.

8. Developer's Rights. Developer shall have and is hereby vested with the rights, during the term of this Agreement, including any extensions, to develop the Project as set forth in the Project Approvals, as they may be lawfully amended by Developer from time to time, all of which are hereby incorporated in this Agreement by reference. Developer shall not be obligated to pay any Developer Fees in connection with the Project, as all Developer Fees are included within the Public Benefit Contribution.

9. Changes in Applicable Rules.

(a) Non-Application 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 Processing Fees 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, 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

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the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way with or be more restrictive than the Applicable Rules or Developer's entitlements under the Project Approvals, shall not be applied to the Project during the term of this Agreement unless such changes represent an exercise of the City's Reserved Powers.

(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, mechanical, plumbing 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 California Laws or Regulations. Changes in, or additions to, the Applicable Rules adopted or made operative on or after the Effective Date shall apply to the Project if such changes or additions are specifically mandated to be applied to developments such as the Project by applicable California or federal laws or regulations. If the City or Developer believes that such a change or addition required by California or federal law or regulation exists, then that Party shall provide the other Party hereto with a copy of such California 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 as to the applicability of California or federal laws to the Project 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 such a change is applied on a Citywide basis.

10. Developer's Obligations.

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

(b) Reimbursement of Project Approval Costs. No later than the thirty (30) days following the Effective Date, Developer shall reimburse the City for all of its costs to process the Project Approvals, including legal and environmental processing costs related to the Project Approvals and preparation of this Agreement, if any.

(c) Processing Fees. Developer agrees to pay all Processing Fees, including City plan check fees, building inspection fees, and permit fees, at the rate and amount in effect at the time the fee is required to be paid.

(d) Public Benefit Contribution. Developer shall pay to the City a Public Benefit Contribution of ten million dollars (\$10,000,000) together with the Municipal Surcharge as required by Section 10(g).

(i) Timing of Payment. Developer shall pay six million dollars (\$6,000,000) of the Public Benefit Contribution prior to or concurrent with

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issuance of the Building Permit to construct the Waldorf=Astoria Hotel. The remaining four million dollars (\$4,000,000) of the Public Benefit Contribution shall be paid prior to issuance of, or concurrent with, the Building Permit for the condominium building shown on Exhibit E.

(ii) *Adjustment of Public Benefit Contribution.* The Public Benefit Contribution for the Project is based on the development of 451,018 square feet of gross floor area of condominiums (the "Floor Area"). If the maximum amount of condominium gross floor area authorized by the Project Approvals exceeds the Floor Area, then the Public Benefit Contribution shall be increased by \$ 17.73 per square foot of difference between the maximum amount of condominium gross floor area permitted by the Project Approvals and the Floor Area. Conversely, if the maximum amount of condominium gross floor area authorized by the Project Approvals is less than the Floor Area, then the Public Benefit Contribution shall be reduced by \$17.73 per square foot of difference between the Floor Area and the maximum amount of condominium gross floor area permitted by the Project Approvals. If the Public Benefit Contribution is increased or decreased pursuant to this subsection (ii), then each of the payments required under subsection (i) shall be increased or decreased proportionally so that the total of the two payments continues to equal the total amount of the Public Benefit Contribution.

(iii) *Affordable Housing Contribution.* The City Council shall place a portion of the Public Benefit Contribution into an affordable housing fund that shall be used by the City for the purpose of promoting the provision of affordable housing in the City of Beverly Hills, or as otherwise may be permitted by State law. The amount to be placed in the affordable housing fund shall be calculated by multiplying \$261,733.00 times ten percent (10%) of the number of dwelling units constructed pursuant to the Project Approvals. For example, if sixty dwelling units were constructed pursuant to the Project Approvals, then the amount of the affordable housing fund would be \$1,570,398.00 [$\$261,733 \times (60/10) = \$1,570,398.00$].

(iv) *Funding for Improvement of Intersection of Santa Monica and Wilshire Boulevards.* The City Council shall place the sum of \$1,000,000.00 or 10% of the Public Benefit Fee, whichever is greater, into a fund to be used solely for the purpose of implementing improvements to address congestion at the intersection of Santa Monica Boulevard and Wilshire Boulevard.

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(e) 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). The EMS Fee shall be paid from the escrow account set up for the Sales Transaction. The EMS fee shall be paid upon each 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.

(f) Liens for EMS Fee Payable Upon Sale. Developer hereby grants to the City, with power of sale, a lien on the Property, and each lot or parcel created by any tentative tract map for the Project, including without limitation, following the creation thereof, each condominium unit in the Project, 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, then the City may enforce such lien by sale by the 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. The 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. The 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 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

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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, the 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 (a "Lien Release"). Such Lien Release shall also indicate that payment of the EMS Fee shall not extinguish the City's lien rights with respect to subsequent Sales Transactions. In the event that the City determines that a conveyance is not a Sales Transaction, the City shall execute and deliver to the seller, buyer or title company documentation that the City has determined that the conveyance is not a Sales Transaction and not subject to the EMS Fee.

(g) Municipal Surcharge. The owner of the Waldorf=Astoria Hotel, shall pay to the City, in perpetuity, two and one-half percent (2.5%) of the Gross Room Revenue generated by the Waldorf=Astoria Hotel (the "Municipal Surcharge").

(i) *Timing of Payment*. The Municipal Surcharge shall be payable monthly, based on the actual Gross Room Revenue received during the month for which payment is to be made, at the same time and in the same manner as is required for payment of the City's transient occupancy tax imposed pursuant to Title 3, Chapter 1, Article 3 of the Beverly Hills Municipal Code, or its successor.

(ii) *Lien to Secure Municipal Surcharge*. Developer hereby grants to the City, with power of sale, a lien on the Property, or if the Property is subdivided, a lien on the lot or parcel that includes the Waldorf=Astoria Hotel, to secure the payment of the Municipal Surcharge and any other sums payable under clause g(iv) below. In the event that the Municipal Surcharge or any other sums payable under clause g(iv) below is not timely paid, then the City may enforce such lien by sale by the 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. The 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. The City is hereby granted in trust, the Property, or if the Property is subdivided the lot or parcel that includes the Waldorf=Astoria Hotel, 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.

(iii) *Acknowledgement*. The parties acknowledge and agree that the Municipal Surcharge is not a tax or a levy by City, but instead is compensation provided in exchange for the benefits received pursuant to this Development Agreement.

(iv) *Late Charges, Interest*. If Developer fails to pay the Municipal Surcharge within ten (10) days after its due date, Developer shall pay a late charge in the amount equal to the lesser of (i) \$2,000, increased on the first day of

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each calendar year by the increase, if any, during the immediately preceding calendar year in the Consumer Price Index - All Urban Consumers for Los Angeles-Riverside-Orange County, California as published by the U. S. Department of Labor, Bureau of Labor Statistics (or any successor thereto); or (b) four percent (4%) of the Municipal Surcharge payment due but not paid. The parties hereto acknowledge and agree that the amount of the costs and expenses that City will incur in the event the Municipal Surcharge is not paid when due is extremely difficult to calculate, and that the late charge set forth in the immediately preceding sentence is a reasonable, good faith estimate of such costs and expenses, but payment of such late charge shall not limit the City's remedies following any default by Developer under this Agreement. If any Municipal Surcharge, including any late charge, is not paid within ten (10) days after the date on which the Surcharge is due, then such Municipal Surcharge (including any late charge) shall bear interest, from the due date until paid, at the rate that is the lesser of (i) eighteen and one-half percent (18.5%), or (ii) the highest rate then permitted by applicable law.

(h) Gateway. Prior to issuance of a certificate of occupancy (or temporary certificate of occupancy) for the Waldorf=Astoria Hotel, Developer shall construct or install (or provide a guarantee of the construction or installation in form and content satisfactory to the City Attorney and the Director of Community Development) a significant "gateway statement" to enhance the significance of the entry to Beverly Hills. The gateway statement shall be located on the Property near the intersection of Wilshire Boulevard and Santa Monica Boulevard. The gateway statement shall be located in an area that is clearly visible to the general public traveling along Wilshire Boulevard and Santa Monica Boulevard. The gateway statement may take the form of public art, landscaping, architectural features such as fountains, or other features satisfactory to the City as hereafter provided.

(i) *Design*. Prior to issuance of a Building Permit for the Waldorf=Astoria Hotel, Developer shall provide to the Director of Community Development conceptual drawings, satisfactory to the Director, depicting the gateway statement and its location. The gateway statement shall be reviewed and approved by the City's Architectural Commission prior to construction or installation. If the gateway statement includes public art, the City's Fine Arts Commission shall review and approve the public art prior to its installation. Decisions of the Architectural Commission and Fine Arts Commission shall be appealable to the Planning Commission, and decisions of the Planning Commission shall be appealable to the City Council pursuant to the procedures set forth in the Beverly Hills Municipal Code. Any appeals shall be filed within ten (10) days of the final decision that is the subject of the appeal. The gateway statement shall be constructed or installed in substantial compliance with the approvals of the Architectural and Fine Arts Commissions.

(ii) *Public Art Requirement*. The gateway statement, combined with a payment of five hundred thousand dollars (\$500,000) into the

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fund established pursuant to Beverly Hills Municipal Code Section 3-1-808 shall satisfy Developer's obligations under the Beverly Hills Public Art Ordinance.

(iii) *Maintenance.* Developer shall own the gateway statement and maintain the gateway statement in good condition and repair. In the event that Developer transfers ownership of the Waldorf=Astoria Hotel, the gateway statement shall also be transferred to the owner of the Waldorf=Astoria Hotel and shall be maintained by the Hotel owner. Additionally, the Developer, initially, and thereafter the Hotel owner, shall maintain insurance satisfactory to the City's Risk Manager and City Attorney and in an amount equal to the value of the gateway statement, which insures the gateway statement against any loss or damage, including vandalism. Upon damage, the party obligated to maintain the gateway statement shall timely repair or replace the gateway statement, as appropriate, to the reasonable satisfaction of the City's Director of Community Development.

(i) Bus Turnouts. Prior to issuance of a Building Permit for the Waldorf=Astoria Hotel, Developer shall dedicate to the City of Beverly Hills right of way easements along the Project's Wilshire Boulevard frontage and Santa Monica Boulevard frontage sufficient to provide reasonable sidewalk area behind bus turnouts in locations as shown on Exhibit B. The dedication shall be in form and substance satisfactory to the City Attorney and substantially in the form set forth in Exhibit B.

(j) Access for City Shuttle. Prior to issuance of a Building Permit for the Waldorf=Astoria Hotel, Developer shall dedicate to the City a non-exclusive easement to allow any City sponsored, financed or operated shuttle service vehicle to access the Property for the purpose of picking up or dropping off residents and visitors to the Property. The easement shall be in form and substance satisfactory to the City Attorney and substantially in the form set forth in Exhibit C.

(k) Subway Portal. Prior to obtaining a Building Permit for the Waldorf=Astoria Hotel, Developer shall dedicate an easement to the City substantially in the form set forth in Exhibit D. The easement shall be for the purpose of providing a portal for a subway station under Wilshire Boulevard or Santa Monica Boulevard and shall be assignable to the Metropolitan Transportation Authority or any other governmental entity responsible for constructing or maintaining a subway line. The easement shall provide that the surface area of the portion of the portal on the Property at ground level shall be no more than 300 square feet. The easement shall automatically terminate unless each of the following conditions are met: (i) the City must accept the easement within twenty (20) years from the Effective Date of this Agreement; and (ii) the Metropolitan Transportation Authority, or other appropriate governmental entity, must have secured funding for construction of the station within twenty years from the Effective Date of this Agreement. The easement shall limit the portal so that it does not materially interfere with or limit access to the Project, materially interfere with the structural integrity of the Property or buildings or structures on the Property, or materially interfere with the operations of the Property or the businesses located on the Property.

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(I) School Benefit Fee. Prior to the issuance of a Building Permit for the Project, Developer shall pay to the Beverly Hills Unified School District a school benefit fee in the amount of \$_____.

11. Issuance of Building Permit. The City shall be under no obligation to issue a Building Permit for any portion of the Project until: (i) all the fees and other obligations set forth in Section 10 and due prior to or concurrent with issuance of the Building Permit have been fully paid or otherwise fulfilled or satisfied; and (ii) any lender whose lien is prior and superior to any lien created by this Agreement or any conveyance or covenant required by this Agreement shall have agreed to subordinate its lien to the liens, conveyances and covenants created and required by this Agreement. The forgoing notwithstanding, nothing herein shall limit or restrict the ability of the City to grant Building Permits for the buildings and structures existing on the Property as of the Effective Date or limit or restrict the right of Developer to secure Building Permits for buildings or structures existing on the Property as of the Effective Date.

12. Default. Failure by City or Developer to perform any term or provision of this Agreement for a period of thirty (30) 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 (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period.

Subject to the foregoing, 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 City Council within thirty (30) calendar days in the manner set forth in Government Code Sections 65867 and 65868. Following consideration of the evidence presented in said review before the City Council and a determination that a default exists, the Party alleging the default by the other Party may give written notice of termination of this Agreement to the other Party. 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. In no event shall consequential damages be available against Developer or any seller of any portion of the Property for any alleged default or breach of this Agreement.

