



# Planning Commission Report

**Meeting Date:** December 12, 2013

**Subject:** **9355 Wilshire Boulevard and 155 North Crescent Drive  
AKA Serviced Residences**

Request for zone amendments to allow serviced residences and restaurant uses within the M-PD-2 Zone, modifications to a previously granted Planned Development Permit, and a development agreement between Metropolitan Crescent Associates, LLC and the City of Beverly Hills for the property located at 9355 Wilshire Boulevard and 155 North Crescent Drive. In addition, staff proposes zone text amendments to address transient uses in single-family residential zones, and to provide the definition of transient uses in multi-family residential zones.

PROJECT APPLICANT: Metropolitan Crescent Associates, LLC

**Recommendation:** That the Planning Commission:

1. Conduct a public hearing and receive testimony on the project and zone text amendments; and
2. Adopt the attached resolutions adopting an addendum pursuant to the California Environmental Quality Act, conditionally approving the project and making recommendations to the City Council regarding the zone text amendments and development agreement.

## REPORT SUMMARY

The subject project was previously on the Commission's November 21, 2013 agenda, and was continued to the December 12, 2013 meeting at the request of the applicant. The previous staff report, inclusive of all original attachments, is provided as an attachment to this report.

In addition to the prior staff report, several new attachments have been added at the very end of the prior report's attachments. The new attachments relate to applicant and public comments received subsequent to the prior hearing, and are detailed as follows:

**Attachment K – Applicant Comments and Staff Responses.** Subsequent to receiving copies of the draft resolutions and development agreement in the Commission's prior packet, the Applicant identified several concerns regarding language and conditions contained within the documents. The applicant submitted written comments, and staff has provided written responses to the comments for consideration by the Commission. For ease of reading, staff's

Attachment(s):

- K. Applicant Comments and Staff Responses
- L. Revised Planning Commission Resolution – Planned Development Permit
- M. Revised Draft Ordinance Regarding the Proposed Zoning Amendments
- N. Revised Development Agreement
- O. Resident Survey
- P. Additional Public Comments

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comments have been provided immediately below each corresponding applicant comment. In the event that there is Commission support for the recommended revisions, staff has provided additional attachments consisting of updated resolutions and a development agreement, with the recommended revisions shown in strikeout/underline format. The additional attachments are further detailed below.

**Attachment L – Revised Planning Commission Resolution – Planned Development Permit.** The draft resolution conditionally approving the Planned Development Permit has been amended in strikeout/underline format to clearly show the recommended revisions in response to the applicant’s comments.

**Attachment M – Revised Draft Ordinance Regarding the Proposed Zoning Amendments.** The draft ordinance intended to amend the Municipal Code to allow AKA’s operations and establish additional standards for transient uses within the City’s residential zones has been amended in strikeout/underline format to clearly show the recommended revisions in response to the applicant’s comments.

**Attachment N – Revised Development Agreement.** The draft development agreement has been amended in strikeout/underline format to clearly show the recommended revisions in response to the applicant’s comments.

**Attachment O – Resident Survey.** The applicant conducted outreach within the surrounding neighborhood to survey the level of resident support for the proposed project. The applicant’s survey results are provided as Attachment O.

**Attachment P – Additional Public Comments.** Public comments not previously included in the Planning Commission’s prior packet are provided as Attachment P.

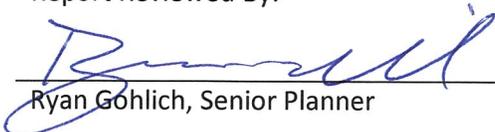
## NEXT STEPS

It is recommended that the Planning Commission approve the requested entitlements and make recommendations to the City Council regarding the zoning amendments, subject to all conditions of approval set forth in the attached resolutions, as revised.

Alternatively, the Planning Commission may consider the following actions:

1. Approve the project with modified findings or conditions of approval.
2. Deny the project, or portions of the project, based on revised findings.
3. Direct staff or applicant as appropriate and continue the hearing to a date (un)certain, consistent with permit processing timelines.

Report Reviewed By:

  
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Ryan Gohlich, Senior Planner



## Planning Commission Report

**Meeting Date:** November 21, 2013

**Subject:** 9355 Wilshire Boulevard and 155 North Crescent Drive  
AKA Serviced Residences

Request for zone amendments to allow serviced residences and restaurant uses within the M-PD-2 Zone, modifications to a previously granted Planned Development Permit, and a development agreement between Metropolitan Crescent Associates, LLC and the City of Beverly Hills for the property located at 9355 Wilshire Boulevard and 155 North Crescent Drive. In addition, staff proposes zone text amendments to address transient uses in single-family residential zones, and to provide the definition of transient uses in multi-family residential zones.

PROJECT APPLICANT: Metropolitan Crescent Associates, LLC

**Recommendation:** That the Planning Commission:

1. Conduct a public hearing and receive testimony on the project and zone text amendments; and
2. Adopt the attached resolutions adopting an addendum pursuant to the California Environmental Quality Act, conditionally approving the project and making recommendations to the City Council regarding the zone text amendments and development agreement.

### REPORT SUMMARY

In 2002 the subject property received approvals to construct a mixed-use development containing 88 residential apartments (units that rent for 30 days or more), 39,975 square feet of commercial space, and 534 parking spaces. The building was completed in 2006 and has operated in accordance with the previously granted entitlements since that time. In 2012 the property was acquired and remodeled by Metropolitan Crescent Associates, LLC, which operates multiple short-term-rental residential properties (known as serviced residences) under the brand of AKA Serviced Residences (AKA) in the United States and Europe. As contemplated in this report, "Serviced Residences" are luxury dwelling units with full kitchens, laundry facilities, and bathrooms, that are offered, without limitation, housekeeping, valet dry-cleaning and laundry services, and which may be rented for periods as short as seven days. AKA is believed to be operating the subject property as apartments and commercial office in accordance with

Attachment(s):

- A. Required Findings
- B. Draft Planning Commission Resolution – Planned Development
- C. Draft Planning Commission Resolution – Zoning Amendments
- D. Draft Planning Commission Resolution – Development Agreement
- E. Addendum to Environmental Impact Report
- F. Fiscal Projections
- G. Public Notice
- H. Prior Planning Commission Resolutions
- I. Prior City Council Resolutions
- J. Architectural Plans (Provided as a Separate Attachment)

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the previously granted entitlements, but wishes to have the ability to operate a restaurant on the property and rent the apartments for periods of seven days up to 29 days as serviced residences. In order to allow the operation of a restaurant and serviced residences at the subject property, the applicant requests the following entitlements:

- **Zone Amendments.** The subject property is subject to the M-PD-2 (Mixed-Use Planned Development) Overlay Zone, which contains specific provisions for allowed land uses. The applicant seeks to allow serviced residences adjacent to North Crescent Drive and a restaurant adjacent to Wilshire Boulevard, neither of which is currently permitted in the overlay zone. Consequently, the applicant proposes amendments to the overlay zone to allow the desired land uses.

In addition to the applicant initiated text amendments, staff recommends separate and distinct amendments related to short-term stays in single-family residential zones and to clearly define what transient uses are in multi-family residential zones.

- **Planned Development.** The previous project approved pursuant to a Planned Development Permit, which contains numerous conditions related to the operation of the subject property. The applicant proposes amendments to some of the conditions in order to facilitate operation of the proposed project.
- **Development Agreement.** As part of the application submittal, the applicant is proposing entering into a development agreement that would provide the applicant with specific guarantees regarding operation of the project, and would also include defined public benefits offered to the City.

This report includes analysis of the proposed project in comparison to the previously approved and constructed project, specifically with respect to the subject property's history and the new concept of allowing a hybrid type of land use that functions as a blend between an apartment and a hotel. Some of the key issues discussed in this report relate to whether the hybrid land use is a desired use at the subject location, whether a restaurant is an appropriate use within the development, and whether the public benefits offered by the applicant are appropriate given the requested changes in land use.

This report also discusses concerns identified by staff that an increasing number of short-term stays within single-family residential zones could have an adverse impact on the character and quality of the City's residential neighborhoods. Analysis of the hybrid serviced residence use caused staff to consider how similar hybrid uses occurring in the City's residential neighborhoods are or should be regulated. Based on the analysis contained in this report, as well as updated environmental analysis prepared to assess the proposed project modifications, staff concludes that the proposed project will be a beneficial addition to the City that will not be detrimental to the surrounding neighborhood, and the recommendation in this report is for project approval, along with the recommendation to amend the zoning code for the single-family residential zones and providing the definition of transient uses in multi-family residential zones.

**BACKGROUND**

File Date 4/19/2013  
Application Complete 5/18/2013  
Subdivision Deadline N/A  
CEQA Determination An addendum to previously certified Environmental Impact Report has been prepared (see Attachment E); in addition the single-family residential zone and multi-family zone text changes are exempt from CEQA  
Permit Streamlining Not applicable to legislative projects  
Applicant(s) Metropolitan Crescent Associates, LLC  
Owner(s) Metropolitan Crescent Associates, LLC  
Representative(s) Stanley Stalford  
Prior Project Previews None  
Prior PC Action 2002 - Approval of a Planned Development Permit for the existing mixed-use project. Planning Commission Resolution No. 1257  
Prior Council Action 2002 – Establishment of the M-PD-2 mixed-use overlay zone, certification of a Final EIR, and denial of an appeal of the Planning Commission’s approval of a Planned Development Permit for the mixed-use development. City Council Ordinance No. 02-O-2417 and Resolution Nos. 02-R-11242 and 02-R-11251.

**PROPERTY AND NEIGHBORHOOD SETTING**

Property Information

Address 9355 Wilshire Boulevard and 155 North Crescent Drive  
Zoning District M-PD-2 – Mixed-Use Planned Development Overlay Zone – Underlying zoning is C-3 (general commercial) and RMCP (multi-family residential, commercial, and parking)  
General Plan Low Density General Commercial and Multi-Family Residential – Commercial – Parking  
Existing Land Use(s) General offices and apartments  
Lot Dimensions & Area Irregularly shaped – 76,380 square feet (1.75 acres)  
Year Built 2006  
Historic Resource N/A  
Protected Trees/Grove None

Adjacent Zoning and Land Uses

North RMCP (multi-family residential, commercial, and parking)  
South C-3 – General Commercial  
East C-3 – General Commercial and R-4 – Multi-Family Residential  
West C-3 – General Commercial

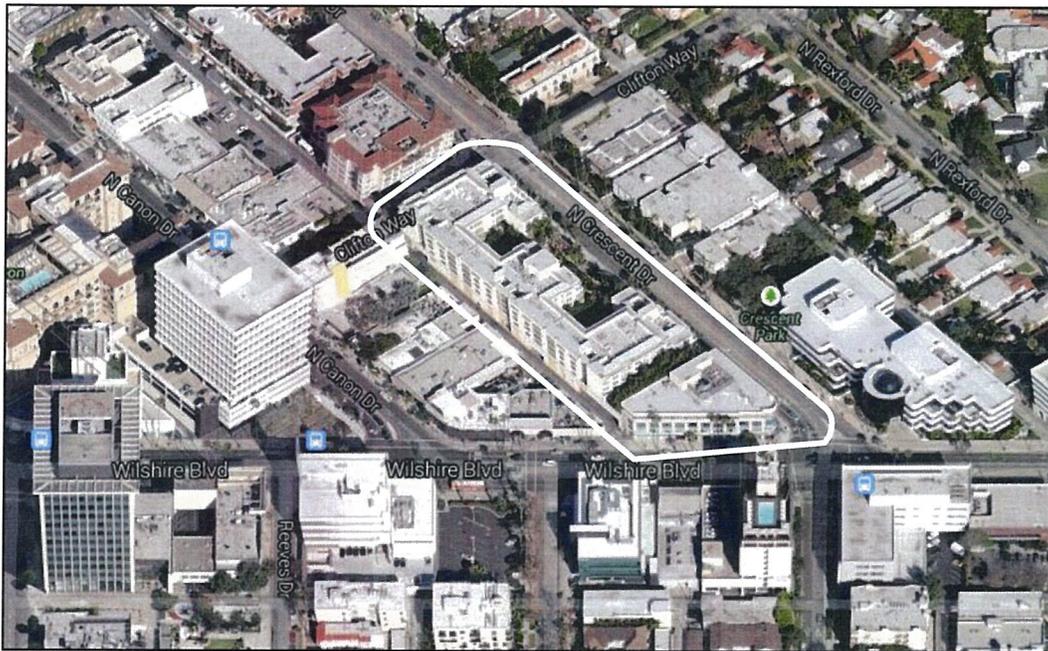
Circulation and Parking

Adjacent Street(s) North Crescent Drive, Wilshire Boulevard, and Clifton Way  
Adjacent Alleys One-way southbound alley at rear of property  
Parkways & Sidewalks 15’ wide sidewalk along Wilshire Boulevard  
6’ sidewalk along North Crescent Drive

Parking Restrictions	1-hour metered parking adjacent to project site
Nearest Intersection	Wilshire Boulevard and North Crescent Drive, and North Crescent Drive and Clifton Way
Circulation Element	Wilshire Boulevard: Arterial Street North Crescent Drive: Local Street Clifton Way: Local Street
Estimated Daily Trips	Wilshire Boulevard: Approximately 43,000 average daily trips North Crescent Drive: Approximately 8,200 average daily trips Clifton Way: Approximately 3,900 average daily trips

Neighborhood Character

The subject property is located along the eastern edge of the Business Triangle, and is uniquely situated in that it is immediately adjacent to a variety of uses including commercial, multi-family residential, and an assisted living facility that tends to function as a multi-family residential property. Much of the development within the vicinity of the project site is between two and four stories in height; however, a single-family residential neighborhood is located one block to the east.



Project Site Looking North

**PROJECT BACKGROUND**

The subject property has been before the Planning Commission and City Council on several occasions for consideration of land use approvals and appeals. Information regarding the project site's history is provided as follows:

**Mixed-Use Development.** Several different iterations of mixed-use project design were contemplated at the project site, and in 2002 the Planning Commission made recommendations to the City Council regarding the mixed-use overlay zone and granted approvals for the existing

development at the project site. The Planning Commission's decision was appealed to the City Council, and the City Council subsequently reviewed the Planned Development Permit, Environmental Impact Report, and mixed-use overlay zone. At the conclusion of the public hearings, the City Council approved the project, which contains a total of 88 apartment units, 39,975 square feet of commercial space, and 534 parking spaces. Construction was initiated in 2004 and completed in 2006. Since completion of construction, the project site has operated in accordance with the previously granted entitlements.

**Apartments versus Condos.** As part of the discussions that occurred at the time of the original project approvals, an important item considered by the Planning Commission and City Council was whether the subject development should contain apartments or condominiums. In the years leading up to the proposal to construct the development that currently exists at the project site, the City experienced the demolition of a number of apartment buildings that were subsequently replaced with condominium units. This trend was of concern to the Planning Commission and City Council because not only were apartment buildings being demolished, but no new apartments were being constructed. The loss of apartments meant that the City was experiencing a loss of rental housing, which is an important component of providing balanced housing options within a city. In light of this concern, the Planning Commission and City Council determined that apartment units for rent would be much more beneficial to the City's housing stock than condominiums, and conditioned the units within the development to be apartments for rent instead of condominiums for sale. Since 2006 the residential units within the development have been offered as apartments (requiring minimum stays of 30 days), and continue to be offered as such presently.

**AKA Serviced Residences.** In 2012, AKA Serviced Residences, a division of Korman Communities, acquired the project site and initiated renovations to enhance the existing building and its amenities. Korman Communities, through its AKA brand, operates rental properties in the United States and Europe that generally include furnished apartments made available for any length of stay greater than one week, and include certain amenities such as housekeeping, valet dry-cleaning, and laundry services. AKA is currently operating the project site as an apartment project by requiring all of its guests to stay for a minimum of 30 days; however, AKA seeks the ability to offer its units for stays as short as 7 days in order to be more consistent with its other operations and be able to offer a service for which it sees demand.

## **PROJECT DESCRIPTION**

The proposed project includes the following elements:

- **Serviced Residences.** Allow all 88 apartment units to function as serviced residences, which could be rented for any length of stay, provided the stay is not less than 7 days.
- **Restaurant Use.** Allow an approximately 2,500 square foot restaurant to be located within the portion of the project site located at the intersection of Wilshire Boulevard and North Crescent Drive. The restaurant would be primarily intended to serve AKA residents, but would also be open to the general public.

- **Amend Previous Development Plan Review Permit.** The new use requires some of the previous conditions to be deleted or modified, and new conditions added.
- **Public Benefits.** Applicant proposes a 6% municipal surcharge for stays less of 29 days or less. Additionally, a transient occupancy tax of 14% would apply to stays of 29 days or less.

In order to clearly document the discrete changes to the previously imposed conditions, all prior conditions are provided in the Draft Planning Commission resolution, with modifications shown in strikeout/underline format.

Separate and distinct from the applicant's request, staff proposes the following zoning text amendments:

- **Single Family Zone Text Amendments.** These amendments would better define single-family transient use, and a single-family residence or second unit to be used for transient use to commence two (2) times per calendar year. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year would be prohibited.
- **Multi-Family Zone Text Amendments.** These amendments provide a definition of multi-family transient use, which memorializes the existing code interpretation of minimum 30-day stays. Anything less would fall within the definition of a hotel, and would not be permitted in the multi-family residential zones.

### **GENERAL PLAN<sup>1</sup> POLICIES**

The General Plan includes numerous goals and policies intended to guide development within the City. Some of the policies relevant to the Planning Commission's review of the project include:

- Policy H 1.5 Conservation of Existing Rental Housing. Regulate the conversion of rental apartments to condominium ownership.
- Policy H 2.5 Adaptive Reuse. Support innovative strategies for the adaptive reuse of residential and commercial structures to provide for a wide range of housing types.
- Policy LU 3.1 Conservation. Conserve existing residential neighborhoods, and non-residential areas where new development builds on and enhances the viability of existing business sectors that are the City's strengths, promotes transit accessibility, is phased to coincide with infrastructure funding and construction, and designed to assure transitions and compatibility with adjoining residential neighborhoods.