13. Termination and Expiration. Upon the expiration of the term or termination of this Agreement, the vested rights provided by this Agreement shall terminate and be of no further force or effect. However, such expiration or termination shall not affect Developer's obligations under Section 10, 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 provided that a Building Permit has been issued for any portion of the Project. After a Building Permit has been

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issued for any portion of the Project, the obligations under Section 10, and the obligation to pay any claim arising before the effective date of expiration or termination shall continue after termination in perpetuity or until completed.

14. Transfers of Interests in Property or Agreement. In the event of a proposed transfer of interest in the Property or in this Agreement by Developer to a transferee other than a retail purchaser of an individual residential condominium unit, Developer agrees to provide the City at least thirty (30) days written notice of such proposed transfer and shall provide satisfactory evidence that the transferee will assume in writing through an assignment and assumption agreement all remaining obligations of Developer under this Agreement. The assignment and assumption agreement shall be in a form reasonably satisfactory to the City Attorney. However, Developer has no obligation to obtain the consent of the City to assign this Agreement to a transferee. 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 Developer (transferor) of any obligations under this Agreement.

15. Mortgage Protection.

(a) *In General.* The provisions of this Agreement shall not prevent or limit Developer's right to encumber the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to such portion. The City acknowledges that Mortgagees may require certain interpretations and modifications of this Agreement and agrees upon request, from time to time, to meet with Developer and representatives of such Mortgagees to negotiate in good faith any such request for interpretation or modification. The City shall not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement and does not, in the City's sole determination, diminish the City's benefits from this Agreement or the security for those benefits. Any Mortgagee shall be entitled to the rights and privileges set forth in this Section.

(b) *Notice of Default to Mortgagee.* If a Mortgagee has submitted a request in writing to City in the manner specified herein for giving notices, the City shall exercise its best efforts to provide to such Mortgagee written notification from the City of any failure or default by Developer in the performance of Developer's obligations under this Agreement, which notification shall be provided to such Mortgagee at such time as such notification is delivered to Developer.

(c) *Right of Mortgagee to Cure.* Any Mortgagee shall have the right, but not the obligation, to cure any failure or default by Developer during the cure period allowed Developer under this Agreement, plus an additional sixty (60) days if, in order to cure such failure or default, it is necessary for the Mortgagee to obtain possession of the property such as by seeking the appointment of a receiver or other legal process. Any Mortgagee that undertakes to cure or attempt to cure any such failure or default shall provide written notice to the City that it is undertaking efforts of such a nature; provided that no initiation of any such efforts by a Mortgagee shall obligate such Mortgagee to complete or succeed in any such curative efforts.

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(d) *Liability for Past Defaults or Obligations.* Subject to the foregoing, any Mortgagee, including the successful bidder at a foreclosure sale, who comes into possession of the Project or the Property or any part thereof pursuant to foreclosure, eviction or otherwise, shall take such property subject to the terms of this Agreement and in no event shall any such property be released from any obligations associated with its use and development under the provisions of this Agreement. Nothing in this Section shall prevent City from exercising any remedy it may have for a default under this Agreement, provided, however, that in no event shall such Mortgagee personally be liable for any defaults or monetary obligations of Developer arising prior to acquisition of possession of such property by such Mortgagee.

16. Binding Effect. 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.

17. Indemnification.

(a) Developer agrees to and shall indemnify, hold harmless, and defend, the City and its respective officers, officials, members, agents, employees, and representatives, from liability or claims for death or personal injury and claims for property damage which may arise from the acts, errors, and/or omissions of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf in relation to the Project and/or in any manner arising from this Agreement. The foregoing indemnity applies to all deaths, injuries, and damages, and claims therefor, suffered or alleged to have been suffered by reason of the acts, errors, and/or omissions referred to in this Section 17, regardless of whether or not the City prepared, supplied, or approved plans or specifications, or both. In the event of litigation, the City agrees, at no cost to the City, to cooperate with Developer. This indemnification, hold harmless and defense requirement shall survive the termination or expiration of this Agreement. The City reserves the right, in cases subject to this indemnity, to reasonably approve the attorney selected by Developer to defend Developer and the 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 the City for the City's costs in defending any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the EIR and 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 the City in any such defense as the City may reasonably request and may not resolve such challenge without the agreement of the City. In the event Developer fails or refuses to reimburse the City for its cost to defend any challenge to this Agreement, the Project Approvals or the EIR, the City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 12 above. In all events, the City shall have the right to

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resolve any challenge in any manner, in its sole discretion, provided, however, Developer's consent shall be required if the resolution of the challenge shall require a payment by Developer or limit Developer's rights under this Agreement. Additionally, in the event of any litigation or referendum initiated by third parties to attack, set aside, modify, void or annul this Agreement, any of the Project Approvals, or the EIR (a "Challenge"), the term of this Agreement shall be tolled for the period during which such Challenge is proceeding until fully and finally resolved.

In order to ensure compliance with this Section 17(b), within twenty (20) 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, Developer shall deposit with the City cash or other security in the amount of one hundred thousand dollars (\$100,000), 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, Developer 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 up to an additional fifty thousand dollars (\$50,000.00) is necessary to secure the obligations of this section, Developer shall provide such additional security within fifteen (15) days of notice from the City Attorney. The City shall promptly notify 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, provided, however, Developer's consent shall be required if the resolution of the challenge shall require a payment by Developer or limit Developer's rights under this Agreement.

18. Relationship of the Parties. The Parties acknowledge and agree that Developer is not acting as an agent, joint venturer or partner of the City, but each 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.

19. 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.

20. No Third Party Beneficiaries. The only signatories to this Agreement are the City and Developer. 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 other than the successors in interest of the signatories.

21. 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 draftsman, but in accordance with its fair meaning.

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22. Certificate of Compliance. At any time during the term of this Agreement, any Mortgagee 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.

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

24. Periodic Reviews.

(a) Annual Reviews. The 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 the City by Developer. Such reimbursement shall include all direct and indirect expenses 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 the 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 (the "Community Development Director") shall conduct the review contemplated by this Section 24 to ascertain whether Developer has complied in good faith with the terms and conditions of this Agreement during the period for which the review is conducted. The Community Development Director shall give Developer written notice that any such review has been commenced, and shall give Developer at least twenty (20) days after Developer's receipt of such notice to provide to the Community Development Director such information as Developer deems relevant to such review. In addition, upon the written request of the Community Development Director, Developer shall furnish such documents or other information as requested by the Community Development Director.

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

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recordable form, and shall contain such information as may be necessary to impart constructive record notice of the finding of good faith compliance hereunder. 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 Community Development Director finds that Developer has not complied in good faith with the terms and conditions of this Agreement, the Community Development Director shall specify in writing the respects in which Developer has failed to so comply. The Community Development Director shall provide Developer with written notice of such noncompliance as provided in Section 12 and the City may follow the default procedures as set forth in Section 12.

(e) Effect on Default Procedures. Nothing in this Section 24 shall be interpreted to prevent the City from providing Developer with a notice of default hereunder at any time, including any time other than during a periodic review under this Section 24, or from terminating this Agreement pursuant to the provisions of Section 12 following any event of default by Developer.

25. Future Litigation Expenses.

(a) Payment of Prevailing Party. If the 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 default, breach, tortious act, or act or omission, 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. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, as follows:

(i) City and Developer, by mutual agreement, may terminate or amend the terms of this Agreement, and the amendment or termination shall be accomplished in the manner provided under California law for the enactment of Development Agreement amendments.

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(ii) Except as may be otherwise agreed to by the Parties, no amendment of this Agreement shall be required in connection with the issuance of any Subsequent Project Approval. Any Subsequent Project Approval issued after the Effective Date of this Agreement automatically shall be incorporated into this Agreement and vested hereby.

28. Alterations. 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.

29. Waiver. 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.

30. 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 is held invalid or unenforceable before approval of a tentative subdivision map for the Project, then this entire Agreement shall be void and unenforceable and of no further force and effect.

31. Force Majeure. Performance by any Party of its obligations hereunder (other than for payment of money) shall be excused during any period of "Permitted Delay," which Permitted Delay shall mean and include delay caused by an event beyond the reasonable control of the Party claiming the delay (and despite the good faith efforts of such Party) that prevents the Party from fulfilling the obligations for which it seeks excuse including without limitation all of the following to the extent that they prevent the Party claiming delay from fulfilling the obligation from which it seeks to be excused: acts of God; civil commotion; riots; strikes; picketing or other labor disputes; shortages of materials or supplies; damage to work in progress by reason of fire, floods, earthquake or other casualties; failure, delay or inability of the other Party to act; terrorism, and litigation brought by a third party attacking the validity of this Agreement, the Project Approvals or the EIR.

32. Notices. All notices, disclosures, demands, acknowledgments, statements, requests, responses and other communications (each, a "Communication") to be given under this Agreement shall be in writing, signed by a signatory 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

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by the United States mail, postage prepaid, certified mail, return receipt requested, in either case addressed as follows:

To Developer: Oasis West Realty, LLC
9860 Wilshire Boulevard
Attn: Samuel Surloff, Esq
Beverly Hills, CA 90210

With Copy to: George Muhlsten, Esq.
Latham & Watkins
633 W. Fifth Street
Los Angeles, CA 90017

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

With Copy to: City Attorney
City of Beverly Hills
455 North Rexford Drive
Room 220
Beverly Hills, California 90210

Any signatory hereto may from time to time, by notice given to the other signatories hereto pursuant to the terms of this Section 32 change the address to which communications to such signatory are to be sent or designate one or more additional persons or entities to which communications are to be sent.

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

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

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

36. 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.

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37. Compliance With Law. Notwithstanding any provision of this Agreement, the Parties agree to comply with all federal, state and local laws and to act in good faith and reasonably in carrying out the terms of this Agreement.

38. Authorization. Each person executing this Agreement represents and warrants that he or she is authorized and has the legal capacity to execute and deliver this Agreement on behalf of the Party for which execution has been made.

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the _____ day of _____, 200__.

CITY OF BEVERLY HILLS,
A Municipal Corporation

JIMMY DELSHAD
Mayor of the City of
Beverly Hills, California

ATTEST:

_____(SEAL)
BYRON POPE
City Clerk

OASIS WEST REALTY LLC, a Delaware
limited liability company

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

LAURENCE S. WIENER
City Attorney

APPROVED AS TO CONTENT:

RODERICK J. WOOD
City Manager

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EXHIBIT A

The Property situated in the State of California, County of Los Angeles, City of Beverly Hills described as follows:

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

PARCEL 1:

Lots 1, 2 and 8 and those portions of lots 3 and 7 in block 33 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 13 Pages 62 and 63 of Maps, in the office of the County Recorder of said County, lying Easterly of the following described line:

Beginning at a point in the Northerly line of said block 33 distant South 89° 55' 00" East 335 feet from the Northeast corner of lot 5 of said block 33; thence South 0° 05' 00" West 177 feet; thence Southeasterly to a point in the Northwesterly line of Santa Monica Boulevard 85 feet wide, distant North 50° 28' 30" East 485 feet from the most Southerly corner of block 33.

PARCEL 2:

Those portions of lots 3 and 7 in block 33 of Beverly in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 13 Pages 62 and 63 of Maps, in the office of the County Recorder of said County, lying Easterly of the following described line:

Beginning at a point in the Northerly line of said block 33, distant South 89° 55' 00" East 300 feet from the Northeast corner of lot 5 of said block 33; thence South 0° 05' 00" West 177 feet; thence Southeasterly to a point in the Northwesterly line of Santa Monica Boulevard 85 feet wide distant North 50° 28' 30" East 431.22 feet from the most Southerly corner of said block 33.

EXCEPT those portions lying within Parcel 1 above described.

PARCEL 3:

An easement for private road purposes over the West 20 feet of the following described property.

Those portions of lots 3, 4 and 7 in block 33 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 13 Pages 62 and 63 of Maps, in the office of the County Recorder of said County, included within a strip of land 40 feet wide, the center line of which is described as follows:

Beginning at a point in the Northerly line of said lot 3 distant North 89° 55' 00" East 300 feet measured along the Northerly line of said block 33 from the Northwest corner of lot 4 of said block 33; thence South 0° 05' 00" East 177.00 feet; thence Southeasterly South 38° 46' 45" East 583.79 feet to a point on the Southeasterly line of lot 7 of said block 33; distant 431.22 feet from the most Southerly corner of lot 6 of said block 33.

Assessor's Parcel Number: **4327-028-001**

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EXHIBIT B

Bus Turnout Dedication and Location

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EXHIBIT C

City Shuttle Access Easement

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EXHIBIT D

Subway Portal Easement

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EXHIBIT E

Site Plan of Project

Attachment 7

Memorandum: Alleged Building Restrictions on Beverly Hilton Site



CITY OF BEVERLY HILLS

OFFICE OF THE CITY ATTORNEY

455 North Rexford Drive, 2nd Floor, Beverly Hills, California 90210
Telephone 310.285.1055 Facsimile 310.285.1056

MEMORANDUM

TO: The Honorable Mayor and Members of the City Council
FROM: David M. Snow, Assistant City Attorney
DATE: April 11, 2008
SUBJECT: Alleged Building Restrictions on Beverly Hilton Site (9876 Wilshire Boulevard)

Executive Summary:

During the public hearings before the City Council and Planning Commission regarding the proposal for redevelopment of the Beverly Hilton site at 9876 Wilshire Boulevard, various members of the public have testified that a building restriction was imposed on development of the site. Staff has researched this issue and concluded that there is no enforceable restriction that limits the property owner's ability to develop the property in accord with its proposed plans, provided the proposed plans are approved. In addition, the project applicant provided a title report and a Chain of Title Guarantee for The Beverly Hilton site, neither of which disclose any restriction on development of the site.

Nonetheless, it appears that in 1950, when the City was considering a request for a variance to allow the 8-story Beverly Hilton project, there was interest by the City Council in imposing conditions that would preclude further development on the site (beyond the development then proposed by the applicant) for a period of thirty years. However, no such condition was imposed. The following analysis discusses the relevant history and documents in the City's records, and reaches the conclusion that there is no development restriction that would preclude the developer from proceeding with the proposed development plan provided the plan is approved by the City.

History and Analysis

August 1, 1950 - Initial Approval of Variance for Hotel – Resolution No. 1557

Resolution No. 1557, adopted by the City Council on August 1, 1950, includes in its findings the statement that "the application states that the applicant does not anticipate erection of any buildings other than the eight story hotel as planned, and the City Council considers this circumstance particularly material and important..." (Resolution 1557 at p. 3.)

However, we found no condition in the variance that would limit future development.

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Extension of Variance for the Hilton Hotel – Resolutions Nos. 1740 and 1889

The applicant requested extensions of the initial approval which were granted by City Council Resolution Nos. 1740 and 1889. The effect of these extensions was to allow plans to be filed in 1953 and construction of the Hilton Tower to proceed through 1956.

The City's records suggest that the building was then constructed in accord with the approved plans.

December 22, 1960 – Application for an 8-story expansion to the existing hotel.

In December 1960, the Beverly Hilton hotel submitted an application seeking "permission 'to erect upon the northerly portion of Block 33, Tract Beverly, an eight story, 266 room, hotel wing addition to the existing hotel.'" (May 28, 1962 Report of the Director of Building and Planning, p. 1).

Staff recommended denial of the application based in part on the fact that when the initial variance in 1950 was obtained, the property owner had made representations that no additional development was contemplated. This representation was memorialized in Resolution 1557 (at p. 3).

However, in the Report of the Director of Building and Planning, staff noted that "there exists no legal prohibition against the erection of four story buildings on this property without variances, and that the requested eight story building would be no larger than a four story building that could be built without a variance." (May 28, 1962 Report of the Director of Building and Planning, p. 2.)

Thereafter, the Planning Commission approved the 8 story, 266 room addition by Planning Commission Resolution No. 46. The approval included a condition (h) stating that "no structure of any kind, whether by way of addition to an existing structure, or otherwise, shall hereafter be constructed on any portion of said parcel of real property, excepting only the addition structure for which this variance is granted and any conversion to dining, drinking, or public assembly areas permitted by subsection (g) hereof, without the granting of a future variance." The effect of this condition (h) is restatement of the general rule that anything beyond what was approved must obtain separate approvals.

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Although approved, this expansion was not constructed.

1965 – Proposal for 4-story building with 173 Guest Rooms

In or around 1965, the property owner proposed construction of an additional 4-story building with 173 guest rooms. At the request of the Building and Planning Department, the City Attorney's office looked into whether the City could issue a permit for the proposed structure, and if so what conditions of approval should be imposed, and whether the Planning Commission or City Council would have to approve the request. (Inter-Office Communication between Building and Planning and City Attorney dated March 11, 1965.)

The City Attorney's office prepared a memorandum dated May 20, 1965 responding to the questions. That memorandum notes that some 22 building permits to add space or convert space from one use to another use had been issued between 1953 and May, 1965. The City Attorney's memo concluded that "a number of [the permits] increased ground coverage," while others "increased the floor area above that contemplated in the variance granted by Resolution No. 1557." (City Attorney's Opinion No. 65-14, p. 2.) One example of what was permitted is "a 39-room two-story building in the pool area." (City Attorney's Opinion No. 65-14, p. 3.)

The City Attorney concluded that the applicant was entitled to building permits for structures that complied with the City's municipal code.

In analyzing the history of the project, the City Attorney discussed the fact that the City Council desired to limit any development beyond that contemplated by Resolution 1557, but that a prior City Attorney previously ruled that a prohibition against building for a 30-year period would be illegal. That legal opinion and testimony from the applicant regarding the adverse impact of such a condition on the ability to finance the project, may partly explain why Resolution No. 1557 contains no express provision prohibiting further construction.

The City Attorney's memorandum concludes with the following statement:

"In view of the history of development of the Beverly Hilton Hotel, the contents of the files relating to this matter, the opinion of three City Attorneys on various aspects of the development, the issuance of some 22 building permits to the Hilton following the adoption of Resolution No. 1557, it is the opinion of this office that the Beverly Hilton Hotel is legally entitled to be issued a building permit for the construction of a new 4-

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story building now contemplated provided plans, specifications and development of such addition is consistent with and meets the requirements of the present provisions of the Municipal Code.”

It was at about this time that the 4-story Palm Court addition was permitted and constructed.

July 1986.

In 1986, the City was apparently processing another request for expansion and remodel of the Beverly Hilton Hotel through a conditional use permit process. As part of this process, the Planning Department asked the then City Attorney what impact Resolution 1557 had on the conditional use permit application. (July 24, 1986 memorandum Planning and Community Development to Acting City Attorney.) Related to this request is a memorandum from the Building and Safety Department to the Planning Department dated September 23, 1986, in which the intent of Resolution 1557 is discussed, along with the conclusion that “ it appears the Variance did not forbid future construction that complied with existing Code.” (Sept. 3, 1986 Memo from Anthony Nisich to Robert Sherwin). Thereafter, by Resolution No. 469, the Planning Commission approved a conditional use permit for modification of the Beverly Hilton Hotel which allowed the addition of 103 hotel rooms. As in 1962, this proposed addition was never constructed.

Recorded Restrictions of Covenants

The City requested and has reviewed a preliminary title report, and a more exhaustive Chain of Title Guarantee for The Beverly Hilton site to determine whether there are any restrictions of record that apply to the property. Neither of the reports, copies of which are attached hereto, identified any development restriction of record that would limit development on the subject site.

Conclusion

Although there may have been a desire of the City Council in 1950 to restrict future development on the site, it appears that a proposed thirty year prohibition of future construction was determined by the then City Attorney to be illegal and unenforceable. As a result, no restriction on future development was placed on the project site. In fact, there has been a pattern and practice of issuing permits for development at the Beverly Hilton Hotel site over the years. There has also been a pattern and practice of requiring conditional use permits or other

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discretionary review for expansions or other activities that are not permitted by right, provided that the appropriate findings can be made. After analyzing the approval document for the original Beverly Hilton Hotel, the history of processing and approving expansions at the Beverly Hilton Hotel, the memoranda and opinions of those involved with the various approvals, and a title report for the property, we conclude that the City has imposed no specific restrictions limiting development on the Beverly Hilton site.

If you have further questions regarding this matter, please do not hesitate to contact me or Larry Wiener.



Commonwealth Land Title Company
915 Wilshire Boulevard
Suite 2100
Los Angeles, CA 90017
Phone: (213) 330-3100

Alagem Capital Group
9860 Wilshire Blvd
Beverly Hills, CA 90210

Attn: **Brian Jennings**

Your Reference No:

Property Address: 9876 Wilshire Boulevard, Beverly Hills, California

Our File No: 06157861 - 27
Senior Commercial Title Officer: Doug
Abernathy
e-mail: dabernathy@landam.com
Direct Phone: (213) 330-3055
Fax: (213) 330-3104

PRELIMINARY REPORT

Dated as of September 11, 2007 at 7:30 a.m.

In response to the above referenced application for a policy of title insurance, Commonwealth Land Title Company hereby reports that it is prepared to issue, or cause to be issued, as of the date hereof, a Policy or Policies of Title Insurance describing the land and the estate or interest therein hereinafter set forth, insuring against loss which may be sustained by reason of any defect, lien or encumbrance not shown or referred to as an Exception below or not excluded from coverage pursuant to the printed Schedules, Conditions and Stipulations of said policy forms.

The printed Exceptions and Exclusions from the coverage and Limitations on Covered Risks of said Policy or Policies are set forth in Exhibit B attached. The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than that set forth in the arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. Limitations on Covered Risks applicable to the CLTA and ALTA Homeowner's Policies of Title Insurance which establish a Deductible Amount and a Maximum Dollar Limit of Liability for certain coverages are also set forth in Exhibit B. Copies of the Policy forms should be read. They are available from the office which issued this report.

Please read the exceptions shown or referred to below and the exceptions and exclusions set forth in Exhibit B of this report carefully. The exceptions and exclusions are meant to provide you with notice of matters which are not covered under the terms of the title insurance policy and should be carefully considered. It is important to note that this preliminary report is not a written representation as to the condition of title and may not list all liens, defects, and encumbrances affecting title to the land.

This report (and any supplements or amendments hereto) is issued solely for the purpose of facilitating the issuance of a policy of title insurance and no liability is assumed hereby. If it is desired that liability be assumed prior to the issuance of a policy of title insurance, a Binder or Commitment should be requested.

SCHEDULE A

The form of policy of title insurance contemplated by this report is:

CLTA Standard Owners

ALTA Loan 2006 Policy (6-17-06)

The estate or interest in the land hereinafter described or referred to covered by this report is:

A FEE as to Parcel(s) 1 and 2;

AN EASEMENT more fully described below as to Parcel(s) 3

Title to said estate or interest at the date hereof is vested in:

Oasis West Realty LLC, a Delaware limited liability company

The land referred to herein is situated in the County of Los Angeles, State of California, and is described as follows:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

EXHIBIT "A"

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

PARCEL 1:

Lots 1, 2 and 8 and those portions of lots 3 and 7 in block 33 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 13 Pages 62 and 63 of Maps, in the office of the County Recorder of said County, lying Easterly of the following described line:

Beginning at a point in the Northerly line of said block 33 distant South 89° 55' 00" East 335 feet from the Northeast corner of lot 5 of said block 33; thence South 0° 05' 00" West 177 feet; thence Southeasterly to a point in the Northwesterly line of Santa Monica Boulevard 85 feet wide, distant North 50° 28' 30" East 485 feet from the most Southerly corner of block 33.

PARCEL 2:

Those portions of lots 3 and 7 in block 33 of Beverly in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 13 Pages 62 and 63 of Maps, in the office of the County Recorder of said County, lying Easterly of the following described line:

Beginning at a point in the Northerly line of said block 33, distant South 89° 55' 00" East 300 feet from the Northeast corner of lot 5 of said block 33; thence South 0° 05' 00" West 177 feet; thence Southeasterly to a point in the Northwesterly line of Santa Monica Boulevard 85 feet wide distant North 50° 28' 30" East 431.22 feet from the most Southerly corner of said block 33.

EXCEPT those portions lying within Parcel 1 above described.

PARCEL 3:

An easement for private road purposes over the West 20 feet of the following described property.

Those portions of lots 3, 4 and 7 in block 33 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 13 Pages 62 and 63 of Maps, in the office of the County Recorder of said County, included within a strip of land 40 feet wide, the center line of which is described as follows:

Beginning at a point in the Northerly line of said lot 3 distant North 89° 55' 00" East 300 feet measured along the Northerly line of said block 33 from the Northwest corner of lot 4 of said block 33; thence South 0° 05' 00" East 177.00

File No: 06157861

feet; thence Southeasterly South $38^{\circ} 46' 45''$ East 583.79 feet to a point on the Southeasterly line of lot 7 of said block 33; distant 431.22 feet from the most Southerly corner of lot 6 of said block 33.

Assessor's Parcel Number: **4327-028-001**

SCHEDULE B – Section A

The following exceptions will appear in policies when providing standard coverage as outlined below:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records.

SCHEDULE B – Section B

At the date hereof Exceptions to coverage in addition to the printed exceptions and exclusions in said policy form would be as follows:

- A. Property taxes, including general and special taxes, personal property taxes, if any, and any assessments collected with taxes, to be levied for the fiscal year 2007 – 2008 which are a lien not yet payable.

- B. Supplemental or escaped assessments of property taxes, if any, assessed pursuant to the Revenue and Taxation Code of the State of California.
 - 1. Covenants, conditions and charges in, an easement over the Westerly and Southwesterly 20 feet of said land as granted to Robinson Fireproof Building Company, a corporation an agreement dated December 20, 1950 executed by Crummer Development corporation, a corporation and Robinson Fireproof Building Company, a corporation recorded December 22, 1950 as Instrument No. 1344 in Book 35141 Page 331 Official Records.
 - 2. An easement for the purpose shown below and rights incidental thereto as set forth in a document

Purpose: public street
Recorded: March 28, 1955 as Instrument No. 2492 of Official Records
Affects: Portions of the herein described land, the exact location of which can be determined by examination of the above-mentioned instrument, which contains a complete legal description of the affected portions of said land.