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<sup>1</sup> Available online at [http://www.beverlyhills.org/services/planning\\_division/general\\_plan/genplan.asp](http://www.beverlyhills.org/services/planning_division/general_plan/genplan.asp)

- Policy LU 3.2 Fair Share of Regional Housing Needs. Meet State requirements to accommodate the City's fair share of regional housing needs, contingent upon the ability to maintain the qualities that distinguish and contribute to the livability of the City and not unduly burden the City's fiscal resources.
- Policy LU 5.8 Encroachment of Incompatible Land Uses. Protect residential neighborhoods from the encroachment of incompatible nonresidential uses and disruptive traffic, to the extent possible. Zoning and design review should assure that compatibility issues are fully addressed when nonresidential development is proposed near or within residential areas.
- Policy LU 9.1 Uses for Diverse Customers. Meet State requirements to accommodate the City's fair share of regional housing needs, contingent upon the ability to maintain the qualities that distinguish and contribute to the livability of the City and not unduly burden the City's fiscal resources.
- Policy LU 15.1 Economic Vitality and Business Revenue. Sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high-paying jobs.

In addition, the following general plan goals and policies support the proposed single-family residential zone amendments:

- Goal LU 5 calling for "Complete, Livable, and Quality Neighborhoods."
- Policy LU 5.1 Neighborhood Conservation. Maintain the uses, densities, character, amenities, and quality of the City's residential neighborhoods, recognizing their contribution to the City's identity, economic value and quality of life.
- In relevant part, Policy LU 5.8 Encroachment of Incompatible Land Uses. Protect residential neighborhoods from the encroachment of incompatible nonresidential uses and disruptive traffic, to the extent possible.
- Goal LU 6 regarding Single-Family Residential Neighborhoods calling for "[m]aintenance of the identity, scale, and character of the distinct single-family residential neighborhoods."

## **ENVIRONMENTAL ASSESSMENT**

The subject project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines<sup>2</sup>, and the environmental regulations of the City. An Environmental Impact Report (EIR) was previously certified by the City Council on December 3, 2002 for the existing mixed-use development on the subject site. Pursuant to Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, a lead agency (the City of Beverly Hills in this case) may prepare an addendum to a previously certified EIR if some changes or additions to the EIR are necessary but none of the conditions described in Section 15162 calling for the

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<sup>2</sup> The CEQA Guidelines and Statute are available online at <http://ceres.ca.gov/ceqa/guidelines>

preparation of a subsequent EIR have occurred. Pursuant to CEQA Guidelines Section 15162, no subsequent EIR shall be prepared for the project unless, on the basis of substantial evidence in the light of the whole record, one or more of the following is determined:

- (1) Substantial changes are proposed in the project that will require major revisions of the previous EIR due to the involvement of new, significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance identifies one or more significant effects not discussed in the previous EIR, significant effects previously examined will be substantially more severe than shown in the previous EIR, mitigation measures or alternatives previously found not to be feasible or not analyzed in the EIR would be feasible and would substantially reduce one or more significant effects but the project proponents decline to adopt of the measure or alternative.

The above criteria have been assessed in accordance with the State CEQA Guidelines, and the proposed project has been determined to be eligible for an addendum to the previously certified EIR because the project does not result in any new environmental impacts, or a significant increase the severity of any previously identified impacts. Therefore, an addendum to the EIR has been prepared and is provided as Attachment E, inclusive of further explanation of the project's eligibility for such an addendum.

The proposed amendments to the text of the various single-family residential zones do not change the conclusion in the addendum. Further, the residential zone text amendments are exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that the amendments will not have the potential for any impacts on the environment. Further, the amendments would be exempt from CEQA pursuant to Section 15305 for single-family residential properties with slopes of less than 20%, as well as Section 15308 as an action to protect the environment of the single-family residential areas of the City. The City's multi-family areas are not in areas with 20% or greater slopes.

#### **PUBLIC OUTREACH AND NOTIFICATION**

Notice regarding the subject public hearing was provided in accordance with Municipal Code requirements. The notice included direct mailing via U.S. mail to all property owners within a 300' radius of the project site and all residential occupants within a 500' radius of the project site. Additionally, notice of the public hearing was published in two newspapers of local circulation, the *Beverly Hills Courier* and the *Beverly Hills Weekly*.

In addition to the notice outlined above, staff met with several residents who had previously raised concerns regarding the project. The residents stated concerns regarding limousines, taxis, litter, commercial loading, increased traffic, noise, general encroachment of commercial uses into the residential zones, and limited pedestrian amenities such as lighting and crosswalks.

### Public Comment

As of the writing of this report, no public comments had been received regarding the proposed project.

### **ANALYSIS<sup>3</sup>**

Project approval, conditional approval or denial is based upon specific findings for each discretionary application requested by the applicant. The findings that must be made in order to approve the project are provided in Attachment A, and draft findings are included in the Draft Planning Commission Resolutions (Attachments B and C), which may be used to guide the Planning Commission's deliberation of the subject project. The analysis considered by staff when drafting the findings is set forth as follows:

**Potential Loss of Apartments.** As is identified above, the proposed project is a hybrid-type use that functions in a manner similar to a traditional apartment, except that units can be rented for periods less than 30 days (but not less than 7 days). While this type of use is still generally consistent with the function of a traditional apartment, especially considering that the units could still be rented for extended periods of time beyond 30 days, the concept does not perfectly align with what has been historically been considered as a traditional apartment use throughout the City. For this reason, allowing the apartments to function as serviced residences could be considered as a loss of apartment units in the City. While the Municipal Code and General Plan generally speak only to discouraging demolition of apartments or conversion to condominium units, there is not clear or specific guidance regarding this new hybrid use. However, Policy H 2.5 within the Housing Element does indicate support for "innovative strategies for the adaptive reuse of residential and commercial structures to provide for a wide range of housing types." In this regard, the proposed project is an innovative strategy that reuses existing apartments as a hybrid between residential and hotel uses, and therefore may be a desirable use of the subject property. Therefore, the project would provide opportunities for both short- and long-term housing without completely displacing the function of the existing apartments. Examples of demand for both short- and long-term housing include but are not limited to residents remodeling or constructing homes, visitors to the City, and individuals on temporary job assignments. In addition, staff discussed the project with the City's housing consultant, who confirmed that the project would not adversely impact the City's Housing Element, except that the changes to the apartments would need to be documented in future reports to the State.

**Traffic.** As proposed, the project would convert the existing 88 apartment units to serviced residences, and a portion of the existing ground floor office space at Wilshire Boulevard and North Crescent Drive would be converted to a restaurant. A concern of converting the uses within the building is whether additional traffic will be generated. In order to determine whether additional traffic will be generated, staff consulted with the City's Traffic Engineer and the Institute of Transportation Engineers (ITE) Trip Generation 7<sup>th</sup> Edition, which contains extensive information on the average number of vehicle trips that can be anticipated from a given use. In this case, staff compared the ITE "low-rise apartment" land use category (Code No.

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<sup>3</sup> The analysis provided in this section is based on draft findings prepared by the report author prior to the public hearing. The Planning Commission in its review of the administrative record and based on public testimony may reach a different conclusion from that presented in this report and may choose to modify the findings. A change to the findings may result in a final action that is different from the staff recommended action in this report.

221) to the “all-suites hotel” land use category (Code No. 311). This comparison reveals that apartments generate approximately 6.6 average daily vehicle trips per unit, while an all-suite hotel generates approximately 6.24 average daily vehicle trips per unit. This information provides one measure that the proposed serviced residences may actually generate a slightly lower amount of vehicle trips than have historically been generated by the subject property. With respect to the proposed restaurant, it would have a limited size of approximately 2,500 square feet, which would generate a potential net increase of 147 average daily trips compared to the office space it would replace (based on ITE trips generation rates of “general office” (Code No. 710) and “quality restaurant” (Code No. 931)); however, this increase would be a worst-case scenario because it is anticipated that a portion of the restaurant patrons will be residents of the serviced residences, thus reducing vehicle trips that would otherwise be experienced. In the event that the restaurant were to generate an additional 147 average daily trips, this would represent less than a 2% increase in daily traffic on North Crescent Drive, which is a negligible increase that does not trigger any environmental impacts under the City’s local traffic thresholds. Based on this analysis, the Project will not result in any traffic impacts to surrounding streets.

**Hotel-Type Operations.** While the project would not function in exactly the same manner as a traditional hotel, there are potential concerns about whether the project can operate without impacting surrounding residential uses and causing a further incursion of commercial uses into the residential neighborhoods east of the Business Triangle. In particular, passenger loading, limousine loading, deliveries, and special events can be problematic if not adequately controlled. The project does not contain any event or banquet space, so any large gatherings would be unlikely (staff has included a condition restricting use of the outdoor third-floor terrace); however, the project is anticipated to utilize taxi limousine, and dry-cleaning services, as well as receive periodic deliveries of supplies. In order to accommodate these operational issues and prevent impacts on surrounding residential neighborhoods, staff recommends incorporation of specific conditions that would provide for taxi and limousine waiting areas within the project’s motor court, and would require all deliveries to occur from the alley located at the rear of the project site. With the incorporation of the recommended conditions, the project’s operations are not anticipated to impact the surrounding residential neighborhoods.

**Development Agreement and Public Benefits.** As part of the applicant’s request to modify the existing development standards and uses for the M-PD-2 overlay zone, the applicant has proposed a development agreement. The development agreement would provide the applicant with certain guarantees regarding use of the property, and would also provide the City with certain public benefits. The public benefit proposed by the applicant is that AKA would pay to the City a municipal surcharge that would be equal to 6% of gross room revenues for any stay less than 30 days at the project site. The municipal surcharge is a concept that the City has effectively utilized in the past for the Montage Hotel, and is also a component of the approvals for the future Waldorf Astoria. In addition to the 6% municipal surcharge on all stays less than 30 days, AKA would be required to pay the City’s 14% transient occupancy tax on all stays less than 30 days. Between the municipal surcharge and the transient occupancy tax, AKA would pay the City a total of 20% of its gross room revenues on stays less than 30 days. Based on revenue generated at other AKA properties, the applicant estimates that the municipal surcharge plus transient occupancy tax will generate approximately \$1.6 million in revenue for

the City during its first year of operation. The applicant’s fiscal projections are provided as Attachment F and the proposed development agreement is provided as Attachment D.

**Summary of Project Benefits and Concerns.** A summary of the project’s potential benefits and potential concerns identified by staff is provided in the table below.

Potential Benefits	Potential Concerns
<ul style="list-style-type: none"> <li>• Hybrid land use that provides short- and long-term housing options</li> <li>• Increased revenue from municipal surcharge and transient occupancy tax to fund municipal services and programs</li> <li>• Negligible traffic increase compared to existing land uses within the project</li> <li>• Operates differently than a traditional hotel but provides similar amenities</li> </ul>	<ul style="list-style-type: none"> <li>• Loss of traditional apartment concept at the subject property</li> <li>• Limousine and taxi loading/waiting</li> <li>• Deliveries associated with commercial operations</li> <li>• Restaurant may attract additional people to the area</li> <li>• Perceived encroachment of commercial uses into residential zones</li> </ul>

**Policy Considerations Distinct from the Project- Transient Residential Uses.** As a component of reviewing the proposed project, staff considered the types of transient residential uses available in the City and the regulations that apply. In doing so, staff identified a need to evaluate the length of stays in the City’s single-family residential zones, as there has been a recent rise in short-term stays associated with online property rental sites such as Airbnb and Vacation Rentals by Owner (VRBO). While such online property rental sites offer additional options for transient residents wishing to stay in Beverly Hills, the frequency at which the short-term stays occur has the potential, over time, to erode the character, desirability, stability, and quality of life enjoyed in the City’s single-family zones. In order to prevent such impacts from occurring, staff has provided recommended code amendments that would limit transient stays in single-family residential zones to a maximum of two transient stays per year, and defines single-family transient use as rental or lease of a single-family residence or second unit for a period of less than 6 months. In addition, a definition of multi-family transient use is provided to clarify the current code interpretation and prohibition. The Commission may also wish to discuss allowing up to two transient stays per year in multi-family zones, similar to staff’s recommendation regarding single-family zones. Additional details concerning the recommendations are contained in the Draft Planning Commission Resolution and ordinance for the zoning amendments (Attachment C).

Upon considering the above information in its entirety, staff’s analysis concludes that the proposed project will not be detrimental to the surrounding neighborhood, will not result in any significant environmental impacts, and will provide a unique land use within the City that will provide a variety of housing options and contribute to the City’s commercial base.

### **NEXT STEPS**

It is recommended that the Planning Commission approve the requested entitlements and make recommendations to the City Council regarding the zoning amendments, subject to all conditions of approval set forth in the attached resolutions.

Alternatively, the Planning Commission may consider the following actions:

1. Approve the project with modified findings or conditions of approval.
2. Deny the project, or portions of the project, based on revised findings.
3. Direct staff or applicant as appropriate and continue the hearing to a date (un)certain, consistent with permit processing timelines.

Report Reviewed By:

  
Jonathan Lait, AICP, City Planner

**ATTACHMENT A**  
**REQUIRED FINDINGS**

## REQUIRED FINDINGS

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### Zone Amendment

1. *The application of the overlay zone will result in a benefit to the public interest, health, safety, morals, peace, comfort, convenience, or general welfare.*

### Planned Development Permit – M-PD-2 Overlay Zone Objectives

1. *To ensure that mixed use development in the M-PD-2 zone is consistent with the general plan and any specific plans adopted for the area;*
2. *To ensure that mixed use development in the M-PD-2 zone will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;*
3. *To provide for mixed use development that is compatible with the scale and massing of the surrounding neighborhood, through appropriate height, modulation, upper story setbacks, and/or other similar measures;*
4. *To provide pedestrian friendly amenities along the street level, and setbacks that are generally consistent with other development along the west side of Crescent Drive between Wilshire Boulevard and Santa Monica Boulevard (South Roadway);*
5. *To promote a combination of land uses and densities within the M-PD-2 zone that will not unduly induce significantly greater traffic to nearby neighborhood streets; provided, however, that achievement of this objective is to be balanced with other public policy considerations in the event that such considerations are found to be of an overriding nature;*
6. *To ensure that mixed use development in the M-PD-2 zone will not create any significant, adverse traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will minimize impediments to vehicular circulation and pedestrian safety;*
7. *To foster uniform planning and development of all parcels in the M-PD-2 zone to ensure unified development in the overlay zone; and*
8. *To protect the public health, safety or general welfare.*

# **ATTACHMENT B**

## **DRAFT PLANNING COMMISSION RESOLUTION – PLANNED DEVELOPMENT**

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A DEVELOPMENT PLAN REVIEW ASSOCIATED WITH MODIFICATIONS TO CONDITIONS OF APPROVAL AND THE TYPES OF LAND USES ALLOWED WITHIN A PREVIOUSLY APPROVED MIXED-USE DEVELOPMENT ON THE PROPERTY LOCATED AT 9355 WILSHIRE BOULEVARD AND 155 NORTH CRESCENT DRIVE.

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

Section 1. Stanley Stalford, representative on behalf of Metropolitan Crescent Associates, LLC (collectively the "Applicant"), has submitted an application for a Planned Development Permit to amend conditions of approval and permitted land uses associated with a previously approved Planned Development Permit for a mixed-use development. The amendments are intended to allow serviced residences and a restaurant within the mixed-use development on the property located at 9355 Wilshire Boulevard and 155 North Crescent Drive (the "Project").

Section 2. The existing development on the Project site was approved by the Planning Commission and City Council in 2002. The existing development was approved pursuant to a mixed-use overlay zone, Planned Development Permit, and Environmental Impact Report (EIR). The existing development contains a total of 88 apartment units, 39,975 square feet of commercial space, and 534 parking spaces. Construction was initiated in 2004 and

completed in 2006. Since completion of construction, the project site has operated in accordance with the previously granted entitlements.

Section 3. The Project elements requested by the Applicant include the following:

- Serviced Residences: Allow all 88 apartment units to function as serviced residences, which could be rented for any length of stay, provided the stay is not less than 7 days.
- Restaurant Use: Allow an approximately 2,500 square foot restaurant to be located within the portion of the project site located at the intersection of Wilshire Boulevard and North Crescent Drive. The restaurant would be primarily intended to serve AKA residents, but would also be open to the general public.

Section 4. The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the environmental regulations of the City. An Environmental Impact Report (EIR) was previously certified by the City Council on December 3, 2002 for the existing mixed-use development on the subject site. Pursuant to Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, a lead agency (the City of Beverly Hills in this case) may prepare an addendum to a previously certified EIR if some changes or additions to the EIR are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred. Pursuant to CEQA Guidelines Section 15162, no subsequent

EIR shall be prepared for the Project unless, on the basis of substantial evidence in the light of the whole record, one or more of the following is determined:

- (1) Substantial changes are proposed in the project that will require major revisions of the previous EIR due to the involvement of new, significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance identifies one or more significant effects not discussed in the previous EIR, significant effects previously examined will be substantially more severe than shown in the previous EIR, mitigation measures or alternatives previously found not to be feasible or not analyzed in the EIR would be feasible and would substantially reduce one or more significant effects but the project proponents decline to adopt of the measure or alternative.

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

Section 5. Notice of the Project and public hearing was mailed on November 7, 2013 to all single-family property owners within a 500-foot radius of the Project site, all property owners within a 300-foot radius of the Project site, and all residential occupants within

a 300-foot radius of the Project site. Notice was also published in two newspapers of local circulation, the *Beverly Hills Courier* and the *Beverly Hills Weekly*. On November 21, 2013 the Planning Commission considered the application at a duly noticed public hearing. Evidence, both written and oral, was presented at the meeting.