- 3. An oil and gas lease for the term therein provided with certain covenants, conditions and provisions, together with easements, if any, as set forth therein.

Dated: July 2, 1966
Lessor: Hilton Hotels Corporation
Lessee: Standard Oil Company of California, a Corporation
Recorded: August 4, 1969 as Instrument No. 2225 in Book M3271 Page 577 of Official Records

No assurance is made as to the present ownership of the leasehold created by said lease, nor as to other matters affecting the rights or interest of the lessor or lessee in said lease.

Said lease affects that portion of said land lying below a depth of 500 feet from the surface thereof.

Said lease does not provide for the right of surface entry.

4. The effect of a Notice of Consent

Dated: June 17, 1966
Executed by: Hilton Hotel Corporation, et al.
In favor of: Southern California Rapid Transit District
Recorded: July 25, 1966 as Instrument No. 3096 in Book M2294 page 791 of Official Records

5. An oil and gas lease for the term therein provided with certain covenants, conditions and provisions, together with easements, if any, as set forth therein.

Dated: March 6, 1989
Lessor: Grifftel, a California Corporation
Lessee: Wainoco Oil & Gas Company, a Delaware Corporation
Recorded: April 5, 1989 as Instrument No. 89-527866 of Official Records

No assurance is made as to the present ownership of the leasehold created by said lease, nor as to other matters affecting the rights or interest of the lessor or lessee in said lease.

Said lease affects that portion of said land lying below a depth of 500 feet from the surface thereof.

Said lease does not provide for the right of surface entry.

6. A financing statement filed in the office of the County Recorder, showing:

Debtor: Oasis West Realty LLC
Secured Party: California first Leasing Corporation
Recorded: October 13, 2005, as Instrument No. 05-2470902, Official Records
Property Covered: (as described therein)

And as amended by document recorded June 28, 2006, as Instrument No. 06-1429998, Official Records.

7. A deed of trust to secure an indebtedness in the amount shown below, and any other obligations secured thereby.

Amount: \$264,000,000.00
Dated: July 18, 2006
Trustor: Oasis West Realty LLC, a Delaware limited liability company
Trustee: First American Title Insurance Company
Beneficiary: Column Financial, Inc., a Delaware Corporation
Loan No.: Not Shown
Recorded: July 20, 2006, as Instrument No. 06-1599892, Official Records

An assignment of the beneficial interest under said deed of trust which names
As Assignee: Wells Fargo Bank, N.A., as Trustee for the Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-TFL2
Recorded: February 26, 2007, as Instrument No. 20070410624, Official Records

8. An assignment of all monies due or to become due as rental or otherwise from said land, to secure payment of an indebtedness, shown below and upon the terms and conditions therein
- | | |
|--------------|---|
| Amount: | \$264,000,000.00 |
| Assigned to: | Column Financial, Inc., a Delaware Corporation |
| By: | Oasis West Realty LLC, a Delaware limited liability company |
| Recorded: | July 20, 2006, as Instrument No. 06-1599893, Official Records |

An assignment of the beneficial interest of the Assignor hereinafter named was assigned of record by

Assignor:	Column Financial Inc.
To Assignee:	Wells Fargo Bank, N.A., as Trustee for the Credit Suisse First Boston Mortgage Securities Corp., Commercial Mortgage Pass-Through Certificates, Series 2006-TFL2
Recorded:	February 26, 2007, as Instrument No. 20070410560, Official Records

9. A financing statement filed in the office of the County Recorder, showing:

Debtor:	Oasis West Realty LLC
Secured Party:	Column Financial, Inc.
Recorded:	July 20, 2006, as Instrument No. 06-1599894, Official Records
Property Covered:	(as described therein)

10. An unrecorded lease with certain terms, covenants, conditions and provisions set forth therein.

Lessor:	Hilton Hotels Corporation as agent for Oasis West Realty LLC
Lessee:	Food Pantry, Ltd.
Disclosed by:	State of California Notice of Non-Responsibility
Recorded:	November 17, 2006, as Instrument No. 06-2556522, Official Records

The present ownership of the leasehold created by said lease and other matters affecting the interest of the lessee are not shown herein.

11. An easement for the purpose shown below and rights incidental thereto as set forth in a document

Granted to:	Southern California Edison Company, a Corporation
Purpose:	Public utilities
Recorded:	July 12, 2007, as Instrument No. 20071655688, Official Records
Affects:	A strip of land, 4.00 feet wide, lying within that portion of Lot 1, the centerline of said strip of land being described as follows:

Commencing at the Southwesterly corner of said Lot 1; thence along the Southeasterly line of said Lot 1, North 50° 28' 30" East, 12.12 feet; thence North 39° 31' 30" West, 61.00 feet to the True Point of Beginning; thence continuing North 39° 31' 30" West, 4.00 feet.

File No: 06157861

12. A lien for unsecured property taxes filed by the tax collector of the county shown, for the amount set forth, and any other amounts due.

County:	Los Angeles
Fiscal Year:	2006-2007
Taxpayer:	Oasis West Realty LLC Circa 55 Lounge Hilton Hotels Corp
County ID No.:	06/3620/757049/P
Amount:	\$998.50, plus penalty and costs
Recorded:	May 2, 2007, as Instrument No. 07-1062026, Official Records

13. An inspection of said land has been ordered, which may result in additional exceptions.

END OF SCHEDULE B EXCEPTIONS

**PLEASE REFER TO THE "NOTES AND REQUIREMENTS SECTION" WHICH
FOLLOWS FOR INFORMATION NECESSARY TO COMPLETE THIS TRANSACTION**

REQUIREMENTS SECTION:

REQ NO.1: The Company will require that it be provided with the following with respect to the limited liability company named below:

- A. A current copy of the formation document certified by the appropriate state official;
- B. A copy of the LLC Agreement and any amendments thereto; and
- C. A certified copy of form LLC-5, if the form has been filed with the California Secretary of State.

Limited Liability Company: Oasis West Realty LLC

REQ NO.2: The Company will require that the attached "Owner's Information Statement" be completed by the owner of the estate described or referred to in Schedule A immediately prior to the close of this transaction and be returned to us.

The purposes of the Owner's Information Statement is to provide the Company with certain information that cannot necessarily be ascertained by making a physical inspection of the land.

REQ NO.3: This Company will require that a full copy of any unrecorded agreement, contract or lease be submitted to us, together with all supplements, assignments and amendments, before any policy of title insurance will be issued.

INFORMATIONAL NOTES SECTION

NOTE NO. 1: The information on the attached plat is provided for your convenience as a guide to the general location of the subject property. The accuracy of this plat is not guaranteed, nor is it a part of any policy, report or guarantee to which it may be attached.

NOTE NO. 2: California insurance code section 12413.1 regulates the disbursement of escrow and sub-escrow funds by title companies. The law requires that funds be deposited in the title company escrow account and available for withdrawal prior to disbursement. Funds deposited with the company by wire transfer may be disbursed upon receipt. Funds deposited with the company via cashier's check or teller's check drawn on a California based bank may be disbursed on the next business day after the day of deposit. If funds are deposited with the company by other methods, recording and/or disbursement may be delayed. All escrow and sub-escrow funds received by the company will be deposited with other escrow funds in one or more non-interest bearing escrow accounts of the company in a financial institution selected by the company. The company may receive certain direct or indirect benefits from the financial institution by reason of the deposit of such funds or the maintenance of such accounts with such financial institution, and the company shall have no obligation to account to the depositing party in any manner for the value of, or to pay to such party, any benefit received by the company. Those benefits may include, without limitation, credits allowed by such financial institution on loans to the company or its parent company and earnings on investments made with the proceeds of such loans, accounting, reporting and other services and products of such financial institution. Such benefits shall be deemed additional compensation of the company for its services in connection with the escrow or sub-escrow.

WIRING INSTRUCTIONS FOR THIS OFFICE ARE:

Comerica Bank
2321 Rosecrans Avenue, 5th Floor
El Segundo, CA 90245-4903
Phone: (800) 376-0430
ABA #121-137-522
Credit To: Commonwealth Land Title Company - Los Angeles County
Account #1891967794

RE: 06157861 983 - DA6

PLEASE INDICATE COMMONWEALTH LAND TITLE COMPANY ESCROW OR TITLE ORDER NUMBER

NOTE NO. 3: The charges which the company will make for next day messenger services (i.e. Federal Express, UPS, DHL, Airborne, Express mail, etc.) Are \$15.00 per letter, standard overnight service, and \$25.00 for larger size packages and/or priority delivery services. Such charges include the cost of such messenger service and the company's expenses for arranging such messenger service and its overhead and profit. Special messenger services will be billed at the cost of such services. There will be no additional charge for pick-up or delivery of packages via the company's regularly scheduled messenger runs.

NOTE NO. 4: Property taxes, including general and special taxes, personal property taxes, if any, and any assessments collected with taxes, for the fiscal year shown below, are paid. For proration purposes the amounts are:

Fiscal year	2006 - 2007
1st Installment:	\$971,899.46
2nd Installment:	\$746,801.88
Exemption:	\$none
Code Area:	02410
Assessment No.:	4327-028-001

NOTE NO. 5: The charge for a policy of title insurance, when issued through this title order, will be based on the short-term rate.

NOTE NO. 6: There are no conveyances affecting said land recorded within 24 months of the date of this report.

NOTE NO. 7: The following information will be included in the CLTA form 116 endorsement to be issued pursuant to this order:

there is located on

said land:

commercial/industrial

known as:

9876 Wilshire Boulevard, in the City of Beverly Hills, County of Los Angeles, State of California

Typist: 2sm

Date Typed: September 13, 2007

Exhibit B (Revised 11-17-06)
CALIFORNIA LAND TITLE ASSOCIATION
STANDARD COVERAGE POLICY - 1990
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building or zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien, or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
(b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) whether or not recorded in the public records at Date of Policy, but created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage or for the estate or interest insured by this policy.
4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with the applicable doing business laws of the state in which the land is situated.
5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
6. Any claim, which arises out of the transaction vesting in the insured the estate of interest insured by this policy or the transaction creating the interest of the insured lender, by reason of the operation of federal bankruptcy, state insolvency or similar creditors' rights laws.

EXCEPTIONS FROM COVERAGE - SCHEDULE B, PART I

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests, or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

CLTA HOMEOWNER'S POLICY OF TITLE INSURANCE (10/22/03)
ALTA HOMEOWNER'S POLICY OF TITLE INSURANCE

EXCLUSIONS

In addition to the Exceptions in Schedule B, You are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes ordinances, laws and regulations concerning:
 - a. building
 - b. zoning
 - c. Land use
 - d. improvements on the Land
 - e. Land division
 - f. environmental protection

This Exclusion does not apply to violations or the enforcement of these matters if notice of the violation or enforcement appears in the Public Records at the Policy Date.

This Exclusion does not limit the coverage described in Covered Risk 14, 15, 16, 17 or 24.

2. The failure of Your existing structures, or any part of them, to be constructed in accordance with applicable building codes. This Exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at the Policy Date.
3. The right to take the Land by condemning it, unless:
 - a. a notice of exercising the right appears in the Public Records at the Policy Date; or
 - b. the taking happened before the Policy Date and is binding on You if You bought the Land without Knowing of the taking.
4. Risks:
 - a. that are created, allowed, or agreed to by You, whether or not they appear in the Public Records;
 - b. that are Known to You at the Policy Date, but not to Us, unless they appear in the Public Records at the Policy Date;
 - c. that result in no loss to You; or
 - d. that first occur after the Policy Date - this does not limit the coverage described in Covered Risk 7, 8.d, 22, 23, 24 or 25.
5. Failure to pay value for Your Title.
6. Lack of a right:
 - a. to any Land outside the area specifically described and referred to in paragraph 3 of Schedule A; and
 - b. in streets, alleys, or waterways that touch the Land.This Exclusion does not limit the coverage described in Covered Risk 11 or 18.

LIMITATIONS ON COVERED RISKS

Your insurance for the following Covered Risks is limited on the Owner's Coverage Statement as follows:

- For Covered Risk 14, 15, 16 and 18, Your Deductible Amount and Our Maximum Dollar Limit of Liability shown in Schedule A. The deductible amounts and maximum dollar limits shown on Schedule A are as follows:

	<u>Your Deductible Amount</u>	<u>Our Maximum Dollar Limit of Liability</u>
Covered Risk 14:	1% of Policy Amount or \$2,500 (whichever is less)	\$10,000
Covered Risk 15:	1% of Policy Amount or \$5,000 (whichever is less)	\$25,000
Covered Risk 16:	1% of Policy Amount or \$5,000 (whichever is less)	\$25,000
Covered Risk 18:	1% of Policy Amount or \$2,500 (whichever is less)	\$5,000

AMERICAN LAND TITLE ASSOCIATION RESIDENTIAL TITLE INSURANCE POLICY (6-1-87)

EXCLUSIONS

In addition to the Exceptions in Schedule B, you are not insured against loss, costs, attorneys' fees, and expenses resulting from:

1. Governmental police power, and the existence or violation of any law or government regulation. This includes building and zoning ordinances and also laws and regulations concerning:
 - land use
 - improvements on the land
 - land division
 - environmental protection

This exclusion does not apply to violations or the enforcement of these matters which appear in the public records at Policy Date.

This exclusion does not limit the zoning coverage described in Items 12 and 13 of Covered Title Risks.

2. The right to take the land by condemning it, unless:
 - a notice of exercising the right appears in the public records on the Policy Date
 - the taking happened prior to the Policy Date and is binding on you if you bought the land without knowing of the taking
3. Title Risks:
 - that are created, allowed, or agreed to by you
 - that are known to you, but not to us, on the Policy Date -- unless they appeared in the public records
 - that result in no loss to you
 - that first affect your title after the Policy Date -- this does not limit the labor and material lien coverage in Item 8 of Covered Title Risks
4. Failure to pay value for your title.
5. Lack of a right:
 - to any land outside the area specifically described and referred to in Item 3 of Schedule A
 - OR
 - in streets, alleys, or waterways that touch your landThis exclusion does not limit the access coverage in Item 5 of Covered Title Risks.

AMERICAN LAND TITLE ASSOCIATION LOAN POLICY (10-17-92) WITH ALTA ENDORSEMENT-FORM 1 COVERAGE

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the

- character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
 3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy (except to the extent that this policy insures the priority of the lien of the insured mortgage over any statutory lien for services, labor or material or to the extent insurance is afforded herein as to assessments for street improvements under construction or completed at Date of Policy); or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the insured mortgage.
 4. Unenforceability of the lien of the insured mortgage because of the inability or failure of the insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the land is situated.
 5. Invalidity or unenforceability of the lien of the insured mortgage, or claim thereof, which arises out of the transaction evidenced by the insured mortgage and is based upon usury or any consumer credit protection or truth in lending law.
 6. Any statutory lien for services, labor or materials (or the claim of priority of any statutory lien for services, labor or materials over the lien of the insured mortgage) arising from an improvement or work related to the land which is contracted for and commenced subsequent to Date of Policy and is not financed in whole or in part by proceeds of the indebtedness secured by the insured mortgage which at Date of Policy the insured has advanced or is obligated to advance.
 7. Any claim, which arises out of the transaction creating the interest of the mortgagee insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the interest of the insured mortgagee being deemed a fraudulent conveyance or fraudulent transfer; or
 - (ii) the subordination of the interest of the insured mortgagee as a result of the application of the doctrine or equitable subordination; or
 - (iii) the transaction creating the interest of the insured mortgagee being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following General Exceptions:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

2006 ALTA LOAN POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.

- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 11, 13, or 14); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of an Insured to comply with applicable doing-business laws of the state where the Land is situated.
5. Invalidity or unenforceability in whole or in part of the lien of the Insured Mortgage that arises out of the transaction evidenced by the Insured Mortgage and is based upon usury or any consumer credit protection or truth-in-lending law.
6. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction creating the lien of the Insured Mortgage, is
 - (a) a fraudulent conveyance or fraudulent transfer, or
 - (b) a preferential transfer for any reason not stated in Covered Risk 13(b) of this policy.
7. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the Insured Mortgage in the Public Records. This Exclusion does not modify or limit the coverage provided under Covered Risk 11(b).

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records.

AMERICAN LAND TITLE ASSOCIATION OWNER'S POLICY (10-17-92) EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys' fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the land; (iii) a separation in ownership or a change in the dimensions or area of the land or any parcel of which the land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
 - (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the land has been recorded in the public records at Date of Policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the public records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the insured claimant;
 - (b) not known to the Company, not recorded in the public records at Date of Policy, but known to the insured claimant and not disclosed in writing to the Company by the insured claimant prior to the date the insured claimant became an insured under this policy;
 - (c) resulting in no loss or damage to the insured claimant;
 - (d) attaching or created subsequent to Date of Policy; or
 - (e) resulting in loss or damage which would not have been sustained if the insured claimant had paid value for the estate or interest insured by this policy.
4. Any claim, which arises out of the transaction vesting in the insured the estate or interest insured by this policy, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that is based on:
 - (i) the transaction creating the estate or interest insured by this policy being deemed a fraudulent conveyance or fraudulent transfer; or

- (ii) the transaction creating the estate or interest insured by this policy being deemed a preferential transfer except where the preferential transfer results from the failure:
 - (a) to timely record the instrument of transfer; or
 - (b) of such recordation to impart notice to a purchaser for value or a judgment or lien creditor.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage Policy will also include the following General Exceptions:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) which arise by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or which may be asserted by persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the public records.

2006 ALTA OWNER'S POLICY (06-17-06)

EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy, and the Company will not pay loss or damage, costs, attorneys' fees, or expenses that arise by reason of:

1. (a) Any law, ordinance, permit, or governmental regulation (including those relating to building and zoning) restricting, regulating, prohibiting, or relating to
 - (i) the occupancy, use, or enjoyment of the Land;
 - (ii) the character, dimensions, or location of any improvement erected on the Land;
 - (iii) the subdivision of land; or
 - (iv) environmental protection;or the effect of any violation of these laws, ordinances, or governmental regulations. This Exclusion 1(a) does not modify or limit the coverage provided under Covered Risk 5.
- (b) Any governmental police power. This Exclusion 1(b) does not modify or limit the coverage provided under Covered Risk 6.
2. Rights of eminent domain. This Exclusion does not modify or limit the coverage provided under Covered Risk 7 or 8.
3. Defects, liens, encumbrances, adverse claims, or other matters
 - (a) created, suffered, assumed, or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (however, this does not modify or limit the coverage provided under Covered Risk 9 and 10); or
 - (e) resulting in loss or damage that would not have been sustained if the Insured Claimant had paid value for the Title.
4. Any claim, by reason of the operation of federal bankruptcy, state insolvency, or similar creditors' rights laws, that the transaction vesting the Title as shown in Schedule A, is
 - (a) a fraudulent conveyance or fraudulent transfer; or
 - (b) a preferential transfer for any reason not stated in Covered Risk 9 of this policy.
5. Any lien on the Title for real estate taxes or assessments imposed by governmental authority and created or attaching between Date of Policy and the date of recording of the deed or other instrument of transfer in the Public Records that vests Title as shown in Schedule A.

The above policy form may be issued to afford either Standard Coverage or Extended Coverage. In addition to the above Exclusions from Coverage, the Exceptions from Coverage in a Standard Coverage policy will also include the following Exceptions from Coverage:

EXCEPTIONS FROM COVERAGE

This policy does not insure against loss or damage (and the Company will not pay costs, attorneys' fees or expenses) that arise by reason of:

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests, or claims that are not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b) or (c) are shown by the Public Records.

ALTA EXPANDED COVERAGE RESIDENTIAL LOAN POLICY (10/13/01)
EXCLUSIONS FROM COVERAGE

The following matters are expressly excluded from the coverage of this policy and the Company will not pay loss or damage, costs, attorneys fees or expenses which arise by reason of:

1. (a) Any law, ordinance or governmental regulation (including but not limited to building and zoning laws, ordinances, or regulations) restricting, regulating, prohibiting or relating to (i) the occupancy, use, or enjoyment of the Land; (ii) the character, dimensions or location of any improvement now or hereafter erected on the Land; (iii) a separation in ownership or a change in the dimensions or areas of the Land or any parcel of which the Land is or was a part; or (iv) environmental protection, or the effect of any violation of these laws, ordinances or governmental regulations, except to the extent that a notice of the enforcement thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
- (b) Any governmental police power not excluded by (a) above, except to the extent that a notice of the exercise thereof or a notice of a defect, lien or encumbrance resulting from a violation or alleged violation affecting the Land has been recorded in the Public Records at Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 12, 13, 14, and 16 of this policy.
2. Rights of eminent domain unless notice of the exercise thereof has been recorded in the Public Records at Date of Policy, but not excluding from coverage any taking which has occurred prior to Date of Policy which would be binding on the rights of a purchaser for value without Knowledge.
3. Defects, liens, encumbrances, adverse claims or other matters:
 - (a) created, suffered, assumed or agreed to by the Insured Claimant;
 - (b) not Known to the Company, not recorded in the Public Records at Date of Policy, but Known to the Insured Claimant and not disclosed in writing to the Company by the Insured Claimant prior to the date the Insured Claimant became an Insured under this policy;
 - (c) resulting in no loss or damage to the Insured Claimant;
 - (d) attaching or created subsequent to Date of Policy (this paragraph does not limit the coverage provided under Covered Risks 8, 16, 18, 19, 20, 21, 22, 23, 24, 25 and 26); or
 - (e) resulting in loss or damage which would not have been sustained if the Insured Claimant had paid value for the Insured Mortgage.
4. Unenforceability of the lien of the Insured Mortgage because of the inability or failure of the Insured at Date of Policy, or the inability or failure of any subsequent owner of the indebtedness, to comply with applicable doing business laws of the state in which the Land is situated.
5. Invalidity or unenforceability of the lien of the Insured Mortgage, or claim thereof, which arises out of the transaction evidenced by the Insured Mortgage and is based upon usury, except as provided in Covered Risk 27, or any consumer credit protection or truth in lending law.
6. Real property taxes or assessments of any governmental authority which become a lien on the Land subsequent to Date of Policy. This exclusion does not limit the coverage provided under Covered Risks 7, 8(e) and 26.
7. Any claim of invalidity, unenforceability or lack of priority of the lien of the Insured Mortgage as to advances or modifications made after the Insured has Knowledge that the vestee shown in Schedule A is no longer the owner of the estate or interest covered by this policy. This exclusion does not limit the coverage provided in Covered Risk 8.
8. Lack of priority of the lien of the Insured Mortgage as to each and every advance made after Date of Policy, and all interest charged thereon, over liens, encumbrances and other matters affecting the title, the existence of which are Known to the Insured at:
 - (a) The time of the advance; or
 - (b) The time a modification is made to the terms of the Insured Mortgage which changes the rate of interest charged, if the rate of Interest is greater as a result of the modification than it would have been before the modification. This exclusion does not limit the coverage provided in Covered Risk 8.
9. The failure of the residential structure, or any portion thereof to have been constructed before, on or after Date of Policy in accordance with applicable building codes. This exclusion does not apply to violations of building codes if notice of the violation appears in the Public Records at Date of Policy.



Commonwealth Land Title Company
 915 Wilshire Boulevard
 Suite 2100
 Los Angeles, CA 90017
 Phone: (213) 330-3100

File No: 06157861

Notice to Customers

You may be eligible for a \$20.00 reduction in your title or escrow fees in this transaction charged by **Commonwealth Land Title Insurance Company** pursuant to the Final Judgments entered in People of the State of California v. LandAmerica Financial Group, Inc., et al., Sacramento Superior Court Case No. 92 AS 06111, and Taylor, et al. v. LandAmerica Financial Group, Inc., et al., Los Angeles Superior Court Case No. BC 231917. You are eligible for this \$20.00 reduction in your title or escrow fees if you meet the following requirements:

1. You are a natural person or trust;
2. Your transaction involves the purchase, sale or refinancing of residential real property containing one-to-four-dwelling units;
3. You previously purchased title insurance or escrow services involving a transaction which closed between May 19, 1995 and October 8, 2002 from one of the following companies:

LandAmerica Financial Group, Inc.
 Commonwealth Land Title Insurance Company or
 Commonwealth Land Title Company
 Lawyers Title Insurance Corporation or Lawyers Title Company
 First American Title Insurance Company, First American Title Company, First American Title Guarantee Company
 Fidelity National Financial, Inc.
 Fidelity National Title Insurance Company
 Fidelity National Title Company
 Fidelity National Title Insurance Company of California, Inc.
 Fidelity National Loan Portfolio Services
 Ticor Title Insurance Company
 Security Union Title Insurance Company
 Chicago Title Insurance Company
 Chicago Title Company
 Chicago Title and Trust Company
 Rocky Mountain Support Services, Inc.
 California Tracking Service, Inc.
 Title Accounting Services Corporation

- 4 You did not receive a \$65.00 cash payment from LandAmerica Financial Group, Inc. in the reconveyance fee claims process pursuant to the Final Judgments entered in People of the State of California v. LandAmerica Financial Group, Inc., et al., Sacramento Superior Court Case No. 92 AS 06111, and Taylor, et al. v. LandAmerica Financial Group, Inc., et al., Los Angeles Superior Court Case No. BC 231917.