Section 6. In reviewing the request for a Planned Development Permit, the Planning Commission considered whether the Project would satisfy the following objectives of the M-PD-2 Mixed-Use Overlay Zone:

1. To ensure that mixed use development in the M-PD-2 zone is consistent with the general plan and any specific plans adopted for the area;
2. To ensure that mixed use development in the M-PD-2 zone will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;
3. To provide for mixed use development that is compatible with the scale and massing of the surrounding neighborhood, through appropriate height, modulation, upper story setbacks, and/or other similar measures;
4. To provide pedestrian friendly amenities along the street level, and setbacks that are generally consistent with other development along the west side of Crescent Drive between Wilshire Boulevard and Santa Monica Boulevard (South Roadway);
5. To promote a combination of land uses and densities within the M-PD-2 zone that will not unduly induce significantly greater traffic to nearby neighborhood streets; provided, however, that achievement of this objective is to be balanced with other

public policy considerations in the event that such considerations are found to be of an overriding nature;

6. To ensure that mixed use development in the M-PD-2 zone will not create any significant, adverse traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will minimize impediments to vehicular circulation and pedestrian safety;

7. To foster uniform planning and development of all parcels in the M-PD-2 zone to ensure unified development in the overlay zone; and

8. To protect the public health, safety or general welfare.

Section 7. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the objectives of the M-PD-2 Mixed-Use Overlay Zone:

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

- Policy H 2.5 Adaptive Reuse. Support innovative strategies for the adaptive reuse of residential and commercial structures to provide for a wide range of housing types.
- Policy LU 15.1 Economic Vitality and Business Revenue. Sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high-paying jobs.

In addition to advancing the above policies, the Project is located in an area that serves as a transition between commercial and residential uses, and the hybrid land use of serviced residences serves as an appropriate transition. For these reasons, the Project is consistent with the elements of the city's general plan. Furthermore, the Project is not located within any specific plan areas;

2. The Project does not result in alteration to the size, scale, or density of the existing mixed-use building. Additionally, the Project is located in an area that serves as a transition between commercial and residential uses, and the hybrid land use of serviced residences serves as an appropriate transition that will contribute to existing and anticipated development in the vicinity, and will promote harmonious development of the area;

3. The existing mixed-use development on the Project site is already constructed and has been in place since 2006. The Project does not result in alteration to the size, scale, density, or design of the existing mixed-use building;

4. The existing mixed-use development on the Project site is already constructed and has been in place since 2006. The Project does not result in alteration to the size, scale, density, or design of the existing mixed-use building. With respect to pedestrian-oriented amenities, the Project includes the addition of a restaurant in place of an existing financial institution. Restaurants are considered to be a pedestrian-oriented land use, while financial institutions are not considered to be a pedestrian-oriented land use. Replacement of the financial institution with a restaurant will enhance the streetscape and enhance the pedestrian experience along the Project's frontage;

5. Based on trip generation rates set forth in the ITE trip generation manual, the Project will result in a negligible increase of approximately 147 average daily vehicle trips, which represents less than a 2% increase on North Crescent Drive. Because of the limited traffic increase associated with the land uses contemplated under the Project, the Project will not unduly induce significantly greater traffic to nearby neighborhood streets;

6. The existing mixed-use development on the Project site is already constructed and has been in place since 2006. The Project does not result in alteration to any of the development's driveways or traffic control devices. Based on trip generation rates set forth in the ITE trip generation manual, the Project will result in a negligible increase of approximately 147 average daily vehicle trips, which represents less than a 2% increase on North Crescent Drive. Because of the limited traffic increase associated with the land uses contemplated under the Project and the fact that the Project will not modify any existing driveways or traffic control devices, the Project will not create any significant, adverse traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will minimize impediments to vehicular circulation and pedestrian safety;

7. The Project does not result in alteration to the size, scale, or density of the existing mixed-use building that was constructed as a unified development of all parcels within the M-PD-2 zone. Additionally, the Project is located in an area that serves as a transition between commercial and residential uses, and the hybrid land use of serviced residences serves as an appropriate transition that fosters uniform planning; and

8. The existing mixed-use development on the Project site is already constructed and has been in place since 2006. The Project does not result in alteration to

the size, scale, density, or design of the existing mixed-use building, does not cause any significant environmental impacts, serves as an appropriate transition between commercial and residential uses, and maintains orderly development of the area.

Section 8. Based on the foregoing, the Planning Commission hereby grants the requested Planned Development Permit, Development Plan Review, and Conditional Use Permit, subject to the following conditions:

Special Conditions

1. The conditions set forth in this resolution incorporate all applicable conditions previously imposed on the subject property pursuant to City Council Resolution No. 02-R-11251 and delete or modify conditions that are no longer applicable. Therefore, this resolution and the conditions set forth herein shall supersede City Council Resolution No. 02-R-11251.

~~1. Prior to issuance of building permits and subject to the review and approval of the Transportation Department, the Applicant shall provide a Parking Operation Plan: (1) to designate replacement parking for the 192 covenant parking spaces displaced during the construction phase, including specifying which parking lots will be used to accommodate such parking; (2) to provide the hours of valet operations, if required; (3) to demonstrate that an adequate number of valet attendants are available during morning and evening peak workday hours. The Parking Operation Plan shall include a map identifying routes and parking lots to be utilized and shall include written verification from the owner of the proposed replacement parking that such parking will be available to the Applicant throughout the construction period.~~

2. No uses other than those specifically ~~approved in Section 8 of this Resolution~~ authorized pursuant to Article 19.3 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code shall be permitted as part of this planned development. This condition shall not be construed to bar the applicant from requesting a modification at a later date to permit additional uses as part of this planned development.

3. No rooftop uses are approved or permitted as part of this planned development. This condition shall not be construed to bar the applicant from requesting a modification at a later date to permit rooftop uses as part of this planned development. Additionally, the outdoor terrace located above the second floor of the development shall be limited to use by residents of the serviced residences and their guests. No private events, receptions, or parties shall be conducted within the outdoor terrace.

4. Prior to issuance of occupancy permits and subject to the review and approval of the Directors of Planning and Transportation, the Applicant shall provide a Loading Management Plan to minimize loading-related impacts from the Project on adjacent land uses. The Loading Management Plan shall designate a delivery monitor to monitor the loading area and deliveries in order to control the circulation activities and to prevent overcrowding in the loading area. Additionally, all deliveries shall occur from the alley at the rear of the Project site. The City shall retain the authority to impose additional conditions on the Project to address loading and delivery problems should they arise.

5. The Project shall provide on-site parking for its residential and commercial tenants at all times. Additionally, space shall be reserved within the Project's motor court for waiting limousines and taxis, and the loading and unloading of

passengers. All taxi and limousine activities associated with the Project shall occur within the motor court and shall not be permitted within the public right-of-way.

6. The Project shall provide one-hour free, validated on-site parking for all patrons of the commercial component at all times. In addition, the rate charged for parking after the first hour shall not exceed the amount charged at the nearest city parking structure. Signage satisfactory to the Director of Planning shall be posted at the driveway entrance indicating the availability of the free parking in the garage.

7. The Project shall provide free, on-site parking to employees of all commercial tenants at all times.

8. The Project shall be designed to prohibit left turn egress from the Commercial (southern) driveway on Crescent Drive. The applicant shall channelize the driveway to restrict turning movements to right turns only and shall install “Right Turn Only” signs and arrow markings on the pavement, or such other restrictive devices as required by the Director of Transportation and City Engineer.

9. Prior to the issuance of occupancy permits for the Project, the applicant shall install a sign indicating “Yield to Pedestrians Crossing” to warn drivers entering/exiting the residential and commercial garage.

10. ~~The rear facade of the commercial component of the Project shall be visually enhanced by proposing architectural articulation.~~

### Standard Conditions

~~1. The Project shall comply with the applicable standard conditions and shall obtain all necessary permits from the Public Works/Engineering Department. The~~

~~Standard Conditions List is attached hereto as Exhibit A and incorporated herein by this reference.~~

~~2. The applicant shall comply with the requirements of the street tree mitigation plan of the Recreation and Parks Department, attached hereto as Exhibit B and incorporated herein by this reference.~~

~~3.1.~~ Except as otherwise provided by these conditions, the Project shall be constructed and operated in substantial compliance with the plans submitted to and approved by the City Council at its meeting of November 14, 2002, as amended by the Planning Commission at its meeting of November 21, 2013.

~~4. A cash deposit of \$5,000 shall be deposited with the City to ensure compliance with the conditions of this Resolution regarding construction activities. Such deposit shall be returned to Applicant upon completion of all construction activities and in the event that no more than two violations of such conditions or the Beverly Hills Municipal Code occur. In the event that three or more such violations occur, the City may: (a) retain the deposit to cover costs of enforcement; (b) notify the Applicant that the Applicant may request a hearing before the City within ten days of the notice; and (c) issue a stop work notice until such time that an additional deposit of \$10,000 is deposited with the City to cover the costs associated with subsequent violations. Work shall not resume for a minimum of two days after the day that the additional deposit is received by the City. If the Applicant timely requests a hearing, said deposit will not be forfeited until after such time that the Applicant has been provided an opportunity to appear and offer evidence to the City, and the City determines that substantial evidence supports forfeiture. Any subsequent violation will trigger forfeiture of the additional deposit, the~~

~~issuance of a stop work notice, and the deposit of an additional \$10,000, pursuant to the procedure set forth herein above. All amounts deposited with the City shall be deposited in an interest bearing account. The Applicant shall be reimbursed all interest accruing on monies deposited. The requirements of this condition are in addition to any other remedy that the City may have in law or equity and shall not be the sole remedy of the City in the event of a violation of the conditions of this Resolution or the Beverly Hills Municipal Code.~~

~~5. Within three working days after approval of this Resolution, the Applicant shall remit to the City a cashier's check, payable to the County Clerk, in the amount of \$25.00 for a documentary handling fee in connection with Fish and Game Code requirements. If the Department of Fish and Game determines that this Project is not exempt from a filing fee imposed pursuant to Fish and Game Code Section 711.4, then the Applicant shall also pay to the Department such fee and any fine which the Department determines to be owed.~~

~~6.2.~~ These conditions shall run with the land and shall remain in full force for the duration of the life of the Project.

~~7.3.~~ This Resolution approving a Planned Development, ~~Mixed Use project for commercial and residential uses and replacement of covenanted parking (collectively, "the discretionary approvals")~~ Permit shall not become effective until the owner of the project site records a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of this resolution as an exhibit.

The Applicant shall deliver the executed covenant to the Department of Planning and Community Development within 60 days of the Planning Commission decision. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this resolution approving the discretionary approvals shall be null and void and of no further effect. Notwithstanding the foregoing, the Director of Planning and Community Development may, upon a request by the Applicant, grant a waiver from the 60-day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that would affect the discretionary approvals.

~~8.4.~~ The City reserves the right to make modifications and/or impose additional conditions which may become necessary to enable implementation of the specific conditions set forth in this Resolution and the Applicant shall comply with all such modified or additional conditions.

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

6. Project Plans are subject to compliance with all applicable zoning regulations, except as may be expressly modified herein. Project plans shall be subject to a complete Code Compliance review when building plans are submitted for plan check.

Compliance with all applicable Municipal Code and General Plan Policies is required prior to the issuance of a building permit.

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

8. VIOLATION OF CONDITIONS: A violation of any of these conditions of approval may result in termination of the entitlements granted herein.

9. Pursuant to the Development Agreement processed in conjunction with the Project, the applicant, and any successors in interest, have agreed to pay a municipal surcharge pursuant to Section 9(d) of the Development Agreement, which agreement must be recorded against the subject property. If, after notice and opt following the procedure set forth in Section 11 of the Development Agreement, the applicant and any successors in interest fail to pay the municipal surcharge, the approval of the serviced residential use pursuant to the Planned Development Permit shall expire, and be of no further effect.

10. If one or more of the applicant, property owner, or any other entity with an interest in the property, challenges any provision of this approval or the related Development Agreement seeking to and invalidate any condition of this entitlement or and provision of the Development Agreement, and is successful in invalidating any condition of this project or the Development Agreement, the approval of the serviced residential component of the project shall expire and be of no further force or effect, and

the use of the residential portion of the property shall be returned to traditional multi-family residential units.

11. If the serviced residences use ceases for a period of 6 consecutive months and the Development Agreement has expired, then the entitlement for the serviced residences shall expire, and be of no further force or effect.

12. This resolution shall not become effective unless and until the associated amendment to the text of the Mixed Use Overlay Zone that would allow the serviced residence land use in the zone has been duly adopted by the City Council and has taken effect.

Section 9. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: November 21, 2013

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Brian Rosenstein  
Chair of the Planning Commission of the  
City of Beverly Hills, California

Attest:

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Secretary

Approved as to form:

Approved as to content:

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David M. Snow  
Assistant City Attorney

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Jonathan Lait, AICP  
City Planner

# **ATTACHMENT C**

## **DRAFT PLANNING COMMISSION RESOLUTION – ZONING AMENDMENTS**

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING ADOPTION OF AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE MUNICIPAL CODE REGARDING TRANSIENT RESIDENTIAL USES IN THE MIXED USE PLANNED DEVELOPMENT OVERLAY, SINGLE FAMILY RESIDENTIAL ZONES, AND MULTI-FAMILY RESIDENTIAL ZONES.

WHEREAS, the Planning Commission has considered the proposed amendments to the City of Beverly Hills Municipal Code, as set forth and attached hereto as Exhibit A and more fully described below (the “Amendments”); and,

WHEREAS, the Planning Commission conduct a duly noticed public hearing on November 21, 2013, at which time it received oral and documentary evidence relative to the proposed Amendments; and,

WHEREAS, the Planning Commission considered the potential impacts of unrestricted short-term rentals of single family residences and second units on the stability and character of the City’s single family residential neighborhoods; and,

WHEREAS, the Planning Commission finds that the proposed Amendments are required for the public health, safety, and general welfare, and that such Amendments are consistent with the general objectives, principles, and standards of the General Plan;

WHEREAS, the Planning Commission finds as follows:

- A. The City was approached by Metropolitan Crescent Associates, LLC, regarding a proposed “AKA Beverly Hills Project,” which would include authorization to operate an existing residential / mixed use project to provide “serviced residences,” a type of multi-family transient accommodation. “Serviced residences” are luxury dwelling units with full kitchens, laundry facilities, and bathrooms, that are offered, without limitation, housekeeping, valet dry-cleaning and laundry services. At present, a “luxury standard” includes a 24-hour resident service team, high-tech fitness center, full-service business center with executive board room and complimentary high-speed Internet access, a lounge; a cafe, en-suite dining, same-day valet dry-cleaning and laundry service, and full-time, on-site management and maintenance. All dwelling units include fully-accessorized kitchens, contemporary furnishings, well-appointed bathrooms, premium cable television and Wi-Fi access.
- B. The request that the City authorize this new type of transient use which, as a hybrid hotel / residential use, does not fit neatly into the City’s traditional land use categories, caused the City to consider how transient uses allowed in the City’s residential and mixed use zones are and should be defined.
- C. Concurrent with the request for serviced residences, the City has become more aware of the degree to which residences in the City are being used

for short-term rentals through such websites as Airbnb ([www.Airbnb.com](http://www.Airbnb.com)), Vacation Rentals By Owner ([www.vrbo.com](http://www.vrbo.com)), and similar on-line short-term rental websites.

D. Unfettered short-term rentals of single-family and multi family residential properties has the potential to change the character and stability of the City's residential neighborhoods. The Land Use Element of the City's General Plan, includes Goal LU 5 calling for "Complete, Livable, and Quality Neighborhoods." Goal LU 5 is bolstered by the following general plan policies that memorialize the City's commitment to preserving and maintaining the stability of single family residential areas:

1. "Policy LU 5.1 Neighborhood Conservation. Maintain the uses, densities, character, amenities, and quality of the City's residential neighborhoods, recognizing their contribution to the City's identity, economic value and quality of life."
2. In relevant part, "Policy LU 5.8 Encroachment of Incompatible Land Uses. Protect residential neighborhoods from the encroachment of incompatible nonresidential uses and disruptive traffic, to the extent possible."

E. The Land Use Element of the City's General Plan includes Goal LU 6 regarding Single-Family Residential Neighborhoods calling for

“[m]aintenance of the identity, scale, and character of the distinct single-family residential neighborhoods.” Goal LU 6 memorializes the City’s commitment to preserving and maintaining its single-family residential neighborhoods from incompatible and character changing uses such as short-term rental of single family residences.

- F. On November 12, 2013, VRBO listed 73 vacation rentals in Beverly Hills, approximately 45 were described as single family residences including 28 houses, 7 villas, 1 castle, 1 country house, 2 bungalows, and 6 estates. The remaining appeared to be multi-family in nature. In addition, a number of properties in the City were listed as available on the airbnb.com, some in single family neighborhoods and some in multifamily areas.
- G. The impact of short-term rentals in single family residential neighborhoods have been discussed in various news articles, including a September 2, 2013 article in the Los Angeles Times in which residents of the Silver Lake neighborhood in Los Angeles have expressed concerns about the operation of “virtual hotels, packing homes with throngs of visitors whose sheer presence alters the community feel.” A copy of the article is attached hereto. The City of New York also has concerns with the phenomenon, where, according to a Los Angeles Times Article of

October 7, 2013, stays of less than 30 days, like in Beverly Hills, generally are not permitted in apartment units.