If you meet the foregoing requirements and want the \$20.00 fee reduction complete this form and return it to your **Commonwealth Land Title Insurance Company** escrow or title officer. **NOTE: If you are eligible for the \$20.00 fee reduction please complete and return this form. You must advise us of your eligibility prior to closing in order to receive the \$20.00 fee reduction.**

Name: _____

Address: _____

Telephone No: _____



Commonwealth Land Title Company
915 Wilshire Boulevard
Suite 2100
Los Angeles, CA 90017
Phone: (213) 330-3100

File No: 06157861

Notice to Customers

You may be eligible for a \$20.00 reduction in your title or escrow fees in this transaction charged by Commonwealth Land Title Insurance Company pursuant to the Final Judgments entered in People of the State of California v. LandAmerica Financial Group, Inc., et al., Sacramento Superior Court Case No. 92 AS 06111, and Taylor, et al. v. LandAmerica Financial Group, Inc., et al., Los Angeles Superior Court Case No. BC 231917. You are eligible for this \$20.00 reduction in your title or escrow fees if you meet the following requirements:

- 1. You are a natural person or trust;
2. Your transaction involves the purchase, sale or refinancing of residential real property containing one-to-four-dwelling units;
3. You previously purchased title insurance or escrow services involving a transaction which closed between May 19, 1995 and October 8, 2002 from one of the following companies:

List of companies: LandAmerica Financial Group, Inc., Commonwealth Land Title Insurance Company or Commonwealth Land Title Company, Lawyers Title Insurance Corporation or Lawyers Title Company, First American Title Insurance Company, First American Title Company, First American Title Guarantee Company, Fidelity National Financial, Inc., Fidelity National Title Insurance Company, Fidelity National Title Company, Fidelity National Title Insurance Company of California, Inc., Fidelity National Loan Portfolio Services, Ticor Title Insurance Company, Security Union Title Insurance Company, Chicago Title Insurance Company, Chicago Title Company, Chicago Title and Trust Company, Rocky Mountain Support Services, Inc., California Tracking Service, Inc., Title Accounting Services Corporation

- 4. You did not receive a \$65.00 cash payment from LandAmerica Financial Group, Inc. in the reconveyance fee claims process pursuant to the Final Judgments entered in People of the State of California v. LandAmerica Financial Group, Inc., et al., Sacramento Superior Court Case No. 92 AS 06111, and Taylor, et al. v. LandAmerica Financial Group, Inc., et al., Los Angeles Superior Court Case No. BC 231917.

If you meet the foregoing requirements and want the \$20.00 fee reduction complete this form and return it to your Commonwealth Land Title Insurance Company escrow or title officer. NOTE: If you are eligible for the \$20.00 fee reduction please complete and return this form. You must advise us of your eligibility prior to closing in order to receive the \$20.00 fee reduction.

Name: _____

Address: _____

Telephone No: _____

OWNER'S INFORMATION STATEMENT

STATE OF CALIFORNIA

} ss

COUNTY OF

To: the Company
Re: Title Order 06157861

The undersigned, first being duly sworn, deposes and says:

1). That I/we are the owner(s) of that certain real property located in the County of Los Angeles described in the report referenced above:

That the land is improved by a:

- Single Family residence: one to four family residence
Apartment building
Office building
Commercial building
Combination office and commercial building
Industrial building

2). That there have been no repairs, work of improvement or materials furnished to the premises within the last 12 months, except

That the work of improvement or repairs, if any:

- Started on
Was completed on
Will be completed on

3). There are no unpaid bills for labor of material because of any improvements or repairs made to the above premises; except

4). That there is no one in possession of or has access to the premises other than:

- the undersigned
tenants based only on month-to-month rental agreements
lessees based upon existing leases, copies of which are attached hereto*

5). That no person(s) other those mentioned above have any rights, easements, licenses, or agreements allowing them to use, encroach on, or travel over said real property except (enter "none" if such is true)

6). That the undersigned has not received any supplemental tax bill which is unpaid.

7). That this declaration is given for the purpose of inducing the Company and Commonwealth Land Title Insurance Company to issue its policy(ies) of title insurance under the above referenced title order which may provide coverage as to the items mentioned above and that the statements made herein are true and correct of my/our knowledge.

*Declarant(s), please remember to attach copies.

Executed under penalty of perjury on the _____ day of _____, 2____.

Signature

Signature



LandAmerica
Commonwealth

Chain of Title Guarantee

Guarantee/File Number: **6157861A**

Liability: **\$1,000.00**

Fee: **\$660.00**

SUBJECT TO THE EXCLUSIONS FROM COVERAGE, THE LIMITS OF LIABILITY AND OTHER PROVISIONS OF THE CONDITIONS AND STIPULATIONS HERETO ANNEXED AND MADE A PART OF THIS GUARANTEE, AND SUBJECT TO THE FURTHER EXCLUSION AND LIMITATION THAT NO GUARANTEE IS GIVEN NOR LIABILITY ASSUMED WITH RESPECT TO THE IDENTITY OF ANY PARTY NAMED OR REFERRED TO IN SCHEDULE A OR WITH RESPECT TO THE VALIDITY, LEGAL EFFECT OR PRIORITY OF ANY MATTER SHOWN THEREIN.

Commonwealth Land Title Insurance Company

a corporation, herein called the Company,

GUARANTEES

THE ASSURED NAMED IN SCHEDULE A AGAINST ACTUAL MONETARY LOSS OR DAMAGE NOT EXCEEDING THE LIABILITY AMOUNT STATED IN SCHEDULE A WHICH THE ASSURED SHALL SUSTAIN BY REASON OF ANY INCORRECTNESS IN THE ASSURANCES SET FORTH IN SCHEDULE A.

Dated: October 15, 2007

By: *Theodore L. Chandler, Jr.*
Authorized Signatory

SCHEDULE A

1. Name of Assured:
Oasis West Realty LLC
2. Date of Guarantee:
October 15, 2007

The assurances referred to on the face page hereof are:

That, according to those public records, which, under the recording laws, impart constructive notice of matters relating to the interest, pursuant to all deeds in and to land described in Exhibit "A" attached hereto and made a part hereof:

Only the following matters appear in such records subsequent to January 1, 1950.

The Guarantee does not cover:

1. Taxes, assessments, and matters related thereto.
2. Instruments, proceedings, or other matters which do not specifically describe said land.
3. The effect of a Grant Deed
Dated: July 6, 1950
Grantor: E. L. Cord
Grantee: Crummer Development Corporation, a California Corporation
Recorded: August 17, 1950, in Book 34025, Page 319, Official Records
4. The effect of a Quitclaim Deed
Dated: August 17, 1950
Grantor: R. E. Crummer, Sr.
Grantee: Crummer Development Corporation, a California Corporation
Recorded: August 22, 1950, in Book 34070, Page 136, Official Records
5. The effect of a Corporation Grant Deed
Dated: February 1, 1951
Grantor: Beverly Hilton Development Corporation
Grantee: Hilton Hotels Corporation, a Delaware Corporation
Recorded: April 6, 1951, as Instrument No. 3169, in Book 35991, Page 115, Official Records
6. The effect of a Quitclaim Deed
Dated: August 11, 1953
Grantor: Reverend L. M. Malone (a single man)
Grantee: Hilton Hotels Corporation, a Delaware Corporation
Recorded: August 13, 1953, as Instrument No. 3485, in Book 42457, Page 236, Official Records

SCHEDULE A - Continued

7. The effect of a Corporation Quitclaim Deed
 Dated: September 11, 1953
 Grantor: Tidewater Associated Oil Company, a Delaware Corporation, for itself and as successor to Associated Oil Co.
 Grantee: Hilton Hotels Corporation, a Delaware Corporation
 Recorded: September 18, 1953, as Instrument No. 2946, in Book 42723, Page 219, Official Records
8. The effect of a Corporation Grant Deed
 Dated: March 31, 1961
 Grantor: Hilton Hotels Corporation, a Corporation
 Grantee: Harry N. Wyatt, Trustee; Irving Crown; Herman Crown; Gladys K. Crown; Lester Crown, Trustee; John J. Crown, Trustee; Charles Goodman and Suzanne C. Goodman, Trustees; and Herman Crown, Trustee
 Recorded: March 31, 1961, as Instrument No. 1, Official Records
9. The effect of a Quitclaim Deed
 Dated: March 31, 1961
 Grantor: Rose Crown
 Grantee: Irving Crown
 Recorded: March 31, 1961, as Instrument No. 2, Official Records
10. The effect of a Quitclaim Deed
 Dated: March 31, 1961
 Grantor: Mildred Crown
 Grantee: Herman Crown
 Recorded: March 31, 1961, as Instrument No. 3, Official Records
11. The effect of a Corporation Grant Deed
 Dated: August 20, 1962
 Grantor: Hilton Hotels Corporation, a Corporation
 Grantee: Harry N. Wyatt, Trustee; Irving Crown; Edward A. Crown, Irving Crown and Mildred Crown, as Executors of the Estate of Herman Crown; Gladys K. Crown; Lester Crown, Trustee; John J. Crown, Trustee; Charles Goodman and Suzanne C. Goodman, Co-Trustees; and Edward A. Crown, Trustee, as successor to Herman Crown, Trustee
 Recorded: August 31, 1962, as Instrument No. 6502, Official Records

SCHEDULE A - Continued

12. The effect of a Order Settling Final Account and Report of Executor, and Decree of Final Distribution Under Will of Herman Crown
 Dated: December 10, 1964
 In favor of: (A) Eighty-five per cent to Mildred Crown, Irving Crown and Edward A. Crown, as Trustees of the Marital Trust as established and set forth in Article 3 of said Will
 (B) Five per cent to Barry Crown, Irving Crown, Edward A. Crown, as Trustees of the Barry Testamentary Trust,
 (C) Five per cent to Florence Rothman, Irving Crown and Edward A. Crown, as Trustees of the Florence Testamentary Trust,
 (D) Five per cent to Mildred Crown, Irving Crown and Edward A. Crown, as Trustees of the Irene Testamentary Trust
 Recorded: February 3, 1965, as Instrument No. 4206, Official Records
13. The effect of a Quitclaim Deed
 Dated: March 19, 1966
 Grantor: Mildred Crown, Irving Crown, and Edward Crown, as Trustee of the marital trust and of the Irene Trust; Barry Crown, Irving Crown, and Edward A. Crown, as Trustees of the Barry Trust; and Florence Rothman, Irving Crown and Edward A. Crown, as Trustees of the Florence Trust; all of the above being Trustees under the Will of Herman Crown, Deceased, and the Decree of Distribution of his estate, a certified copy thereof being recorded in Book D-2737, Page 160, Official Records; Harry N. Wyatt, Trustee; Irving Crown, a married man, as his separate property; Gladys K. Crown; and Benjamin Z. Gould, Trustee, as successor to the following named people who acquired title as Trustee: Lester Crown, Trustee; John J. Crown, Trustee; Charles Goodman and Suzanne C. Goodman, Co-Trustees; and Herman Crown, Trustee
 Grantee: Hilton Hotels Corporation, a Corporation
 Recorded: March 21, 1966, as Instrument No. 1146, Official Records
14. The effect of a Corporation Grant Deed
 Dated: February 19, 1975
 Grantor: Hilton Hotels Corporation, a Corporation
 Grantee: Beverly Hilton Joint Venture, a Partnership
 Recorded: February 28, 1975, as Instrument No. 854, Official Records
15. The effect of a Grant Deed
 Dated: December 22, 1987
 Grantor: Beverly Hilton Joint Venture, a joint venture in partnership form
 Grantee: The Prudential Insurance Company of America, a New Jersey Corporation, and Hilton Hotels Corporation, an Delaware Corporation, an undivided fifty percent (50%) interest
 Recorded: December 23, 1987, as Instrument No. 87-2023224, Official Records

EXHIBIT "A"

All that certain real property situated in the County of Los Angeles, State of California, described as follows:

Parcel 1:

Lots 1, 2 and 8 and those portions of Lots 3 and 7 in Block 33 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 13, Page(s) 62 and 63 of Maps, in the Office of the County Recorder of said County, lying Easterly of the following described line:

Beginning at a point in the Northerly line of said Block 33 distant South 89° 55' 00" East 335 feet from the Northeast corner of Lot 5 of said Block 33; thence South 0° 05' 00" West 177 feet; thence Southeasterly to a point in the Northwesterly line of Santa Monica Boulevard 85 feet wide, distant North 50° 26' 30" East 485 feet from the most Southerly corner of Block 33.

Parcel 2:

Those portions of Lots 3 and 7 in Block 33 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per map recorded in Book 13, Page(s) 62 and 63 of Maps, in the Office of the County Recorder of said County, lying Easterly of the following described line:

Beginning at a point in the Northerly line of said Block 33, distant South 89° 55' 00" East 300 feet from the Northeast corner of Lot 5 of said Block 33; thence South 0° 05' 00" West 177 feet; thence Southeasterly to a point in the Northwesterly line of Santa Monica Boulevard 85 feet wide distant North 50° 28' 30" East 431.22 feet from the most Southerly corner of said Block 33.