- H. In multi-family residential neighborhoods, there is a greater likelihood of and expectation of shorter term occupancy of units such as apartments than in single family neighborhoods, however use of properties for stays of shorter than 30 days runs counter to the residential nature of the multi-family zones where hotel uses are prohibited. Existing ordinances prohibit this type of use, but further clarification is warranted.
- I. Protection of the City's single family neighborhoods warrants amendment of the City's single family residential zones to establish a minimum term of any rental or lease, and limit the number of times per year single family residential units, including second units, can be rented for short-term occupancy.
- J. Protection of the City's multi-family neighborhoods warrants amendment of the City's single family residential zones to provide a definition of transient use and clarify that short-term stays of less than 30 days are not permitted, with an exception for the hybrid serviced residences use proposed to be allowed only in the Mixed Use Planned Development Overlay Zone (M-PD-2).

NOW, THEREFORE, the Planning Commission of the City of Beverly Hills does resolve as follows:

Section 1. The Amendments have been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the environmental regulations of the City. An Environmental Impact Report (EIR) was previously certified by the City Council on December 3, 2002 for the existing mixed-use development on the subject site. Pursuant to Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, a lead agency (the City of Beverly Hills in this case) may prepare an addendum to a previously certified EIR if some changes or additions to the EIR are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred. Pursuant to CEQA Guidelines Section 15162, no subsequent EIR shall be prepared for the Project unless, on the basis of substantial evidence in the light of the whole record, one or more of the following is determined:

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

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

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

In addition, the proposed amendments to the text of the various single-family residential zones do not change the conclusion in the addendum. Further, the residential zone text amendments are exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that the amendments will not have the potential for any impacts on the environment. Further, the amendments would be exempt from CEQA pursuant to Section 15305 for single family residential properties with slopes of less than 20%, as well as Section 15308 as an action to protect the environment of the single family residential areas of the City. The City's multi-family areas are not in areas with 20% or greater slopes. Therefore the Planning Commission recommends that the City Council adopt the addendum for the overall serviced residences project, as well as find the ordinance amendments exempt from CEQA.

Section 2. The Planning Commission does hereby find that the Zone Text Amendments serve to benefit the public interest, health, safety, morals, peace, comfort, convenience, and general welfare of both the business and residential communities.

Section 3. The Planning Commission does hereby recommend to the City Council the adoption of an ordinance approving and enacting the proposed Amendments substantially as set forth in Exhibit A, which is attached hereto and incorporated herein by reference.

Section 4. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: \_\_\_\_\_

\_\_\_\_\_  
Brian Rosenstein  
Chair of the Planning Commission of the  
City of Beverly Hills, California

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

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David M. Snow  
Assistant City Attorney

APPROVED AS TO CONTENT:

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Jonathan Lait, AICP  
City Planner

EXHIBIT A

[DRAFT] ORDINANCE NO. 13-O-

AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE MUNICIPAL CODE REGARDING TRANSIENT RESIDENTIAL USES IN THE MIXED USE PLANNED DEVELOPMENT OVERLAY ZONE, SINGLE FAMILY RESIDENTIAL ZONES, AND MULTI-FAMILY RESIDENTIAL ZONES.

WHEREAS, on November 21, 2013 the Planning Commission conducted a duly noticed public hearing to consider proposed municipal code text amendments to the standards for transient uses in the City's single family residential zoning districts and the Mixed Use Planned Development Overlay Zone (M-PD-2), and with respect to proposed modifications to an approved Planned Development Permit to implement a new multi-family transient land use referred to as "serviced residences" for the property at 155 North Crescent Drive and 9355 Wilshire Boulevard; and,

WHEREAS, the Planning Commission considered the potential impacts of unrestricted short-term rentals of single family residences and second units on the stability and character of the City's single family residential neighborhoods, and the potential impacts of short-term rentals of multi-family residences in multi-family residential neighborhoods; and,

WHEREAS, the Planning Commission recommended that the City Council adopt an ordinance to permit serviced residences in the Mixed Use Planned Development Zone, to limit short-term rentals of single family residences and second units, and to provide a definition of transient uses in multi-family residential zones; and,

WHEREAS, on \_\_\_\_\_, 2013, the City Council conducted a duly noticed public hearing to consider the proposed municipal code amendments and introduced the Ordinance; and,

WHEREAS, the Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the environmental regulations of the City. An Environmental Impact Report (EIR) was previously certified by the City Council on December 3, 2002 for the existing mixed-use development on the subject site. Pursuant to Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, a lead agency (the City of Beverly Hills in this case) may prepare an addendum to a previously certified EIR if some changes or additions to the EIR are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred. Pursuant to CEQA Guidelines Section 15162, no subsequent EIR shall be prepared for the Project unless, on the basis of substantial evidence in the light of the whole record, one or more of the following is determined:

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

increase in the severity of previously identified significant effects; or

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

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

In addition, the proposed amendments to the text of the various residential zones do not change the conclusion in the addendum. Further, the residential zone text amendments are exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that the amendments will not have the potential for any impacts on the environment. Further, the amendments would be exempt from CEQA pursuant to Section 15305 for single family residential properties with slopes of less than 20%, as well as Section 15308 as an action to protect the environment of the single family residential areas of the City. The City's multi-family areas are not in areas with 20% or greater slopes.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF BEVERLY HILLS  
DOES ORDAIN AS FOLLOWS:

Section 1. Legislative Findings. The City Council hereby finds as follows:

- A. The City was approached by Metropolitan Crescent Associates, LLC, regarding a proposed “AKA Beverly Hills Project,” which would include authorization to operate an existing residential / mixed use project to provide “serviced residences,” a type of multi-family transient accommodation. “Serviced residences” are luxury dwelling units with full kitchens, laundry facilities, and bathrooms, that are offered, without limitation, housekeeping, valet dry-cleaning and laundry services. At present, a “luxury standard” includes a 24-hour resident service team, high-tech fitness center, full-service business center with executive board room and complimentary high-speed Internet access, a lounge; a cafe, en-suite dining, same-day valet dry-cleaning and laundry service, and full-time, on-site management and maintenance. All dwelling units include fully-accessorized kitchens, contemporary furnishings, well-appointed bathrooms, premium cable television and Wi-Fi access.
- B. The request that the City authorize this new type of transient use which, as a hybrid hotel / residential use, does not fit neatly into the City’s traditional land use categories, caused the City to consider how transient

uses allowed in the City's residential and mixed use zones are and should be defined.

- C. Concurrent with the request for serviced residences, the City has become more aware of the degree to which dwelling units in the City are being used for short-term rentals through such websites as Airbnb ([www.Airbnb.com](http://www.Airbnb.com)), Vacation Rentals By Owner ([www.vrbo.com](http://www.vrbo.com)), and similar on-line short-term rental websites.
- D. Unfettered short-term rentals of single-family and multi family residential properties has the potential to change the character and stability of the City's residential neighborhoods. The Land Use Element of the City's General Plan, includes Goal LU 5 calling for "Complete, Livable, and Quality Neighborhoods." Goal LU 5 is bolstered by the following general plan policies that memorialize the City's commitment to preserving and maintaining the stability of single family residential areas:
1. "Policy LU 5.1 Neighborhood Conservation. Maintain the uses, densities, character, amenities, and quality of the City's residential neighborhoods, recognizing their contribution to the City's identity, economic value and quality of life."
  2. In relevant part, "Policy LU 5.8 Encroachment of Incompatible Land Uses. Protect residential neighborhoods from the encroachment of

incompatible nonresidential uses and disruptive traffic, to the extent possible.”

- E. The Land Use Element of the City’s General Plan includes Goal LU 6 regarding Single-Family Residential Neighborhoods calling for “[m]aintenance of the identity, scale, and character of the distinct single-family residential neighborhoods.” Goal LU 6 memorializes the City’s commitment to preserving and maintaining its single-family residential neighborhoods from incompatible and character changing uses such as short-term rental of single family residences.
  
- F. On November 12, 2013, VRBO listed 73 vacation rentals in Beverly Hills, approximately 45 were described as single family residences including 28 houses, 7 villas, 1 castle, 1 country house, 2 bungalows, and 6 estates. The remaining appeared to be multi-family in nature. In addition, a number of properties in the City were listed as available on the airbnb.com, some in single family neighborhoods and some in multifamily areas.
  
- G. The impact of short-term rentals in single family residential neighborhoods have been discussed in various news articles, including a September 2, 2013 article in the Los Angeles Times in which residents of the Silver Lake neighborhood in Los Angeles have expressed concerns

about the operation of “virtual hotels, packing homes with throngs of visitors whose sheer presence alters the community feel.” The City of New York also has concerns with the phenomenon, where, according to a Los Angeles Times Article of October 7, 2013, stays of less than 30 days, like in Beverly Hills, generally are not permitted in apartment units.

- H. In multi-family residential neighborhoods, there is a greater likelihood of and expectation of shorter term occupancy of units such as apartments than in single family neighborhoods, however use of properties for stays of shorter than 30 days runs counter to the residential nature of the multi-family zones where hotel uses are prohibited. Existing ordinances prohibit this type of use, but further clarification is warranted.
- I. Protection of the City’s single-family neighborhoods warrants amendment of the City’s single family residential zones to establish a minimum term of any rental or lease, and limit the number of times per year single family residential units, including second units, can be rented for short-term occupancy.
- J. Protection of the City’s multi-family neighborhoods warrants amendment of the City’s single family residential zones to provide a definition of transient use and clarify that short-term stays of less than 30 days are not permitted, with an exception for the hybrid serviced residences use

proposed to be allowed only in the Mixed Use Planned Development Overlay Zone (M-PD-2).

Section 2. Section 100 of Article 1 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to insert a new defined term “Serviced Residence” between the existing defined terms “Second Unit” and “Setback, Front,” as follows, with all other portions of Section 10-3-100 remaining in effect without amendment:

“SERVICED RESIDENCE: A multi family transient use where each dwelling unit includes a full kitchen, laundry facilities and bathroom, no dwelling unit is leased or occupied by any person for less than seven (7) consecutive days, and each dwelling unit is maintained and offered services at a luxury standard. By way of illustration, at the time of adoption of the ordinance enacting this definition, a “luxury standard” includes a 24-hour resident service team, high-tech fitness center, full-service business center with executive board room and complimentary high-speed Internet access, a lounge; a cafe, en-suite dining, same-day valet dry-cleaning and laundry service, and full-time, on-site management and maintenance. All dwelling units include fully-accessorized kitchens, contemporary furnishings, well-appointed bathrooms, premium cable television and Wi-Fi access. Dwelling units may be occupied by no more than one single housekeeping unit.”

Section 3. Section 1935 of Article 19.3 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to revise paragraph B and add a new paragraph J as follows, with all other portions of Section 10-3-1935 remaining in effect without amendment:

“B. Restaurants and bars may be permitted as part of a planned development but only in portions of a mixed use development with an underlying zoning of C-3 or RMCP.”;

“J. Serviced Residence uses may be permitted as part of a planned development but only in those portions of a mixed use development with an underlying zoning of RMCP.”

Section 4. Section 100 of Article 1 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to revise the existing definition of “Single Housekeeping Unit” to read as follows:

“SINGLE HOUSEKEEPING UNIT: A traditional family or the functional equivalent of a traditional family, whose members are a nontransient interactive group of one (1) or more persons, where if consisting of more than one (1) person, such persons jointly occupy a single dwelling unit, jointly use common areas, share household activities and responsibilities (e.g., meals, chores, and expenses), and where, if the unit is rented or leased, all adult members jointly agree to occupy and be responsible for the entire premises of the dwelling unit under a single written rental agreement or lease and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager.”

Section 5. Section 100 of Article 1 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to insert a new defined term “Multi- Family Transient Use” between the existing defined terms “Multi-Family Residential Zone” and “New Car Dealer” as follows, with all other portions of Section 10-3-100 remaining in effect without amendment:

“MULTI-FAMILY TRANSIENT USE: Rental or lease of a multi-family dwelling unit for a period of less than thirty (30) days.”

Section 6. Section 100 of Article 1 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to insert a new defined term “Single-Family Transient Use” between the existing defined terms “Single-Family Residential Zone” and “Single Housekeeping Unit” as follows, with all other portions of Section 10-3-100 remaining in effect without amendment:

“SINGLE-FAMILY TRANSIENT USE: Rental or lease of a single-family residence or second unit for a period of less than six (6) months.”

Section 7. The table of uses set forth in paragraph A of Section 302 of Article 3 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to insert a new row immediately after the “Home Occupations...” row, entitled “Single-Family Transitional Use”, inclusive of new footnote number 4, with all other portions of paragraph 10-3-302 A remaining in effect without amendment:

“

	R-1	R-1.X	R-1.5	R-1.5X	R-1.5X2	R-1.6X	R-1.7X	R-1.8X
Single-Family Transient Use <sup>4</sup>	P <sup>4</sup>							

4. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per

calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 8. Section 401 of Article 4 of Chapter 3 of Title 10 of the Beverly

Hills Municipal Code is amended to read as follows:

“10-3-401: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1. shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 9. Section 501 of Article 4 of Chapter 3 of Title 10 of the Beverly

Hills Municipal Code is amended to read as follows:

“10-3-501: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.X shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A

Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 10. Section 601 of Article 4 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to read as follows:

“10-3-601: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.5 shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 11. Section 701 of Article 4 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to read as follows:

“10-3-701: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.5X shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small

community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 12. Section 801 of Article 4 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to read as follows:

“10-3-801: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.5X2 shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 13. Section 901 of Article 4 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to read as follows:

“10-3-901: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.6X shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 14. Section 1001 of Article 4 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to read as follows:

“10-3-1001: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.7X shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 15. Section 1101 of Article 4 of Chapter 3 of Title 10 of the Beverly

Hills Municipal Code is amended to read as follows:

“10-3-1101: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.8X shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 16. The City Council has considered the addendum prepared for this project in accordance with the California Environmental Quality Act in conjunction with the EIR previously certified for the development on the project site, finds that the proposed project will not have any new or substantially increased significant adverse impacts on the environment, and hereby adopts the addendum. Further, the City Council finds that the proposed amendments to the text of the various single-family residential zones do not change the conclusion in the addendum. The City Council finds that the residential zone text amendments are exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that the amendments will not have the potential for any impacts on the environment. Further, the

amendments would be exempt from CEQA pursuant to Section 15305 for single family residential properties with slopes of less than 20%, as well as Section 15308 as an action to protect the environment of the single family residential areas of the City. The City's multi-family areas are not in areas with 20% or greater slopes.

Section 17. The City Council hereby approves this Ordinance and authorizes the Mayor to execute the Ordinance on behalf of the City.

Section 18. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.”

Section 19. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 20. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:  
Effective:

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

ATTEST:

\_\_\_\_\_  
(SEAL)  
BYRON POPE  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

\_\_\_\_\_  
JEFFREY C. KOLIN  
City Manager

\_\_\_\_\_  
SUSAN HEALY KEENE  
Director of Community Development



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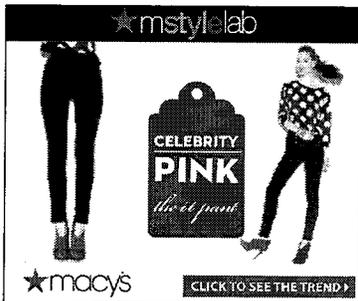
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## In Silver Lake, some have reservations about vacation rental website

Silver Lake officials say Airbnb, often cited as a lifeline for struggling homeowners, has taken over their community and a crackdown is under consideration.

September 02, 2013 | By Walter Hamilton

Despite working 18-hour days, including part time as a waitress at a strip club, Hope Arnold was on the verge of losing her Silver Lake home.

Then she discovered Airbnb, a website that links vacationers seeking an alternative to hotels and homeowners with rooms to rent.

Billing her place as an "artsy and rustic 1927 treehouse," she started renting out her master bedroom, while she slept in the den. It paid off. Arnold has made \$39,000 on Airbnb in the last 12 months, and the site now accounts for as much as 70% of her monthly income.



Hope Arnold finishes making a bed in her Silver Lake home. Arnold supplements... (Arne Cusack, Los Angeles...)

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"It has been a financial savior for me," said Arnold, 39.

Originally conceived as a way to make a few extra bucks, Airbnb has emerged as an unexpected lifeline for struggling homeowners — but one they are now trying to preserve in the face of a growing backlash.

Echoing concerns in other cities, officials in Silver Lake complain that Airbnb has taken over their community. The neighborhood council is contemplating a crackdown to reduce noise, traffic and parking problems.

Airbnb proponents say many homeowners rely on the site to help them cover living expenses in a sluggish economy that's still riddled with high unemployment.

Growth has been driven by the lingering effects of the 2008 global financial crisis, as people who can't land full-time work stitch together part-time gigs. Advocates liken Airbnb to homeowners who took in boarders during the Great Depression.

"These people depend on this additional income," said Lisa Gansky, who wrote a book on what's known as the sharing economy. "It's supplementing essentials, allowing them to pay medical bills or allowing them to stay in their homes."

According to a study by Airbnb last year, 56% of hosts in San Francisco use their earnings to help pay their mortgage or rent. The company is doing a similar analysis in Los Angeles.

Proponents say it's part of a broader shift in the economy being propelled by an emerging peer-to-peer marketplace.

Websites such as Lyft, RelayRides and TaskRabbit enable people to cobble together a living by renting their cars, their couches, or their own time and expertise.

"This is the first stage of something more profound, which is the ability of people to structure their lives around doing multiple sharing-economy activities as a choice in lieu of a 9-to-5, five-day-a-week job," said Arun Sundararajan, a professor at New York University.

"This is technology-driven progress," he said. "This is what it's all about."

But opposition is rising from neighbors, business rivals and city officials.

Web-based transportation services such as Uber, Lyft and SideCar have drawn howls of protest from taxicab companies decrying what they say is unregulated competition. The sites pair riders with car owners willing to ferry them around in their own vehicles for fees or "donations" lower than those charged by cabs.

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Likewise, plumbers and other tradesmen bristle at what they contend are unlicensed rivals undercutting them on TaskRabbit, a help-for-hire site listing people who will happily walk a dog or fix a leaky faucet.

Airbnb is among the most prominent sites to encounter opposition.

Critics in Silver Lake say some Airbnb hosts are running virtual hotels, packing homes with throngs of visitors whose sheer presence alters the community feel.

"They're popping up everywhere," said Scott Plante, a neighborhood councilman. "They're all over Silver Lake, and it's the volume of these things. There has to be some sort of balance."

Airbnb rentals violate zoning laws, which prohibit rentals shorter than 30 days, except for licensed hotels and bed-and-breakfasts, council member Anne-Marie Johnson said.

A Silver Lake council committee held a heated public hearing on the issue last month and plans another meeting this month.

Johnson suspects that many Airbnb hosts are hiding behind false claims of financial desperation.

"People have jumped onto that urban myth: 'We had to do it or we wouldn't survive,'" she said. "Then why not run a bordello? If you're really upside down in your house, then have an escort service run out of your house. Where does it end?"

The potential for bigger profits has prompted some landlords to transform long-term apartments into short-term Airbnb units. That pushes up rents of remaining apartments and squeezes out young or low-income people, said Neal Gorenflo, co-founder of Shareable.net.

"We're in favor of people occasionally renting out their homes and bringing in extra income and financial security, but not doing it to the extent where you start to hurt the local housing stock," Gorenflo said.

Airbnb hosts say they're just trying to stay afloat.

Andrea Hutchman turned to Airbnb last year after she and her husband, both actors, had trouble paying their mortgage. Acting work was sporadic, and part-time jobs were low-paying and tough to get, she said.

Rental demand has been strong for the one-bedroom guesthouse in their backyard.

"We're absolutely doing it to pay the bills," she said.

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## Airbnb home-leasing business faces scrutiny in New York

October 07, 2013 | By Stuart Pfeifer

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Airbnb Inc., the short-term home rental service for travelers, has been issued a subpoena from New York prosecutors.

State Attorney General Eric Schneiderman's office is investigating whether people who put units on the Airbnb website are complying with state rental laws, Bloomberg News reported, citing an unidentified person familiar with the matter.



Hope Arnold said she uses the Airbnb website to rent the bedroom of her home. (Anne Cusack / Los Angeles...)

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Airbnb, which has become increasingly popular in Southern California, allows people to rent homes and apartments on a short-term basis as an alternative to hotels. A 2010 New York law bars renters from subletting apartments for fewer than 30 days with some exceptions.

The trend has also been criticized in Silver Lake, where homeowners have complained that Airbnb hosts are running virtual hotels, packing homes with throngs of visitors whose presence alters the community feel.

"They're popping up everywhere," said Scott Plante, a Silver Lake neighborhood councilman. "They're all over Silver Lake, and it's the volume of these things. There has to be some sort of balance."

#### PHOTOS: Most affordable ZIP codes for home buyers

Airbnb rentals violate Los Angeles zoning laws, which prohibit rentals shorter than 30 days, except for licensed hotels and bed-and-breakfasts, Silver Lake council member Anne-Marie Johnson said.

In New York, Schneiderman's office is targeting people who are renting large numbers of units or are leasing their properties for much of the year, Bloomberg News said. Casual hosts who occasionally rent personal apartments they own or lease aren't a target of the probe.

Matt Mittenthal, a spokesman for Schneiderman, declined to comment.

New York City has been a legal battleground for Airbnb. Last month, the company helped a tenant who sublet his apartment through the service overturn a \$2,400 fine levied by the city.

Democratic state Sen. Liz Krueger, the author of the state's illegal-hotel law, has called Airbnb's business model "unambiguously illegal" in the city.

In a blog post Sunday, Airbnb's head of global policy, David Hantman, said the company wants "to work with governments to make the Airbnb community stronger."

The demand from the attorney general's office, seeking data on 15,000 New York Airbnb hosts, is "unreasonably broad and we will fight it with everything we've got," he wrote.

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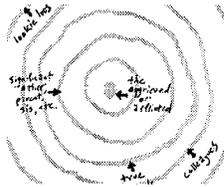
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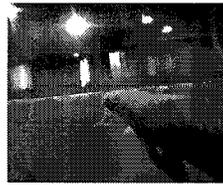
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## **ATTACHMENT D**

# **DRAFT PLANNING COMMISSION RESOLUTION – DEVELOPMENT AGREEMENT**

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS RECOMMENDING THAT THE CITY COUNCIL APPROVE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND METROPOLITAN CRESCENT ASSOCIATES, LLC, FOR DEVELOPMENT AND USE OF THE PROPERTIES AT 155 NORTH CRESCENT AND 9355 WILSHIRE BOULEVARD FOR A MIXED USE PROJECT INCLUDING SERVICED RESIDENCES AND RESTAURANT USE

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

Section 1. Metropolitan Crescent Associates, LLC (“Developer”) proposes to enter into a development agreement (herein, the “Development Agreement”), a draft version of which is attached to this Resolution as Exhibit “A” in connection with the development and use of the properties at 155 North Crescent and 9355 Wilshire Boulevard for a mixed use project including serviced residences and restaurant use (the “Project”).

Section 2. The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the City’s Local CEQA Guidelines. The City previously prepared and certified an Environmental Impact Report (“EIR”) for the Project to analyze the potential impacts on the environment of the mixed use project when initially approved in 2002. Upon review of the proposed changes to the project as approved in 2002, the Planning Commission, for the reasons set forth in the addendum to the Final EIR, which is hereby incorporated herein by reference, finds that: changes to the previously certified EIR are necessary due to the

proposed changes in use of the property, but some of the conditions of CEQA Guidelines Section 15162 require preparation of a subsequent EIR. The Planning Commission finds that the proposed changes in use, subject to the conditions of approval recommended on the project, will ensure that no significant impacts will result. The project remains subject to all applicable mitigation measures identified in the previously certified Final EIR. The documents and other materials that constitute the record on which this recommendation was made are located in the Department of Community Development and are in the custody of the Director of Community Development.

Section 3. On November 21, 2013, the Planning Commission conducted duly noticed public hearings to consider the Development Agreement and the Project. Notices of the time, place and purpose of the public hearings were duly provided in accordance with California Government Code Sections 65867, 65090 and 65091.

Section 4. The Planning Commission finds that the provisions of the Development Agreement are consistent with the City of Beverly Hills General Plan and comply with its objectives and policies, and in particular advances the following General Plan Policies:

- Policy H 2.5 Adaptive Reuse. Support innovative strategies for the adaptive reuse of residential and commercial structures to provide for a wide range of housing types.
- Policy LU 15.1 Economic Vitality and Business Revenue. Sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high-paying jobs.

The Development Agreement implements the terms of the General Plan, and City ordinances, including a zone text amendment to allow serviced residences and restaurant uses in the project, and does not allow development except in conformance with the General Plan.

Section 5. The Planning Commission hereby recommends that the City Council adopt an ordinance approving a Development Agreement substantially similar to the draft Agreement attached hereto as Exhibit "A".

Section 6. The Secretary shall certify to the adoption of this Resolution, and shall cause this Resolution and his certification to be entered into the Book of Resolutions of the Planning Commission.

Adopted:

---

Brian Rosenstein  
Chair of the Planning Commission  
of the City of Beverly Hills, California

ATTEST:

---

Secretary

Approved as to form:

---

David M. Snow  
Assistant City Attorney

Approved as to content:

---

Jonathan Lait, AICP  
Assistant Director of Community  
Development/City Planner

**EXHIBIT A**

**DRAFT DEVELOPMENT AGREEMENT**

# Draft Development Agreement

CITY OF BEVERLY HILLS

WHEN RECORDED MAIL TO:

City of Beverly Hills  
Attention: City Attorney's Office  
455 North Rexford Drive  
Room 320  
Beverly Hills, CA 90210

## **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made by and between THE CITY OF BEVERLY HILLS, a California municipal corporation (the "City"), and METROPOLITAN CRESCENT ASSOCIATES, 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 [ owner of a leasehold interest in that certain real property located in the City of Beverly Hills, California and legally described in Exhibit A attached hereto and incorporated herein by reference (the "Property").

B. Developer desires to further develop and operate the Project (as hereafter defined) by adding a restaurant and bar to the Project and expanding the current permitted uses to allow the following uses in addition to the currently permitted uses on the Property: (i) serviced residence uses and (2) restaurant and bar uses, including, without limitation, room service to the serviced residence units.

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. Developer has submitted that certain Application for Zone Change, General Plan Amendment, Specific Plan Amendment, dated February 20, 2013 (the "Application") to the City (in its governmental capacity) for certain approvals, entitlements, findings and permits required for the development and operation of the Project, including, without limitation the following (collectively, and together with any and all Subsequent Project Approvals (as hereafter defined) the "Project Approvals"): (1) a zoning code amendment, (2) a planned development permit

# Draft Development Agreement

amendment, (3) an extended hours permit; and (4) 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.

F. This Agreement eliminates uncertainty in planning and provides for the orderly further 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 further development and operation of the Project with the uses, density and other land use characteristics specified in the Project Approvals. Developer would not enter into this Agreement without the City's agreement that the Project can be developed and used, during the term of this Agreement, with the uses, density and other land use characteristics and approvals specified in the Project Approvals.

H. The City has determined that, as a result of the further development of the Project in accordance with the Project Approvals and this Agreement, substantial benefits will accrue to the public.

I. On [month] [day], 2013, 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 [month] [day], 2013, 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 [month] [day], 2013, the City Council adopted Ordinance No. 13-O- [redacted] approving this Agreement, and such ordinance became effective on [month] [day], 2013.

## 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:

# Draft Development Agreement

(a) “AKA Beverly Hills Project” shall mean the serviced residence use permitted to be operated on the Property by the Project Approvals, whether or not operated under the “AKA” name.

(b) “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 the City’s Zoning Regulations, adopted as of the Effective Date, all as amended pursuant to the Project Approvals. Among other matters, the Applicable Rules set forth and govern the permitted uses of land, the density or intensity of use, the maximum height and size of the buildings and the provisions for reservation or dedication of land for public purposes applicable to the use and development of the Property.

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

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

(e) “Conditions of Approval” shall mean those conditions of approval, if any, which are not set forth in this Agreement and which are otherwise imposed by the City in connection with the City’s approval of the Project Approvals.

(f) “Development Agreement” or “Agreement” means this Agreement.

(g) “Development Agreement Act” means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code (as the same may be amended and/or re-codified from time to time).

(h) “Discretionary Action(s)” or “Discretionary Approval(s)” means an action that 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).

(i) “Effective Date” shall mean the date this Agreement, fully executed, is recorded in the Official Records of the Los Angeles County Recorder.

(j) “Entitlements” means “Entitlements” as defined in Section 6.

(k) “General Plan” means the General Plan of the City, as it exists as of the Effective Date.

(l) “Gross Room Revenue” means consideration received from lessees of dwelling units at the AKA Beverly Hills Project for the occupancy of units and ancillary space in the AKA Beverly Hills Project. Revenue shall be valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property and services of any kind or nature, without any deduction therefrom.

# Draft Development Agreement

(m) “Ministerial Permit(s),” or “Ministerial Approval(s)” means a permit or approval that 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.

(n) “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 and/or operate the Project, or any refinancing of any of the foregoing.

(o) “Mortgagee” means, collectively, the holder of the beneficial interest under any Mortgage, together with the successful bidder at a foreclosure sale or a transferee by deed in lieu of foreclosure or similar instrument, who comes into possession of the Property or any part thereof pursuant to foreclosure, deed in lieu or otherwise.

(p) “Municipal Surcharge” means the fee paid pursuant to Section 9(d) of this Agreement.

(q) “Processing Fees” means all application, inspection and other fees and charges required by the City that are applied uniformly to all development related activity, including fees for land use applications.

(r) “Project” means the AKA Beverly Hills Project.

(s) “Project Approvals” means Project Approvals as defined in Recital D above..

(t) “Property” means the real property described in Exhibit “A” attached hereto and defined in Recital A.

(u) “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). Reserved Powers also include the power and authority of the City to enact regulations that apply generally to hotels and serviced residences or multi-family residential uses and serviced residences within the City, including regulations of hotel, serviced residence, or multi-family residential use operations, provided that such regulations do not impact the permitted uses, density, height or square footage of the Project permitted by the Zoning Regulations.

(v) “Serviced Residence” means a multi family transient use where each dwelling unit includes a full kitchen, laundry facilities and bathroom, no dwelling unit is leased or

# Draft Development Agreement

occupied by any person for less than seven (7) consecutive days, and each dwelling unit is maintained and offered services at a luxury standard.

By way of illustration, at the time of adoption of this agreement, a “luxury standard” includes a 24-hour resident service team, high-tech fitness center, full-service business center with executive board room and complimentary high-speed Internet access, a lounge; a cafe, en-suite dining, same-day valet dry-cleaning and laundry service, and full-time, on-site management and maintenance. All dwelling units include fully-accessorized kitchens, contemporary furnishings, well-appointed bathrooms, premium cable television and Wi-Fi access.

Dwelling units may be occupied by no more than one single housekeeping unit, as defined in the Beverly Hills Municipal Code and all residents shall jointly occupy the entire dwelling unit, under a single written lease.

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

(x) “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. Following adoption or approval, a Subsequent Project Approval shall become a Project Approval.

(y) “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 commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

# Draft Development Agreement

(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 costs of development.”

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

(b) The Project. The Developer intends to develop and operate the Property as described in the Project Approvals, subject to the Applicable Rules, the Project Approvals, and the Conditions of Approval. The Parties hereby agree that, subject to the exercise of the City’s Reserved Powers, for the term of this Agreement, the permitted uses, the density and intensity of use, the maximum height and size of the buildings, provisions for reservation or dedication of land for public purposes and the design, improvement and other guidelines, standards and specifications applicable to the development and use of the Property shall be those set forth in the Project Approvals, the Applicable Rules, this Agreement, and the Conditions of Approval. Subject to the exercise of the City’s Reserved Powers, any Subsequent Project Approvals shall, at the election of Developer, be subject to the Applicable Rules or the rules, regulations, ordinances, resolutions, codes, guidelines, and officially adopted procedures and official policies of the City at the time of such Subsequent Project 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 one (1) year.

Notwithstanding the term set forth above, the obligation to pay the Municipal Surcharge pursuant to Section 9 shall continue indefinitely as provided in Sections 9 and 11.

6. Permitted Uses; Density; Building Heights and Sizes; Required Dedications. The City and Developer hereby agree that the permitted uses of the Property (including, without limitation, as set forth in Recital B hereof), the density and intensity of such uses, and the maximum heights and sizes of the buildings and improvements on the Property, allowed in connection with the development and operation of the Project shall be as set forth in and consistent with prior entitlements as modified by the Project Approvals, and as they may be lawfully amended by Developer from time to time (collectively the “Entitlements”). As set forth in the Project Approvals, the City and Developer agree that Developer shall not reserve or dedicate land for public purposes given the nature of the Project’s site and the presence of necessary public improvements in the area of the Project. Developer shall not cause or permit

# Draft Development Agreement

any use of the Property that is not permitted by the Entitlements, 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 Entitlements.

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

8. 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 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 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 Entitlements, 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 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. For the purposes of this Agreement, the City's determination as to the applicability of California or federal laws to the Project shall be final and conclusive. In the event that any such change or addition shall be required by California or federal law or regulation, the City shall reasonably cooperate with Developer in minimizing the impact of such change upon the Project and the Property.

(c) Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, construction in connection with the Project shall be subject to changes occurring from time to time in the provisions of the City's building standards codes, including the City's building, mechanical, plumbing and electrical regulations that are based on the recommendations of a multi-state professional organizations and become applicable throughout the City, including the California Building Code and other similar or related uniform codes.

(d) Changes in Processing Fees Under Applicable Rules and Applicability of other Fees. The Project shall be subject to any increase in Processing Fees imposed by the City, provided that such a change is applied on a City-wide basis. Except as provided in Section 9, no

# Draft Development Agreement

fees are imposed on Developer pursuant to this Agreement. Additionally, nothing in this Agreement shall exempt Developer from fees set forth in the Beverly Hills Municipal Code or the City's adopted schedule of rates, fees and charges.

## 9. 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 reasonable and customary costs to process the Project Approvals, including reasonable legal processing costs related to the Project Approvals and preparation of this Agreement, if any.

(c) Processing Fees. Developer agrees to pay all Processing Fees applied to the Project at the rate and amount in effect at the time the fee is required to be paid.

(d) Municipal Surcharge. The owner of the AKA Beverly Hills shall pay to the City, in perpetuity, an amount of six percent (6.0%) of the Gross Room Revenue generated by the AKA Beverly Hills Project on all room occupancies of thirty calendar days or less (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) *Letter of Credit to Secure Municipal Surcharge.* Developer shall provide the City with a letter of credit, or other form of security reasonably acceptable to the City Manager and City Attorney, in the initial amount of two hundred thousand dollars (\$200,000) for the purpose of securing its obligation to pay the Municipal Surcharge. The letter of credit shall be substantially in the form attached hereto as Exhibit B, and shall be in substance and form reasonably satisfactory to the City Attorney, and shall be issued by an issuer reasonably acceptable to the City Manager in good faith. The letter of credit may be drawn by City to pay any monthly installment of the Municipal Surcharge if Developer fails to pay any monthly installment of the Municipal Surcharge within thirty (30) days after its due date (and partial and multiple drawings shall be permitted). The letter of credit may be drawn in full by City if (i) the City receives notice of termination from the issuing bank or if the letter of credit is not extended, renewed or replaced (as shown by delivery to City of a copy of the extension or renewal amendment that is acceptable to the City Attorney, or the original of a replacement letter of credit acceptable to the City Manager and City Attorney from an issuer reasonably acceptable to the City Manager, as applicable, or substitute collateral reasonably acceptable to the City Manager and City Attorney) at least thirty (30) days prior to any fixed expiry date in the letter of credit; or (ii)

# Draft Development Agreement

if the issuer is no longer creditworthy, as reasonably determined by the City Manager and in good faith, and the letter of credit is not replaced with a similar letter of credit reasonably acceptable in form and substance to the City Attorney or substitute collateral reasonably acceptable to the City Manager and City Attorney within thirty (30) days after written notice from the City Manager to Developer that the issuer is no longer creditworthy. Developer hereby covenants to provide such an extension or renewal amendment or replacement letter of credit or such substitute collateral, within such thirty (30) day period such that the letter of credit (and/or such substitute collateral) is maintained in perpetuity. In the event of a full or partial draw under the letter of credit, Developer shall deliver to the City an amendment to the letter of credit raising the available amount thereof to \$200,000 (or additional collateral acceptable to the City Manager and City Attorney) within thirty (30) days.