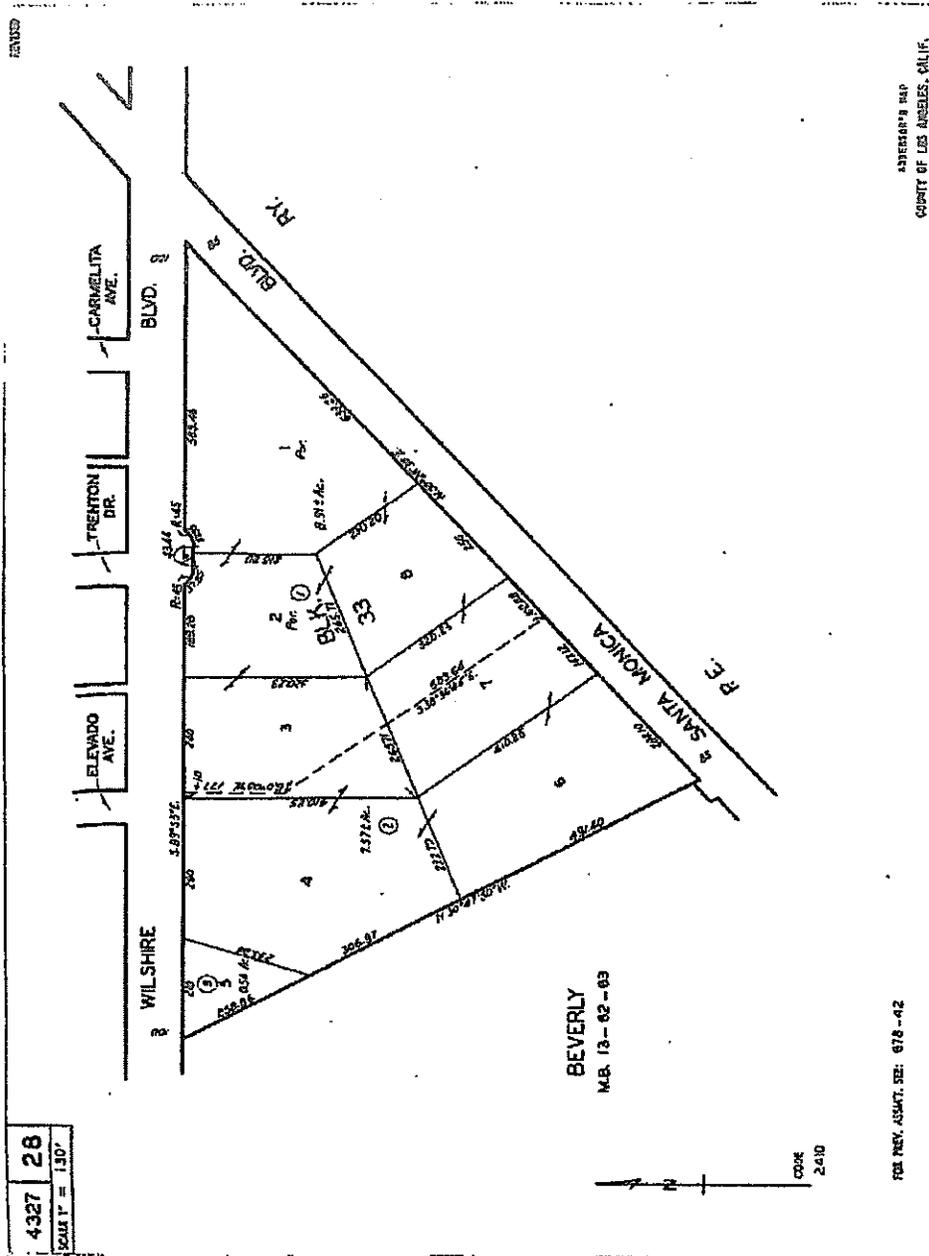
Except those portions lying within Parcel 1 above described.

Assessor's Parcel Number: **4327-028-001**

EXHIBIT A -- Continued

File Number: 6157861A

Title Officer Order: 6157861A Comment:



LOS ANGELES, CA Document: Assessor-Map 4327.28
Printed on 10/19/2007 11:15:17 AM Provided by Data Trace System

Page 1 of 1

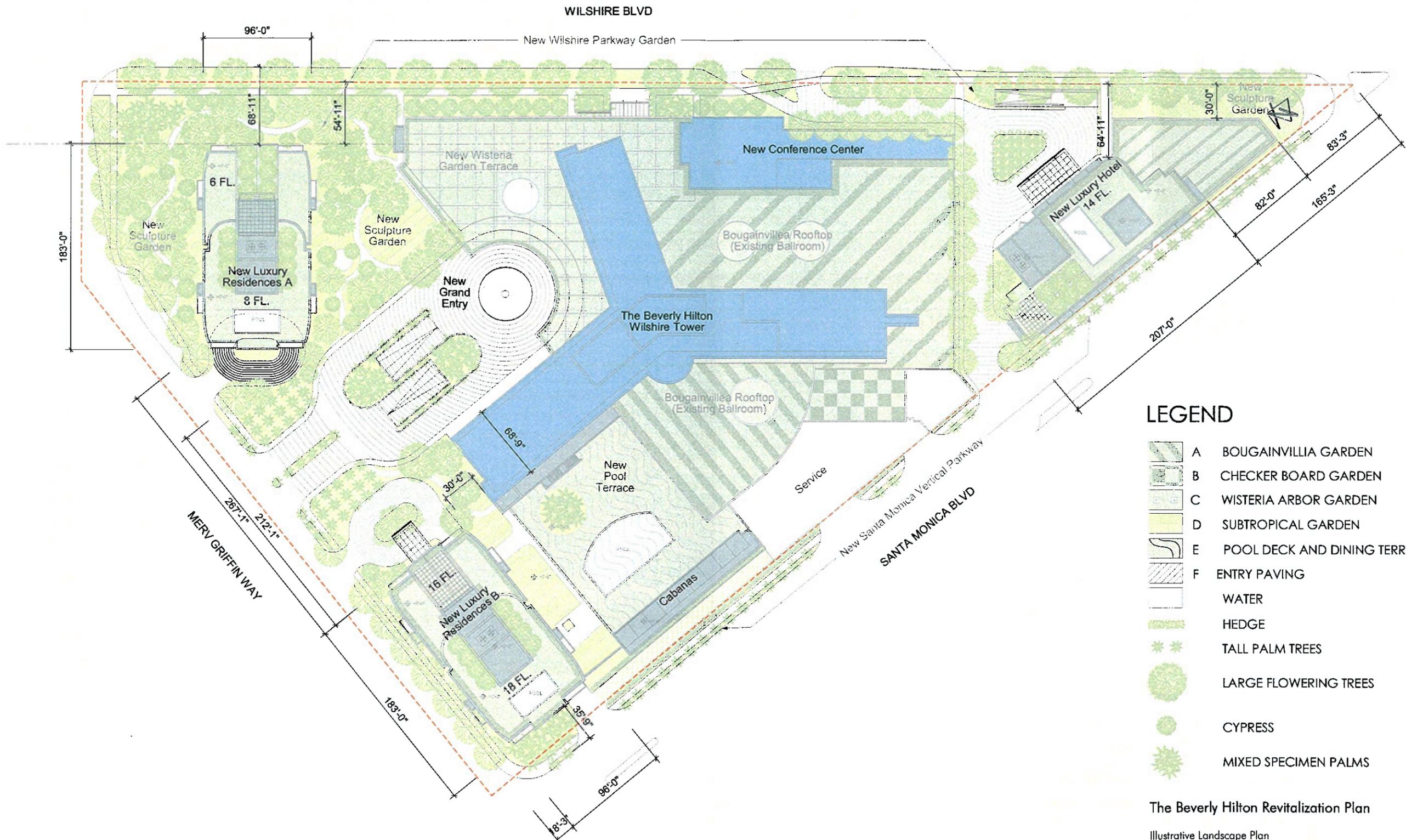
Attachment 8

**Applicant's Submittal Packet
(Site Plans, Elevations, Floor Plans for 3
Scenarios)**

The Beverly Hilton Revitalization Plan
April 11, 2008

Attachments:

1. Scenario A, Option 1 Site Plan
2. Scenario A, Option 2 Site Plan
3. Scenario B, Option 1 Site Plan
4. Scenario A, Res A and Res B Typical Floor Plan
5. Scenario B, Res B Typical Floor Plan
6. Proposed Beverly Hilton Entrance Rendering w/ Scenario A
7. Proposed Beverly Hilton Entrance Rendering w/ Scenario B
8. Waldorf=Astoria Rendering 14 Floors
9. Waldorf=Astoria Rendering 12 Floors



LEGEND

- A BOUGAINVILLEA GARDEN
- B CHECKER BOARD GARDEN
- C WISTERIA ARBOR GARDEN
- D SUBTROPICAL GARDEN
- E POOL DECK AND DINING TERRACE
- F ENTRY PAVING
- WATER
- HEDGE
- TALL PALM TREES
- LARGE FLOWERING TREES
- CYPRESS
- MIXED SPECIMEN PALMS

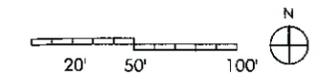
**Scenario A
Option 1**

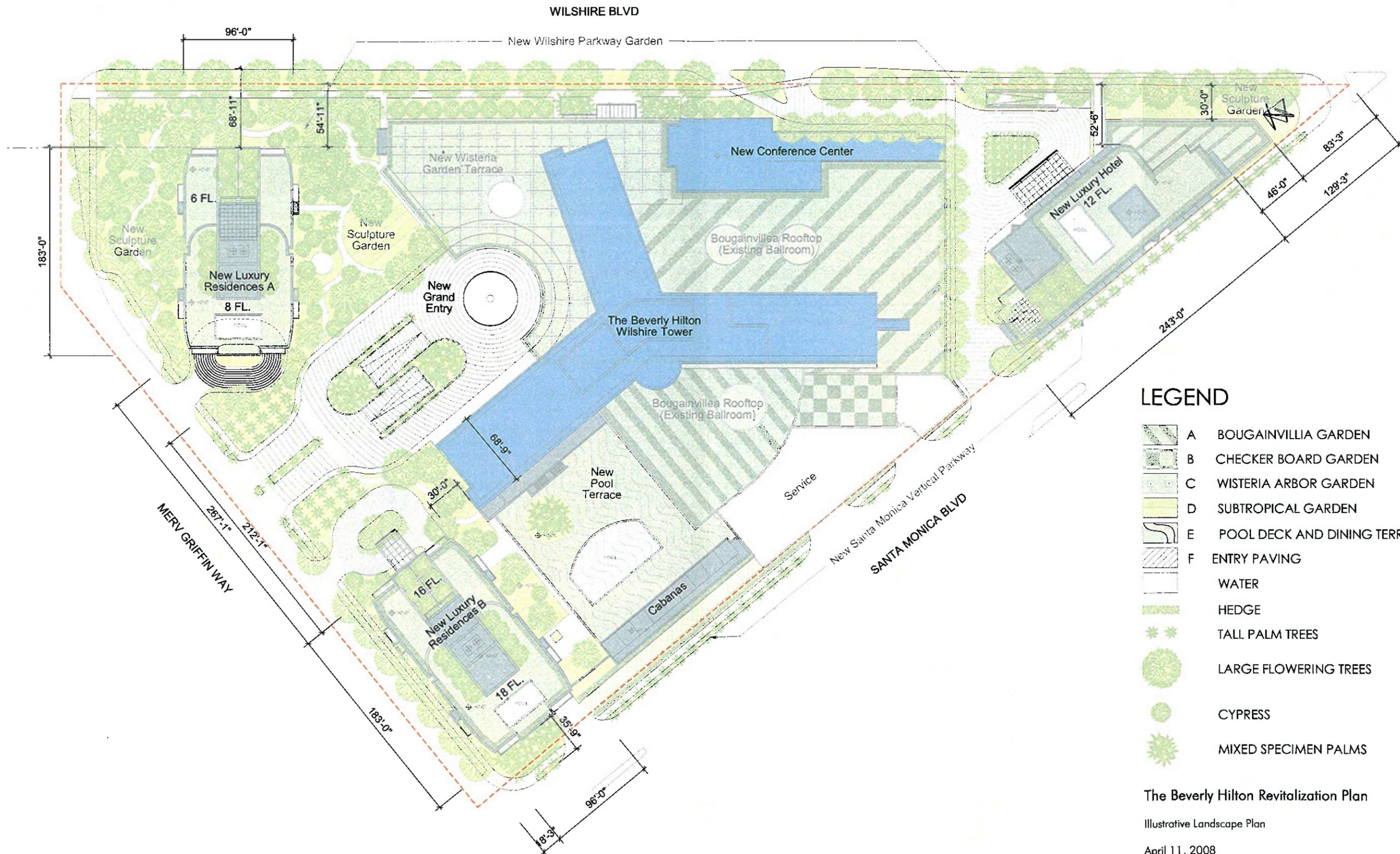
The Beverly Hilton Revitalization Plan

Illustrative Landscape Plan

April 11, 2008

Gwathmey Siegel & Associates Architects
Peter Walker and Partners Landscape Architects





LEGEND

- A BOUGAINVILLEA GARDEN
- B CHECKER BOARD GARDEN
- C WISTERIA ARBOR GARDEN
- D SUBTROPICAL GARDEN
- E POOL DECK AND DINING TERRAC
- F ENTRY PAVING
- WATER
- HEDGE
- TALL PALM TREES
- LARGE FLOWERING TREES
- CYPRESS
- MIXED SPECIMEN PALMS