If the letter of credit has been maintained and not drawn upon in whole or part for a period of two (2) years, the letter of credit may be reduced in amount to one hundred thousand dollars (\$100,000). However, if at any time after such reduction, the letter of credit is drawn upon by City in accordance with the terms hereof, or if Developer transfers its interest in the Property or the Agreement, then Developer shall deliver to City an amendment to the letter of credit raising the available amount thereof to \$200,000.

(iii) *Acknowledgement.* The parties acknowledge and agree that the Municipal Surcharge is not a tax or a levy by City.

(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) two thousand dollars (\$2,000), increased on the first day of 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 percent (18%), or (ii) the highest rate then permitted by applicable law.

(e) *Transient Occupancy Tax.* The operator of the AKA Beverly Hills Project, as "operator" is defined in Beverly Hills Municipal Code Section 3-1-302, shall collect, report and

# Draft Development Agreement

remit the City's transient occupancy tax in accordance with the provisions of the Beverly Hills Municipal Code or their successors.

10. Audit. Developer shall maintain full and accurate records with respect to the Municipal Surcharge. . For the purpose of determining whether the Municipal Surcharge has been properly calculated and paid to the City, City shall have access one time annually, without charge and upon reasonable notice, during normal business hours, to such records, and the right to examine and audit the same and to make copies and transcripts therefrom, and to inspect all program data, documents, proceedings and activities related to the Municipal Surcharge. Such examination and audit shall be at the City's expense unless the examination and audit reveals that Developer has underpaid the Municipal Surcharge by at least ten percent (10%) in any one month. If the examination and audit reveals that Developer has underpaid the Municipal Surcharge by at least ten percent (10%) in any one month, then Developer shall reimburse the City for the cost of the examination and audit and the City shall be entitled to conduct another audit during that year,

11. 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, or failure of Developer to timely provide a letter of credit extension, renewal amendment, replacement letter of credit, letter of credit amendment or substitute collateral as required by Section 9(d)(ii), shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Any such default 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 (if applicable), 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.

Upon a default by City or Developer, after notice and expiration of the thirty (30) day period (if applicable) without cure, the other 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.

12. Termination and Expiration. Upon the expiration of the term or termination of this Agreement, and except as provided below, 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 9(d) and Section 10, nor the obligation to pay any

# Draft Development Agreement

claim of any Party hereto arising out of the provisions of this Agreement prior to the effective date of such termination. Additionally, for a period of four years after expiration or termination of this Agreement, such expiration or termination shall not affect Developer's vested right pursuant to Section 7 to construct a restaurant as permitted by the Entitlements. The obligations under Section 9(d), and the obligation to pay any claim arising before the effective date of expiration or termination, shall continue after expiration or termination in perpetuity or until completed.

13. 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, Developer agrees to make commercially reasonable efforts 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 during the one year term hereof unless: (A) at least thirty (30) days before any transfer, Developer has submitted to City the name of the proposed transferee and financial information regarding the transferee reasonably satisfactory to the City's Chief Financial Officer, and the City determines, prior to transfer, that the proposed transferee is able to satisfactorily fulfill the obligations of this Agreement, and (B) the transferee accepts, in writing, the obligations of Developer under this Agreement. Upon any transfer after the one year term hereof, Developer shall be relieved of all liability and obligations hereunder (without regard to whether any of the same shall survive the termination or expiration hereof). Such writing shall be in form and content reasonably satisfactory to the City Attorney.

## 14. Mortgagee 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

# Draft Development Agreement

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.

(d) *Liability for Past Defaults or Obligations.* Subject to the foregoing, any Mortgagee 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 13 shall prevent City from exercising any remedy it may have for a default under this Agreement (subject to the cure periods set forth in Section 13(c) above), 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.

15. 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 and appurtenant to the land and the covenants made and benefits granted and established, and the rights and restrictions contained herein, are intended to, and shall, inure to the benefit of and be binding upon the Developer..

## 16. 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 15, 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.

# Draft Development Agreement

(b) In the event of any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals, or the CEQA determination for the Project, Developer may 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 CEQA determination for the Project, 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 prior written consent of the City. In the event Developer fails or refuses to reimburse the City for its cost to defend any challenge to this Agreement, any of the Project Approvals, or the CEQA determination for the Project, the City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 10 above. In all events, the City shall have the right to resolve any such challenge in any manner, in its sole discretion, provided, however, Developer's consent shall be required (and may be granted or withheld in Developer's discretion) if the City is reimbursed for its defense by Developer and 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 CEQA determination for the Project, ( each, 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 15(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 CEQA determination 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 15. 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) 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 15.

17. 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.

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

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19. 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.

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

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

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

## 23. Periodic Reviews.

(a) Special Reviews. 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.

(b) Procedure for Review. The City's Director of Community Development (the "Community Development Director") shall conduct the review contemplated by this Section 22 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.

# Draft Development Agreement

(c) 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 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 10 and the City may follow the default procedures as set forth in Section 10.

(d) Effect on Default Procedures. Nothing in this Section 22 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 22, or from terminating this Agreement pursuant to the provisions of Section 10 following any event of default by Developer.

## 24. 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, reasonable attorneys' fees and expert witness fees.

(b) Scope of Fees. Attorneys' fees under this Section 23 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.

25. 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."

26. 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:

# Draft Development Agreement

(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.

(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.

27. 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.

28. 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.

29. 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 9 is held invalid or unenforceable, then this entire Agreement shall be void and unenforceable and of no further force and effect.

30. 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, any of the Project Approvals or the CEQA determination for the Project.

31. Notices. All notices, disclosures, demands, acknowledgments, statements, requests, responses and other communications (each, a "Communication") to be given under this

# Draft Development Agreement

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

To Developer: Metropolitan Crescent Associates, LLC  
c/o Korman Communities  
220 West Germantown Pike, Suite 250  
Plymouth Meeting, Pennsylvania 19462  
Attn: Robert S. Grossman

With Copy to: Seyfarth Shaw, LLP]  
333 S. Hope St. Suite 3900]  
Los Angeles, CA 90071  
Attn: Richard C. Mendelson, Esq.

To City: City Manager  
City of Beverly Hills  
455 North Rexford Drive  
Fourth 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 30 change the addresses 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.

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

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

34. 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.

35. 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.

# Draft Development Agreement

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.

[Signatures on next page]

# Draft Development Agreement

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF BEVERLY HILLS,  
a Municipal Corporation

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

ATTEST:

\_\_\_\_\_(SEAL)  
BYRON POPE  
City Clerk

METROPOLITAN CRESCENT  
ASSOCIATES, LLC,  
a Delaware limited liability company

By: KCI BLACKROCK VENTURE V,  
LLC,  
a Delaware limited liability company,  
its Sole Member  
KCI Crescent Associates, LLC,  
a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

\_\_\_\_\_  
JEFFREY KOLIN  
City Manager

# Draft Development Agreement

## EXHIBIT A

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

### PARCEL 1:

Lots 8, 9 and 10 in Block 13 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per Map recorded in Book 11 Page 94 of Maps in the Office of the County Recorder of said County.

### PARCEL 2:

Lots 11, 12, 13, 14, 15 and 16 in Block 13 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per Map recorded in Book 11, Page 94 of Maps, in the Office of the County Recorder of said County.

Except therefrom all oil, gas and other hydrocarbon substances in and under the following described real property in the County of Los Angeles, excepting therefrom however, the right to enter upon the surface or subsurface thereof to a depth of 500 feet below the surface of the ground, as granted to Jacqueline Block Leisure and Sharlot Carpenter as tenants in common, by deed recorded August 20, 1964 as Instrument No. 4516, in Book D2598 Page 9, of Official Records.

# Draft Development Agreement

STATE OF \_\_\_\_\_ }

} ss.

COUNTY OF \_\_\_\_\_ }

On \_\_\_\_\_, 2013, before me, \_\_\_\_\_, Notary Public, personally appeared \_\_\_\_\_, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_

(seal)

**ATTACHMENT E**

**ADDENDUM TO MITIGATED DECLARATION**

**ADDENDUM TO ENVIRONMENTAL IMPACT REPORT  
AS CERTIFIED BY THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS  
FOR THE CRESCENT PROJECT**

**Prepared by the City of Beverly Hills  
in its capacity as a Lead Agency**

**SITE:** 9355 Wilshire Boulevard and 155 North Crescent Drive, Beverly Hills, CA 90210

**PROJECT TITLE:** AKA Serviced Residences

**PROJECT APPLICANT:** Metropolitan Crescent Associates, LLC

**Attachments:** A. City Council Resolution No. 02-R-11242

**PROJECT DESCRIPTION:** The Project is a proposal to make modifications to the uses permitted in an existing mixed-use building containing commercial and residential uses approved in conjunction with an Environmental Impact Report (EIR). The originally approved project consists of 88 apartment units, 39,975 square feet of commercial space, and 534 parking spaces. The building has been fully constructed and operational since 2006. The proposed modifications (the “Project”) include the following changes in permitted uses:

- **Serviced Residences.** Allow all 88 apartment units to function as serviced residences, which could be rented for any length of stay, provided the stay is not less than 7 days.
- **Restaurant Use.** Allow an approximately 2,500 square foot restaurant to be located within the portion of the project site located at the intersection of Wilshire Boulevard and North Crescent Drive. The restaurant would be primarily intended to serve AKA residents, but would also be open to the general public.

**PURPOSE:** This Addendum to the EIR is being prepared pursuant to Section 15164 of the California Environmental Quality Act (CEQA) Guidelines which allows a lead agency to prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred. Pursuant to CEQA Guidelines Section 15162, no subsequent EIR shall be prepared for the project unless, on the basis of substantial evidence in the light of the whole record, one or more of the following is determined:

- (1) Substantial changes are proposed in the project that will require major revisions of the previous EIR due to the involvement of new, significant environmental effects or a substantial increase in the severity of previously identified significant effects;

- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance identifies one or more significant effects not discussed in the previous EIR, significant effects previously examined will be substantially more severe than shown in the previous EIR, mitigation measures or alternatives previously found not to be feasible or not analyzed in the EIR would be feasible and would substantially reduce one or more significant effects but the project proponents decline to adopt of the measure or alternative.

#### **FINDINGS CONCERNING ENVIRONMENTAL IMPACTS OF REVISIONS TO THE PROJECT:**

1. The originally approved project consisting of the construction of a mixed-use building, and hereafter referred to as the "Original Project", was environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* ("CEQA"), and the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*). The City of Beverly Hills prepared an Environmental Impact Report, (hereafter referred to as the "EIR") and, based on the information contained in the EIR, determined that the Project would result in significant and unavoidable impacts with regard to the following:
  - Air Quality (short-term construction related impacts)

Additionally, based on the information contained in the EIR, the Project would result in significant, but mitigable impacts with regard to the following:

- Visual Quality: Aesthetics
  - Public Services
  - Traffic, Circulation and Parking
  - Noise
  - Geology
  - Hazards
2. On December 3, 2002, the City of Beverly Hills City Council certified the EIR and approved the Original Project to allow construction of the mixed-use project. In addition, the EIR identified certain mitigation measures (set forth in City Council Resolution No. 07-R-12273 and provided as Attachment A) that were necessary to mitigate potential impacts of the Original Project to less than significant levels. The

mitigation measures were adopted by the City Council and made binding on the Project. The findings of fact made in the EIR and associated mitigation measures are provided for reference as Attachment A (City Council Resolution No. 08-R-12497).

3. Thereafter, an application for the Project was submitted to the City of Beverly Hills on April 3, 2013 to allow the modifications outlined in the Project Description, above.
4. Staff analyzed the Project to determine if any new impacts, or substantial increase in the severity of previously identified impacts, would result from the proposed modifications. Pursuant to CEQA Guidelines Section 15162, neither a subsequent EIR nor supplemental EIR is required for the modifications contemplated by the Project because:

- (1) The Original Project consists of the development of 88 apartment units and 39,975 square feet of commercial uses contained within a single development. The modifications contemplated under the Project do not result in an increase to the total floor area of the Original Project, and are limited to discrete changes in allowed land uses. Additional analysis of the Project modifications and impact study areas discussed in the EIR are set forth as follows:

**Air Quality.** The significant and unavoidable air quality impact identified in the EIR was related to construction of the Original Project. Construction of the Original Project was completed in 2006, and the Project will not result in new construction beyond tenant improvements. Additionally, the changes to allowed land uses at the subject property will result in a maximum net increase of 147 average daily vehicle trips, less than a 2% increase over existing traffic on North Crescent Drive. Based on the fact that the Project will not result in substantial new construction, and will result in a nominal increase in daily vehicle trips, it can be concluded that the Project will not result in a new significant air quality impact, nor will the Project require additional or modified mitigation measures

**Visual Quality: Aesthetics.** The Original Project resulted in significant but mitigable impacts related to aesthetics, caused by the construction of new, larger structures on the subject property. The Original Project was completed in 2006, and the Project does not propose any changes to the mass or scale of the original Project. Because the Project would not alter the mass, scale, or modulation of the Original Project, it can be concluded that the Project will not result in a new significant visual quality impact, nor will the Project require additional or modified mitigation measures.

**Public Services.** In order to mitigate potential impacts related to schools, parks, and solid waste, the Original Project was required to pay all applicable impact/use fees and comply with standards related to the disposal of solid waste generated by construction and operation of the Original Project. The Project does not result in the development of any new floor area at the subject property, and all necessary impact/use fees have been paid by the Original Project. Furthermore, the Project remains bound by mitigation measures related to the disposal of solid waste for operation of the Project. Consequently, it can be concluded that the Project will not result in a new significant public services impact, nor will the Project require additional or modified mitigation measures.

**Traffic, Circulation and Parking.** The Original Project is subject to mitigation measures related to congestion management, site access, parking, and loading. The Original Project has operated in accordance with the previously imposed mitigation measures, and the mitigation measures remain binding on the Project. In addition, the Project's trip generation has been assessed in accordance with ITE trip generation rates. The Project would result in a worst-case scenario net increase of 147 average daily vehicle trips, less than a 2% increase over existing traffic on North Crescent Drive. Because the Project results in a nominal increase in daily traffic and continues to be bound by all mitigation measures imposed on the Original Project, it can be concluded that the Project will not result in a new significant traffic, circulation and parking impact, nor will the Project require additional or modified mitigation measures.

**Noise.** Noise impacts associated with the Original Project were the result of construction activities. The Original Project has been fully constructed and operational since 2006, and the Project does not result in any new construction beyond tenant improvements. Since the Project does not result in any substantial new construction, it can be concluded that the Project will not result in a new significant noise impact, nor will the Project require additional or modified mitigation measures.

**Geology.** Geology impacts associated with the Original Project were the result of construction activities. The Original Project has been fully constructed and operational since 2006, and the Project does not result in any new construction beyond tenant improvements. Since the Project does not result in any substantial new construction, it can be concluded that the

Project will not result in a new significant geology impact, nor will the Project require additional or modified mitigation measures.

**Hazards.** Hazards impacts associated with the Original Project were the result of construction activities. The Original Project has been fully constructed and operational since 2006, and the Project does not result in any new construction beyond tenant improvements. Since the Project does not result in any substantial new construction, it can be concluded that the Project will not result in a new significant hazards impact, nor will the Project require additional or modified mitigation measures.

**Other Impact Categories.** A review of the remaining environmental categories in which the Original Project was found not to have any significant environmental impacts reveals that the modifications in use proposed by the Project would not result in any new operational impacts in those categories. Further, as noted above, construction of the building is completed, so there is no potential for construction related impacts as a result of the proposed changes in building use.

Therefore, the changes in the Project do not require major revisions to the previous EIR, and there are no new significant environmental effects or an increase in the severity of previously identified significant effects.

- (2) There are no changes with respect to the circumstances under which the project is undertaken that will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of a previously identified impact. The circumstances under which the Project would be undertaken have not changed when compared to the circumstances in place during approval of the Original Project.
- (3) Staff has identified no new information of substantial importance that was not known and could not have been known with the exercise of reasonable diligence at the time the EIR was adopted, identifying: (a) a new or substantially more severe significant effect, or (b) new or previously infeasible mitigation measures or alternatives that would substantially reduce one or more significant impacts of the project. All mitigation measures adopted in conjunction with the Original Project continue to be imposed on the Project and are provided for reference in Attachment A to this Addendum.

Therefore, pursuant to CEQA Guidelines Section 15164, the City has prepared this Addendum to the EIR, which documents changes to the Project Description that would not result in new, significant environmental effects or a substantial increase in the severity of previously identified significant effects:

**Addendum.** The project, with the proposed revisions noted herein, is within the scope of the project analyzed in the certified EIR, and no further CEQA analysis is required.

Project revisions:

- **Serviced Residences.** Allow all 88 apartment units to function as serviced residences, which could be rented for any length of stay, provided the stay is not less than 7 days.
- **Restaurant Use.** Allow an approximately 2,500 square foot restaurant to be located within the portion of the project site located at the intersection of Wilshire Boulevard and North Crescent Drive. The restaurant would be primarily intended to serve AKA residents, but would also be open to the general public.

The concurrent processing of the single-family and multi-family transient zone text amendments does not change the conclusions of this addendum, although those text amendments are separately and independently exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3), 15305, and 15308.

For any questions regarding this matter, please contact Ryan Gohlich, Senior Planner in the Beverly Hills Community Development Department at 310.285.1194.

By: \_\_\_\_\_

  
Ryan Gohlich, Senior Planner

DATE: November 18, 2013

RESOLUTION NO 02-R-11242

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE CRESCENT PROJECT, MAKING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTING A MITIGATION MONITORING PROGRAM

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

Section 1 A formal application has been submitted for a planned development, amendments to existing parking covenants, and a zoning code amendment to allow construction of a mixed use development project consisting of a four-story, 39,975 square-foot office/retail building fronting Wilshire Boulevard with a height of 45 feet and a residential component comprised of 88 apartment units with modulated height up to a maximum height of five-stories and 60 feet on property generally located at 131-191 Crescent Drive/9355-9373 Wilshire Boulevard (collectively referred to herein as the "Project"), as more fully described in Section 2 0 of the Draft Environmental Impact Report dated July 2002 (the "DEIR") In accordance with the California Environmental Quality Act ("CEQA") (Cal Pub Res Code §21000 *et seq*) and the State Guidelines (the "Guidelines") (14 Cal Code Regs §15000 *et seq*) promulgated with respect thereto, the City analyzed the Project's potential impacts on the environment

Section 2 Pursuant to Section 15063 of the Guidelines, the City prepared an Initial Environmental Study (the "Initial Study") for the Project. The Initial Study concluded that there was substantial evidence that the Project might have a significant environmental impact on several specifically identified resources and governmental services, including aesthetics, air quality, geology, population and housing, land-use and planning, noise, public services and utilities, transportation/circulation, and hazards and hazardous materials.

Section 3 Pursuant to Guidelines Sections 15064 and 15081, and based upon the information contained in the Initial Study, the City ordered the preparation of an environmental impact report (the "EIR") for the Project. The City contracted with an independent consultant for the preparation of the EIR and, on April 12, 2002, prepared and sent a Notice of Preparation of the EIR to responsible, trustee, and other interested agencies and persons in accordance with Guidelines Section 15082(a).

Section 4 The independent consultant completed the DEIR, together with those certain technical appendices (the "Appendices"), on July 15, 2002. The City circulated the DEIR and the Appendices to the public and other interested persons between July 15, 2002, and August 14, 2002, for a 30-day comment period pursuant to Guidelines Sections 15087(c) and 15105. The Planning Commission held a duly noticed public hearing on July 31, 2002, and August 28, 2002, at which times it received oral and documentary evidence from the public regarding the Project and the DEIR.

Section 5 During the public review and comment process, the City received written and oral comments regarding the adequacy of the DEIR. The City prepared written responses to all comments and made minor revisions and additions to the DEIR in response to the comments. After reviewing the responses to comments and the revisions to the DEIR, City staff concluded that the information and issues raised by the comments and the responses thereto did not constitute new information requiring recirculation of the DEIR pursuant to Public Resources Code Section 21092.1 or Guidelines Section 15088.5.

Section 6 The Final Environmental Impact Report (the "EIR") is comprised of three volumes: the DEIR dated July 15, 2002, the Appendices dated July 15, 2002, and the Comments and Responses to Comments on the DEIR dated August 19, 2002. The Planning Commission held a duly noticed public hearing on the DEIR and the EIR on July 15, 2002, and August 28, 2002 (the "PC Hearings") at which time evidence, both written and oral, was presented to and considered by the Planning Commission. Notice of the time, place and purpose of the PC Hearings was provided in accordance with applicable law. Based upon the record of the PC Hearings, the Planning Commission voted to certify the completeness and adequacy of the EIR, to make certain environmental findings, to conditionally approve the planned development for the project, and to recommend that the City Council approve the zoning amendment and amend the parking covenants.

Section 7 The City Council held a duly noticed *de novo* public hearing on the EIR and the Project on November 14, 2002 (the "Hearing") at which time evidence, both written

and oral, was presented to and considered by the City Council. Notice of the time, place and purpose of the Hearing was provided in accordance with applicable law. Based upon the record of the Hearing, the City Council voted to certify the completeness and adequacy of the EIR, to introduce the zoning amendment, to amend the parking covenant, and to conditionally approve the planned development for the Project.

Section 8 The findings made in this Resolution are based upon the information and evidence set forth in the EIR and upon other substantial evidence which has been presented in the record of this proceeding. The documents, staff reports, technical studies, appendices, plans, specifications, and other materials that constitute the record of proceedings on which this Resolution is based are on file and available for public examination during normal business hours in the Department of Planning and Community Development and with the Director of Planning and Community Development, who serves as the custodian of these records.

Section 9 The City Council finds that pursuant to Guideline Sections 15087(e) and 15105, agencies and interested members of the public have been afforded ample notice and opportunity to comment on the EIR.

Section 10 The City Council has independently reviewed and considered the contents of the EIR prior to deciding whether to approve the Project pursuant to Guidelines Section 15084(e). The City Council hereby finds that the EIR reflects the independent judgement of the City and the City Council. The City Council further finds that the additional information

provided in the staff reports, in the responses to comments received after circulation of the DEIR, and in the evidence presented in written and oral testimony presented at the Hearings, does not constitute new information requiring recirculation of the EIR under CEQA. None of the information presented to the City Council after circulation of the DEIR has deprived the public of a meaningful opportunity to comment upon a substantial environmental impact of the Project or a feasible mitigation measure or alternative that the City has declined to implement.

Section 11 The City Council finds that the comments regarding the DEIR and the responses to those comments have been received by the City, that the Planning Commission and the City Council received public testimony regarding the adequacy of the EIR, and that the City Council, as the final decision-making body for the lead agency, has reviewed and considered all such documents and testimony prior to acting on the Project. Pursuant to Guidelines Section 15090, the City Council hereby certifies that the EIR has been completed in compliance with CEQA.

Section 12 Based upon the EIR and the record before the City Council, the City Council finds that the Project will not cause any significant environmental impacts except in the area of short term Air Quality impacts. Explanations for why the impacts other than short term Air Quality were found to be insignificant are contained in the Environmental Findings set forth in Exhibit A to this resolution and more fully described in Section 3.0 of the EIR and the Initial Study (included as Exhibit A to the EIR).

Section 13 Based upon the EIR and the record before the City Council, the City Council finds that the Project will create significant unavoidable impacts to Air Quality from short-term air pollutants associated with construction of the Project. These significant impacts are further described in the "Findings and Facts In Support of Findings" set forth in Exhibit A, which is attached hereto and is incorporated herein by reference, and in Sections 3.0 of the EIR. The significant impacts to Air Quality arising from Project are associated with construction equipment and will be temporary in nature but will generate emissions of air pollutants. Estimated daily average construction emissions will remain below the thresholds of significance established by the South Coast Air Quality Management District with the exception of nitrogen oxide (NO<sub>x</sub>) emissions. The Project's construction-related NO<sub>x</sub> emissions, which are associated with hauling trips over long distances and the operation of heavy construction equipment on-site, will result in short-term, significant, unavoidable impacts to Air Quality. These impacts will be substantially reduced through the application of standard conditions, uniform codes, Project design features, and mitigation measures identified in the EIR, and will cease at the completion of construction activities. Nevertheless, these impacts remain significant. All feasible mitigation measures have been adopted. The changes or alterations required in, or incorporated into, the Project, and a brief explanation of the rationale for this finding with regard to the identified impacts, are contained in Exhibit A. Further explanation for these determinations may be found in Section 3.0 of the EIR.

Section 14 Based upon the EIR and the record before the City Council, the City Council finds that the Project's cumulative impacts are not significant. Further explanation for this determination may be found in Section 3.0 and Section 4.0 of the EIR.

Section 15 Section 5.0 of the EIR describes, and the City Council has fully considered, a reasonable range of alternatives to the Project. These alternatives include "Alternative 1 – Prior Version of the Project (Triangle Gateway)," "Alternative 2 – No Project Code-Conforming with Senior Housing," "Alternative 3 – Code-Conforming with Market Rate Housing," "Alternative 4 – No Project No Change to Project Site." The alternatives identified in the EIR either would not sufficiently achieve the basic objectives of the Project, would do so only with unacceptable adverse environmental impacts, or are not feasible. Accordingly, and for any one of the reasons set forth in Exhibit A, attached hereto and incorporated herein by this reference, or set forth in the EIR, the City Council finds that specific economic, social, or other considerations make infeasible each of the Project alternatives, including the three "No Project" alternatives, identified in the EIR, and each is hereby rejected. The City Council further finds that a good faith effort was made to incorporate alternatives into the preparation of the EIR, and that all reasonable alternatives were considered in the review process of the EIR and the ultimate decision on the Project.

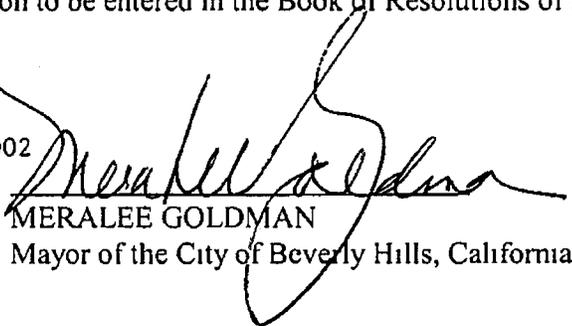
Section 16 For the short term Air Quality impacts identified in the EIR as "significant and unavoidable," the City Council hereby adopts the "Statement of Overriding Considerations" set forth in Exhibit B, which is attached hereto and is hereby incorporated by

reference The City Council finds that each of the overriding benefits, by itself, would justify proceeding with the Project despite any significant and unavoidable air quality impacts identified in the EIR

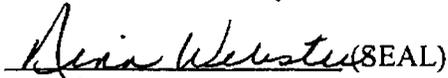
Section 17 The City Council hereby adopts the mitigation measures set forth in Exhibit C, attached hereto and incorporated herein by this reference and imposes each mitigation measure as a condition of Project approval The City Council further adopts the "Mitigation Monitoring Program" which is presented as Exhibit D, attached hereto and incorporated herein by reference City staff shall implement and monitor the mitigation measures as described in Exhibit D

Section 18 The City Clerk shall certify to the adoption of this resolution, and shall cause this resolution and her certification to be entered in the Book of Resolutions of the Council of this City

Adopted December 3, 2002

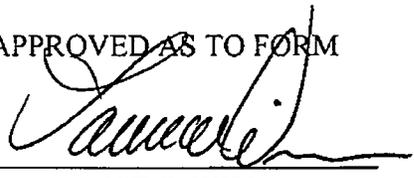
  
MERALEE GOLDMAN  
Mayor of the City of Beverly Hills, California

ATTEST

  
NINA WEBSTER (SEAL)  
City Clerk

[Signatures continue]

APPROVED AS TO FORM

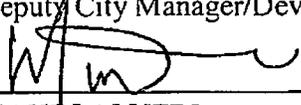


LAURENCE S WIENER  
City Attorney

APPROVED AS TO CONTENT



DAVID LIGHTNER  
Deputy City Manager/Development



MAHDI ALUZRI  
Director of Planning & Community Development

## EXHIBIT A

## Findings and Facts In Support Of Findings

## I Introduction

Pursuant the requirements of CEQA, the City Council hereby makes the following environmental findings in connection with the proposed construction of a mixed use development project consisting of a four-story, 39,975 square-foot office/retail building fronting Wilshire Boulevard with a height of 45 feet and a residential component comprised of 88 apartment units with modulated height up to a maximum height of five-stories and 60 feet on property generally located at 131-191 Crescent Drive/9355-9373 Wilshire Boulevard (the "Project"), as more fully described in Section 2 0 of the Environmental Impact Report dated July 15, 2002 (the "EIR") The Project includes requests for a planned development, amendments to an existing parking covenant, and a zoning code amendment establishing a mixed-use overlay zone over the project site These findings are based upon evidence presented in the record of these proceedings, both written and oral, the Environmental Impact Report (the "EIR") and all of its contents including, without limitation, the Initial Study, the Draft EIR, the Appendices, the Comments and Responses to Comments on the Draft EIR, and staff and consultants' reports prepared and presented to the Planning Commission and the City Council

## II Project Objectives

As set forth in Section 2 0 of the EIR, the objectives which the Project applicant seeks to achieve with this Project (the "Project Objectives") are as follows

- To develop luxury apartments,
- To develop high-quality office space in a prominent and visible location,
- To develop supporting retail space,
- To accommodate existing covenanted parking obligations to neighboring restaurant and office uses,
- To provide sufficient and convenient parking for on-site uses,
- To produce a development that is harmonious in scale and architectural style with the area, will not interfere with the enjoyment of residential properties in the vicinity, and is consistent with the General Plan, public interest and general welfare, and,
- To meet the objectives specified by the City Council in Resolution 1163 for any project on the site to provide an adequate transition between the business district and nearby residential uses to the east, by
  - Ensuring "that the scale and massing of the development is compatible to the character of Crescent Drive between Wilshire Boulevard and Santa Monica Boulevard (South Roadway) through appropriate height limits, modulation and upper-story setbacks,"

- Providing "pedestrian-friendly amenities at the street level and" providing "street setbacks that are consistent with the rest of the west side of Crescent Drive between Wilshire Boulevard and Santa Monica Boulevard (South Roadway),"
- Limiting "land use and density on the site to that which, in aggregate, will not create unmitigable significant traffic impacts on nearby residential streets unless there is an overriding public policy consideration that otherwise justifies approving the increased density or a more intense land use despite the traffic impacts,"
- Instituting "physical standards, such as alley setbacks, loading facility configurations, and turning radii to address deliveries and loading operations in a manner that minimizes impediments to vehicular circulation, and protects life and property,"
- Providing "that the zoning or any development proposed for the site include all nine lots between Wilshire Boulevard and Clifton Way and between Crescent Drive and the alley between Canon Drive and Crescent Drive to be treated in a unified manner "

### III Significant Environmental Impacts and Adopted Mitigation Measures

The EIR identified the potential for the Project to cause significant environmental impacts in the areas of Land Use and Planning, Aesthetics, Population and Housing, Public Services and Utilities, Transportation/Circulation (traffic), Air Quality, Noise, Geology and Hazards. With the exception of short term impacts to air quality discussed in Section IV below, measures were identified that would mitigate all of these impacts to a level of insignificance.

The City Council finds that the mitigation measures identified in the EIR are feasible and, with the exception of the short term air quality impacts identified in Section IV below, would reduce the Project's impacts to a level of insignificance. The City Council adopts all of the mitigation measures described in the EIR as conditions of approval of the Project and incorporates those into the Project.

#### A Land Use, Plans and Policies

##### 1 Potential Impacts

Section 3.1 of the EIR identifies the potential for long term significant impacts to land use resulting from the Project's potential inconsistency with the General Plan and the increased intensity of the proposed land use. These potential impacts result from the creation of a new Mixed-Use Planned Development Overlay Zone which would increase the allowable density on the Project site and the introduction of a more intense land use to the Project site. These potential impacts were analyzed in detail in Section 3.1 of the EIR at pages 3-2 through 3-14, inclusive.

## 2 Findings

No mitigation is required since the Project will not have a significant impact on land use plans or policies. The requested zoning code amendment is consistent with the intent of the City's General Plan and will have a less than significant impact on the environment, further, the intensity of the land use proposed by the Project was anticipated by the General Plan and the increase in intensity over the existing use of the Project site is minor and will have a less than significant impact on the environment.

## 3 Facts in Support of Findings

a Zoning code amendment The Project includes a request for a zoning code amendment to create a new Mixed-Use Planned Development Overlay Zone. Although the proposed overlay zone will permit higher intensity development, it is consistent with the General Plan Land Use Element. The General Plan Land Use Element designates the majority of the Project site (the eight lots that front along Crescent Drive) as a Transitional Use District, while the Wilshire Boulevard frontage is designated Low Density Commercial. The Transitional Use District designation permits multiple-family residential and commercial parking uses, the Low Density Commercial designation permits commercial uses with a maximum floor area ratio of 2.0 and a maximum height of 45 feet. The requested overlay zone does not authorize new land uses. Rather, the proposed overlay zone will modify existing development standards applicable to the project site, including density and height limits.

The requested increases are consistent with the general density and height limits anticipated by the General Plan. Moreover, the Project implements several of the stated goals of the General Plan. Specifically, the Land Use Element sets forth a goal to "recommend that certain anchor locations be set aside to permit development of a higher intensity development which is not otherwise provided in the community." The Land Use Element further provides that such anchor locations "should encourage unified development oriented towards and along Wilshire Boulevard planned to complement the scale and character of adjacent residential areas" and "should incorporate measures to enhance streets, sidewalks and roadways in order to encourage pedestrian circulation between these areas and the Business Triangle." The Project provides an opportunity to construct a quality mixed-use development that would not otherwise be encouraged by the underlying zone. The project site is located on an important site at the tip of the Business Triangle. The development of this site will set the tone for the rest of the Wilshire corridor and the Business Triangle. The planned development provides for sufficient floor area to allow construction of a commercial building that includes high quality amenities and high quality architectural design. Moreover, the Project provides an opportunity for the City to improve the circulation and pedestrian flow between the retail activity in the City's central business district (the "Business Triangle") and the commercial areas along Wilshire Boulevard (the "Wilshire Corridor"). The Project design will contribute to the urban design amenities that will serve as a visual and pedestrian link between the Wilshire Corridor and the Business Triangle. The Project's lower height along Crescent Drive and pedestrian friendly

landscaping will complement the scale of residential areas across Crescent Drive and will encourage pedestrian circulation from the residential areas and Wilshire Boulevard to the business triangle

Additionally, the proposed overlay zone will establish standards for mixed commercial/residential development, a stated goal of both the Land Use Element and the Housing Element of the General Plan. The proposed overlay zone also provides a transitional buffer between the commercial uses of the Business Triangle and the residential uses along the east side of Crescent, thereby promoting the Land Use Element goal to mitigate "[t]ransitional conflicts resulting from the juxtaposition of commercial and residential uses through a program which would provide adequate buffers between conflicting uses," and furthers Objective 4.3 of the Housing Element by "to expand the variety of housing product available in the City." The Project, as revised and approved, will further this goal by providing a buffer between the residential uses situated along the east side of Crescent Drive and the more intense commercial uses of the Business Triangle to the west. The Project, though slightly larger in scale than the residential uses on the east side of Crescent Drive, is comparable in scale and mass to adjacent development on the west side of Crescent Drive. The design of the residential component concentrates the height and mass of the building away from Crescent Drive and against the alley, thereby shielding surrounding development on Crescent Drive from the intrusive effects of the commercial uses along Canon Drive. Moreover, the residential nature of the use is comparable in intensity and harmonious with nearby residential development. Implementation of the Project will remove the possibility for other potentially more intrusive development on the site and will help preserve the existing character of the neighborhood to the maximum extent feasible.