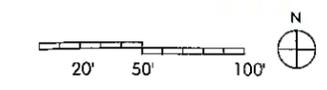
The Beverly Hilton Revitalization Plan

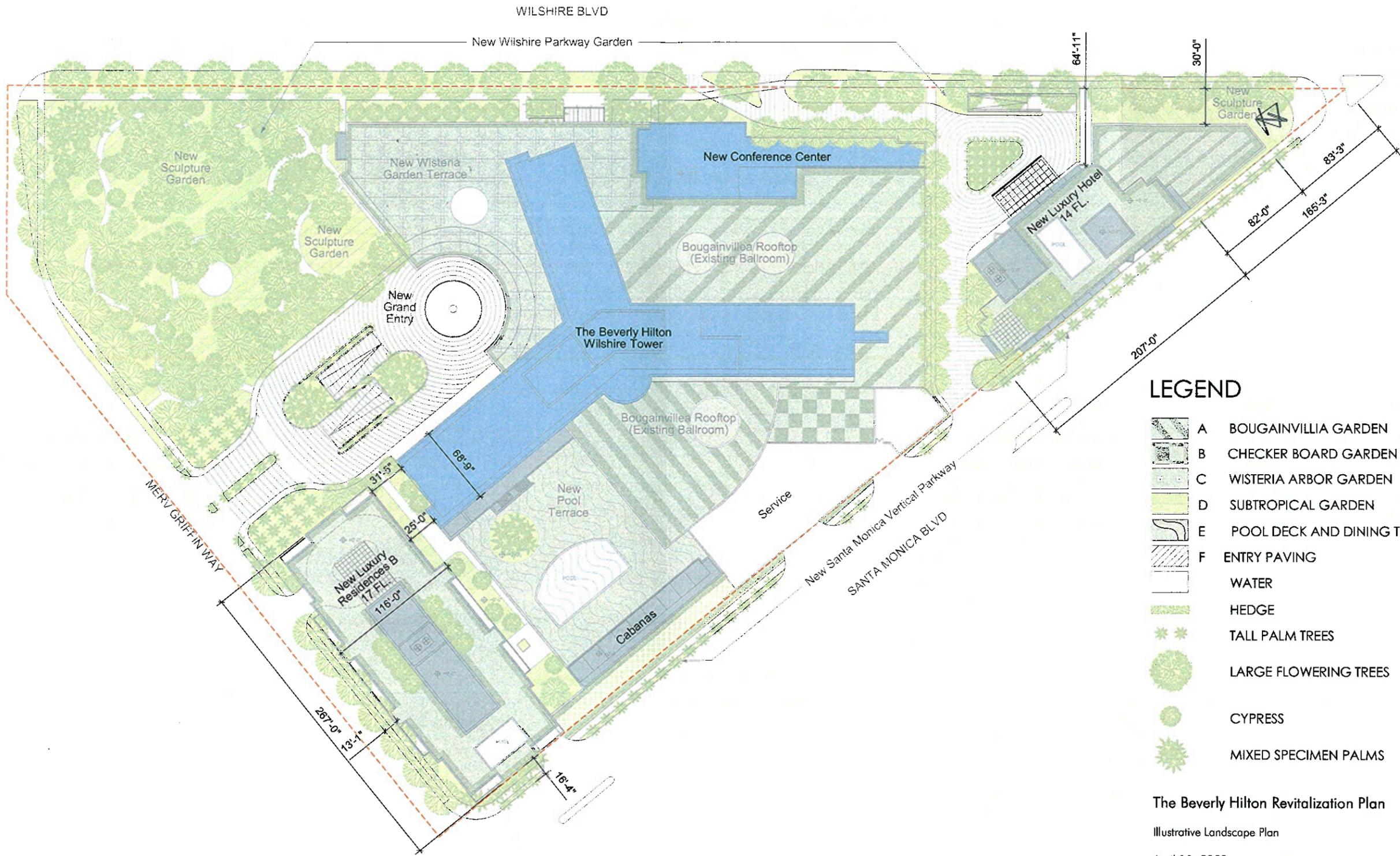
Illustrative Landscape Plan

April 11, 2008

Gwathmey Siegel & Associates Architects
Peter Walker and Partners Landscape Architects

**Scenario A
Option 2**





LEGEND

- A BOUGAINVILLEA GARDEN
- B CHECKER BOARD GARDEN
- C WISTERIA ARBOR GARDEN
- D SUBTROPICAL GARDEN
- E POOL DECK AND DINING TERRACE
- F ENTRY PAVING
- WATER
- HEDGE
- TALL PALM TREES
- LARGE FLOWERING TREES
- CYPRESS
- MIXED SPECIMEN PALMS

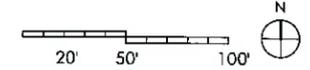
The Beverly Hilton Revitalization Plan

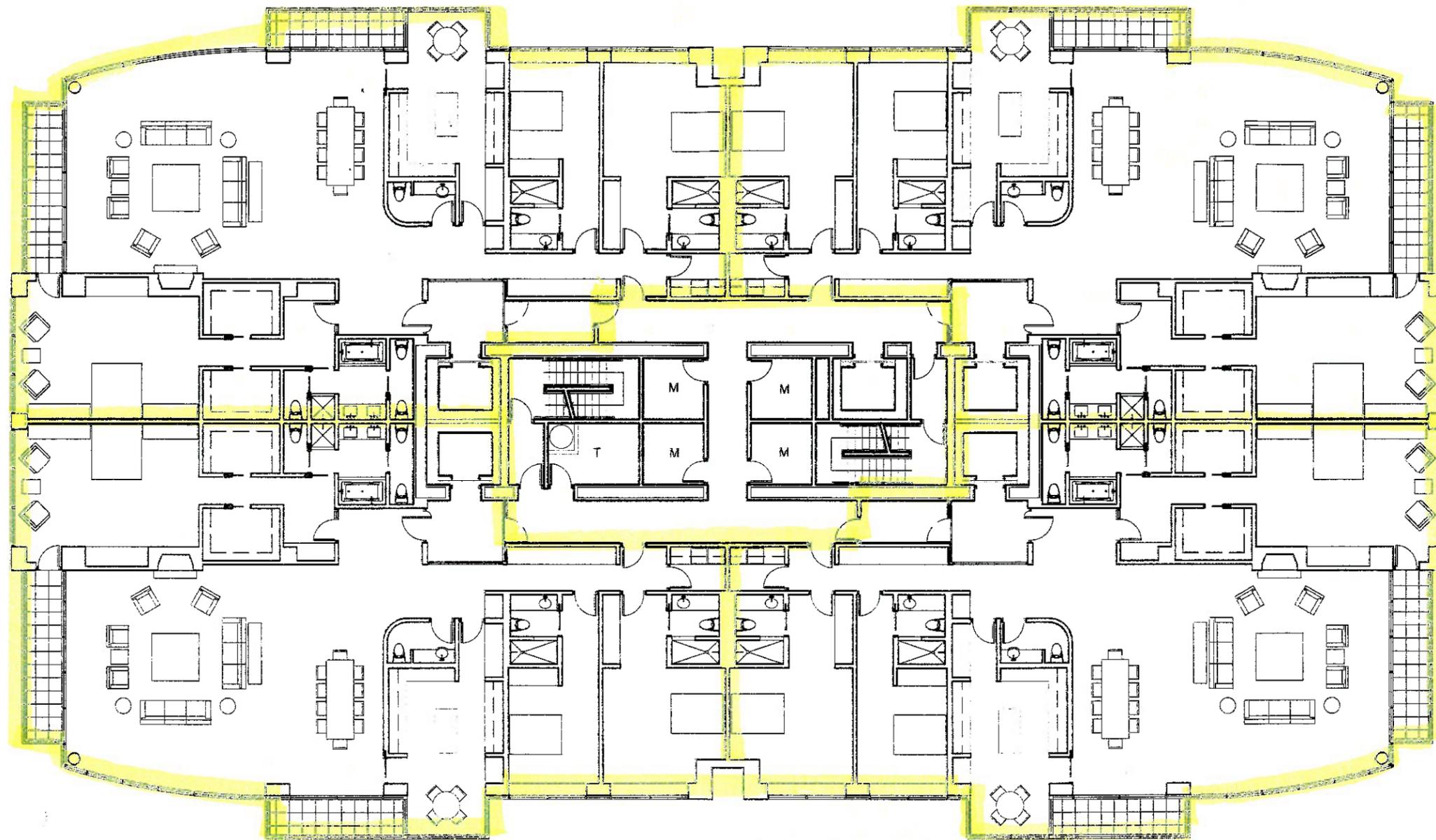
Illustrative Landscape Plan

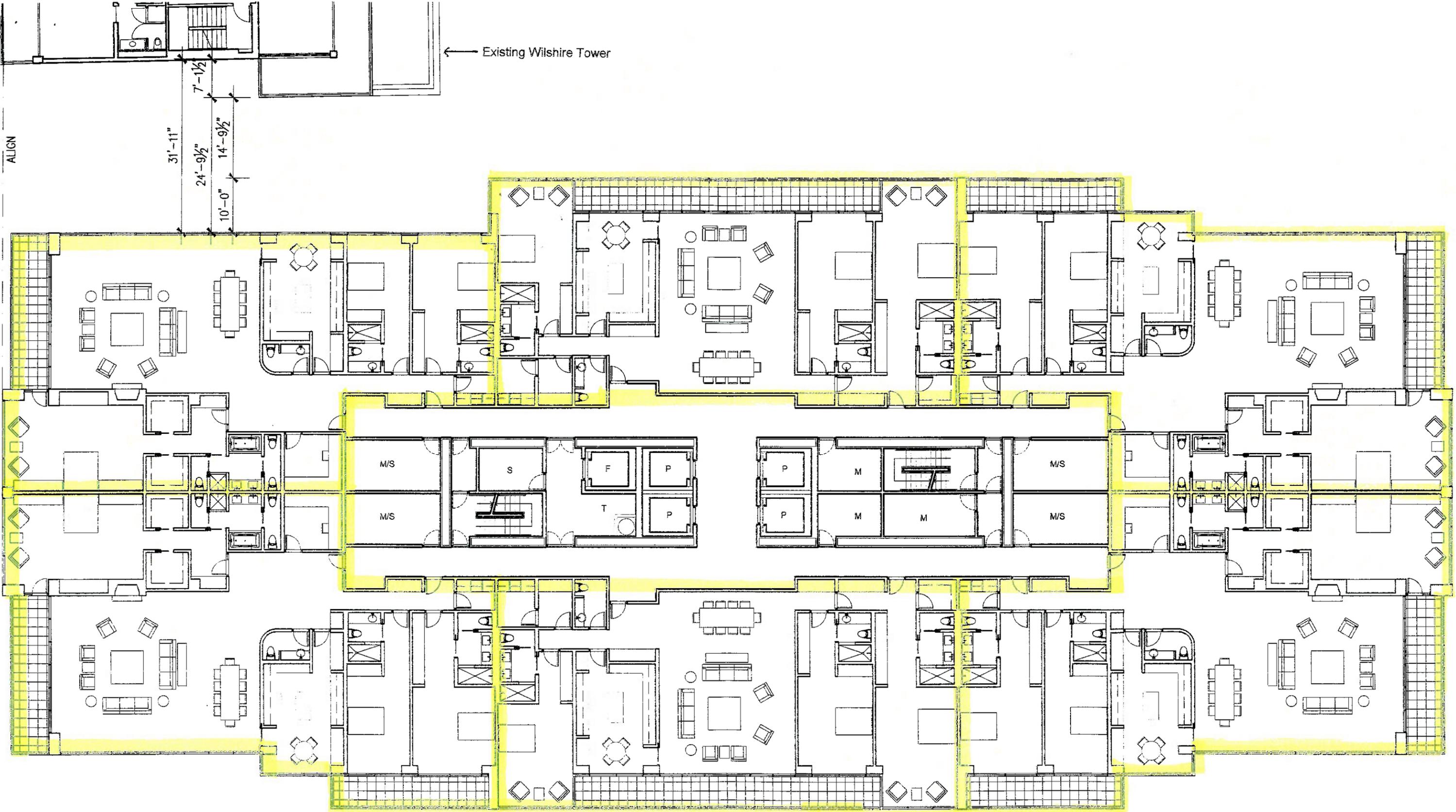
April 11, 2008

Gwathmey Siegel & Associates Architects
Peter Walker and Partners Landscape Architects

**Scenario B
Option 1**













WALDORF=ASTORIA AT 14 FLOORS

Outline of Original Waldorf=Astoria Proposal

VIEW FROM SANTA MONICA BLVD / WILSHIRE BLVD INTERSECTION



WALDORF=ASTORIA AT 12 FLOORS

Outline of Original Waldorf=Astoria Proposal

VIEW FROM SANTA MONICA BLVD / WILSHIRE BLVD INTERSECTION