Finally, the proposed zoning code amendment requires that all development under the proposed overlay zone must be approved through a planned development. The review process to obtain a planned development approval creates a built-in safeguard that requires the proposed Project and all other projects in the zone, to be consistent with the General Plan as well as the Zoning Code.

Thus, the proposed zoning code amendment is consistent with the General Plan and will not have significant effects on the environment.

b. Increased land-use intensity The Project site is currently developed with a two-story commercial building with a floor area of approximately 20,900 square feet and a 244-space surface parking lot. The project site encompasses an entire block (9 lots), located between the Business Triangle to the west, multi-family residential, office uses and a mini-park to the east, mixed retail uses, including a surface parking lot with an entitlement for senior housing, to the north, and commercial uses to the south along Wilshire Boulevard. The current zoning designation permits the proposed commercial and residential/parking uses proposed on the Project site. Moreover, the Zoning Code provides a review process for planned developments to regulate the intensity of development. Although the Project represents a more intense use when compared to the Project site's current condition and the development standards for the underlying zones, no intensification of land use or operation character above that which is provided for the project site in the General

Plan is anticipated. The proposed land use is consistent with the General Plan and will not have significant effects on the environment.

B Aesthetics

1 Potential Impacts

Section 3.2 of the EIR identifies the potential for significant impacts to aesthetics in the form of long term impacts to existing viewsheds, alteration of the visual character of the site, and creation of new sources of light and glare as well as shade and shadow. Development of the Project will permanently alter the existing view from neighboring properties and will clearly change the visual character of the site. Additionally, the Project will add new sources of light and glare to the environment and will create a new source of shade and shadow. These potential impacts were fully analyzed in Section 3.2 of the EIR at pages 3-15 through 3-42, inclusive.

2 Findings

Through the incorporation of project design features and/or the compliance with applicable City codes, the Project will avoid or substantially lessen any significant effects.

3 Facts in Support of Findings

a Alteration of views Development of the Project will alter views of and across the Project site from surrounding properties. However, the City Council finds that this impact will be less than significant. The Project site is currently developed with a two-story, 20,900 square foot commercial building fronting Wilshire Boulevard and a 244-space surface parking lot. The site does not lie within a scenic corridor and limited vistas are visible in the immediate project vicinity. Views of the project site are limited because of the urban nature of the surrounding area and are partially obstructed by existing buildings in the vicinity. Views across the project site are primarily from the residential areas north and east, and these views are obstructed within two or three blocks by the high-rise structures along Wilshire Boulevard. The Project will create views of landscaped areas and architectural facades consistent with adjacent development and will not impair any designated viewshed or introduce a visual incongruity with surrounding land uses. The alteration to existing views will not have a significant impact on adjacent land uses.

b Alteration of visual character Construction and development of a mixed use development project consisting of a four-story, 45-foot tall office building fronting Wilshire Boulevard and an 88-unit apartment complex with modulated height fronting Crescent Drive will permanently alter the visual character of the site. The impacts will be both short term and long term in nature. Short term impacts are expected to occur during the construction phase due to demolition of existing structures, site grading and construction activities which will include, among other things, exposed soil, dirt storage, and staging areas for various construction activities on site. This short-term condition would create a temporary visual distraction typically associated with construction.

activities. The City has standard conditions related to construction which require barriers to be installed around the site to screen construction activities. Given the short term nature of the construction impacts and the screening requirements, the short-term impacts to visual character will not be significant.

The Project includes construction of a 45-foot tall, four-story office building and an 88-unit apartment complex with modulated height. The architectural quality of the Project is visually compatible with surrounding development. The proposed structures will comply with the City's development codes, as amended by the requested zoning code amendment, and will be visually similar in mass, scale and form to the structures to the north, east and west of the site. The commercial building complies with the 45-foot height limit along Wilshire Boulevard and is similar in height and visual mass to nearby commercial development. While the residential component of the Project is 60 feet in height at its highest point, the height and mass of the building is concentrated away from Crescent Drive. The residential building forms an "E" with the spine along the alley at the west side of the site and the legs extending toward Crescent Drive. The green space atop the roof of the parking structure creates the voids between the legs of the "E" and substantially reduces the mass of the building as viewed from the street. The top story is stepped back from Crescent Drive approximately 35 feet so that it appears one story lower from the street. The proposed architectural treatments, setbacks (including upper floor setbacks), modulation, architectural ornamentation, and landscaping reduce the perceived mass of the structure as viewed from the street and make the Project more harmonious with existing development in the vicinity. The Project is comparable in scale and mass to other existing and proposed structures on the west side of Crescent Drive. The expansive, landscaped setback along the Crescent Drive frontage further softens the mass and scale of the structure. Further, the project's building facade, architectural details and landscaping are subject to review and approval by the Architectural Commission. Thus, the alteration of the visual character of the site will not result in a significant impact.

c. Light/Glare The Project site is currently developed with a two-story, 20,900 square foot commercial building fronting Wilshire Boulevard and a 244-space surface parking lot. Development of the Project will create general nighttime building lighting, security lighting, and landscape lighting not currently present at the site. This lighting will be detectable from surrounding sites. This impact will be reduced by the incorporation of both Project design features and compliance with Sections 5-6 1101 and 10-3 314 of the Beverly Hills Municipal Code. These provisions will minimize light impacts and prevent "spillover" onto surrounding properties. Furthermore, the materials proposed for the Project (stucco) will not result in sunlight reflection that will adversely affect neighboring properties. Accordingly, light and glare impacts from the Project will be less than significant and no mitigation is necessary.

d. Shade/Shadow Construction of a new four-story building and a five-story, 60-foot tall apartment complex on the project site will generate new shade and shadow in the area. A shadow analysis conducted by the Independent Consultant retained to prepare the EIR concluded that the proposed Project will cast minimal shadows during the spring, summer and fall, with the longest afternoon shadows falling across the front portions of some buildings along the east side of Crescent

Drive Even during winter months, when the Project will cast the longest shadow, the impact to surrounding residential development is minimal. Although the Project will cast shadows that extend easterly of the mid-block between Crescent Drive and Rexford Drive, these shadows are less than the shadows cast by existing buildings along Crescent Drive. The Project does cast a new shadow over the mini-park on the east side of Crescent Drive. However, the Project's actual impact on the park is minimal since the park is already heavily shaded by mature vegetation. Therefore, no significant shade or shadow impacts will be associated with the Project.

## C Population and Housing

### 1 Potential Impacts

Section 3.3 of the EIR examines the Project's potential to cause significant impacts to the City's population or housing stock. Development of the Project will create 141 new jobs and add 88 new rental units to the City's housing inventory. Therefore, the Project has the potential to result in additional population growth. These potential impacts were analyzed in detail in Section 3.3 of the EIR at pages 3-43 through 3-50, inclusive.

### 2 Findings

No mitigation is required since the Project will not have a significant impact on population or housing. The Project-related growth in employment and housing falls well within forecasted increases and, therefore, would not result in substantial growth.

### 3 Facts in Support of Findings

A proposed project may have a significant impact on population and housing if it induces substantial population growth in an area either directly (by proposing new homes and businesses) or indirectly (through the extension of roads or infrastructure), displaces substantial numbers of existing housing, or displaces substantial numbers of people. The project site is currently developed with a two-story, 20,900 square foot commercial building and a 244-space surface parking lot. The Project will displace the businesses and jobs in the existing commercial building. However, because the Project will replace and add commercial space, the Project will result in a net increase of 141 employees. The Southern California Association of Governments ("SCAG") projects that the number of employees in Beverly Hills will increase by 1,774 employees by the year 2005. The Project-related increase would represent eight percent (8%) of this total and is consistent with anticipated growth for the City. Thus, the project's creation of employment positions will not result in substantial population growth. In addition, the Project will add 88 market-rate housing units to the City. SCAG estimates that by 2005 the City will need an additional 256 housing units, including 139 market-rate units. The Project will not displace either existing housing or zoning for housing. To the contrary, the Project would assist the City in meeting its projected housing needs over the current five-year planning period. Since the additional housing is consistent with forecasted needs,

and would meet the City's housing element goals, the project's housing generation will not result in substantial population growth and the amount of growth generated will be positive, not adverse. Thus, the Project's impacts to population and housing will be less than significant.

D Public Services and Utilities

1 Potential Impacts

The Initial Study indicated that the Project has the potential to cause significant impacts in the areas of fire protection, police protection, schools, parks and solid waste disposal. These potential impacts are fully analyzed in Section 3.4 of the EIR at pages 3-51 through 3-61, inclusive.

2 Finding

Compliance with standard conditions and uniform codes and the implementation of the mitigation measures identified in the EIR, the Project will avoid or substantially lessen the significant effects on the environment and reduce these potential impacts to a less than significant level.

3 Facts in Support of Finding

a Fire and police services The Project involves the construction of a 39,975 square foot commercial building and an 88-unit apartment complex, which would increase both the daytime and nighttime populations of the area. This increase could potentially place a greater demand on fire and police services within the area. The addition of project-related traffic to local streets could further increase response times during peak hours. However, the potential increase would be similar in nature to the existing demand for these services in the general area. The small amount of growth from the Project will neither create the need for additional facilities nor increase response times to the extent that they would compromise public health or safety. Accordingly, the Project will result in less than significant impacts on fire and police services.

b Schools The Project includes 88 new multi-family residential units and is expected to generate 36 new students which must be matriculated into the City's schools. The existing capacity in area schools is more than sufficient to accommodate the project-related increase in students. The Project will not result in the need to construct additional facilities. Moreover, the Project will be required to pay school impact fees in accordance with the most current rate schedule adopted by the school district. The school impact fees will be used to assist the school district in meeting the incremental costs associated with expanded enrollment. The project's impacts on area schools are, therefore, expected to be less than significant.

c Parks The proposed Project is expected to add an additional 197 residents to the City. The proposed Project will place additional demands on the City's parks. However, the City

has adopted a park and recreation tax on development to insure that additional development will pay the cost of meeting additional demand upon the City's existing park facilities and programs. The Project will be required to pay that tax. Additionally, the Project is required to provide 17,600 square feet of outdoor living area to serve the recreational needs of its residents. The project far exceeds this requirement, providing 19,595 square feet of outdoor living areas and a total of 29,775 square feet of open space (including landscaped setbacks along Crescent Drive). With the payment of the park impact fees and the provision of outdoor living space described above, the Project will have a less than significant impact on the City's parks.

d Solid waste disposal The Project will increase the amount of solid waste generated by the site. The Project will generate an estimated 592 pounds of waste per day. The Puente Hills Landfill, which accepts the City's solid waste, can accept as much as 13,200 tons of solid waste per day. In addition, the Project will be required to develop and implement a Solid Waste Management Plan to ensure that the Project includes measures consistent with the City's AB939 waste reduction requirements. With implementation of the identified mitigation, the solid waste generated by the Project will not significantly affect the life expectancy of the Puente Hills Landfill. Therefore, the Project's impact on solid waste services would be less than significant.

E Transportation/Circulation

1 Potential Impacts

The traffic study prepared in connection with the EIR identifies the potential for significant traffic impacts due to increased traffic congestion at local intersections, increased traffic volumes on adjacent residential streets, the effect of the Project on Congestion Management Program (CMP) compliance, increased parking demand on local streets, effect of commercial loading and delivery activities on the operation of adjacent business and residences, on-site circulation and access impacts and short-term traffic and parking impacts associated with construction activities. These potential impacts are fully analyzed in Section 3.5 of the EIR at pages 3-62 through 3-88, inclusive.

2 Findings

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen project-related traffic impacts.

3 Facts in Support of Findings

a Increased traffic congestion at local intersections Although the proposed Project will generate more traffic than existing uses on site, the project will not result in significant impacts at any intersection. The traffic analysis studied ten signalized intersections in the vicinity of the project site. Five of the signalized intersections studied will be significantly impacted by cumulative development even without the Project. While Project traffic will contribute to an incremental worsening of the significant impacts at these five intersections, the traffic analysis concluded that

the Project's contribution to these impacts would not be considerable and, thus, is not significant. Conditions at all ten intersections studied will be essentially the same with or without the Project. In addition, all three of the unsignalized intersections studied will continue to operate at acceptable levels of service after implementation of the Project. No mitigation is required since the Project will not result in significant impacts to local intersections.

b. Congestion Management Program Compliance Cumulative development would result in a significant unmitigated impact to the intersection of North Santa Monica Boulevard and Wilshire Boulevard which is designated as a CMP intersection under the Los Angeles County CMP. Although the Project would add additional traffic to this intersection, the project's contribution to this cumulative impact would not be considerable since the Project's contribution would be well below the threshold of significance established under the CMP. As with the local intersections discussed above, conditions would essentially be the same with or without the proposed Project. The Project's contribution to these significant cumulative impacts is thus *de minimus* and no mitigation is required. The proposed Project will create 1,284 debits under the CMP. Cumulative development in the City is anticipated to generate an additional 7,953 debits. However, the City currently has a CMP credit balance of 20,800 credits. Thus, the combined debits generated by the proposed Project, in combination with anticipated cumulative development, is less than significant. No mitigation is required since the Project will not have a significant impact on CMP compliance.

c. Neighborhood traffic impacts Development of the Project will result in increased traffic volumes on residential streets in the Project vicinity. The traffic analysis set forth in the EIR demonstrates that this will not be significant on any residential street in the vicinity of the Project. Thus, the Project's impacts on neighborhood traffic will be less than significant and no mitigation is required.

d. Parking impacts The Project will displace 244 parking spaces of which 192 are under covenant to Spago Restaurant and a Coldwell Banker real estate office. The proposed Project will provide a total of 534 parking spaces within a four and one-quarter level parking garage under the residential component. The 534 parking spaces provided will replace the 192 covenanted parking spaces and fully satisfy the Beverly Hills Municipal Code parking requirements for the proposed Project. Moreover, the parking required by the Beverly Hills Municipal Code exceeds the parking rates recommended by the Institute of Traffic Engineer's by 136 spaces. The potential impacts created by the use of tandem spaces in the parking structure will be mitigated by requiring that a parking management plan for the Project be reviewed and approved by the Director of Planning prior to the issuance of occupancy permits for the Project. The Director shall review the plan to ensure the effective use of tandem parking by (1) restricting such parking to tenants, rather than visitors, and/or (2) by requiring the use of commercial tandem parking spaces by employees of the same organization, and/or (3) by providing for an attendant service to move cars, and/or (4) by specifying some other method acceptable to the Director. The Parking Management Plan shall also provide for weekend use of commercial/office parking by non-project users to accommodate overflow public parking needs in the area. The temporary loss of on-site parking during construction will be mitigated by requiring a comprehensive construction parking and hauling plan to be reviewed.

and approved by the Directors of Planning and Building & Safety prior to the issuance of building permits for the Project. Said plan shall make adequate provisions to obtain off-site parking within 500 feet of the project site to satisfy the parking needs generated by the covenanted parkers and construction workers. With the provision of substitute parking, there will be no impacts to traffic and air quality as a result of the loss of parking and any inconvenience to parkers will be minimized. With implementation of these mitigation measures, the parking impacts associated with the Project will be less than significant.

e. Commercial delivery and loading impacts The Project will include a loading bay at the southerly end of the alley to accommodate commercial deliveries. Loading dock operations may cause a potential conflict with pedestrians along Wilshire Boulevard and could impair circulation in the alley during the p.m. peak hours. This potential conflict will be mitigated by requiring the Project operator to install signage in the alley in the vicinity of the loading area clearly directing delivery trucks to pull as far south as possible so that a second truck can access the northerly loading space without protruding into the pedestrian pathway along Wilshire Boulevard. The Project operator shall further be required to implement the following restrictions on the use of the loading area and alley: (1) two trucks of greater than 30 feet shall be prohibited from using the loading area at the same time, and (2) commercial vehicles other than small vans (e.g. couriers) shall be prohibited from using the loading area between the hours of 4:00 p.m. and 6:00 p.m. Monday through Friday. The Project operator will further be required to designate an employee to monitor the loading area and deliveries to ensure compliance with the foregoing restrictions. With implementation of these mitigation measures, the loading impacts associated with the Project will be less than significant.

f. On-site Circulation Impacts Project access is provided via four driveways – two on Crescent Drive and two on the southbound alley between Canon Drive and Crescent Drive. Both alley driveways will be dedicated for use by the commercial tenants and covenanted parkers and entry will be restricted by key-card access. The northernmost driveway on Crescent Drive will serve the residential component of the Project, while the southerly driveway will serve the commercial component. Circulation and access issues associated with the commercial component are anticipated to be less than significant. The design of the motor court on the residential component has the potential to result in significant circulation impacts because of the small turning radius. This potential impact will be mitigated by requiring the Project applicant to modify the design of the motor court to correct this deficiency prior to the issuance of grading and construction permits for the Project. With implementation of these mitigation measures, the Project's on-site circulation impacts will be less than significant.

## F. Air Quality

### 1. Potential Impacts

The Air Quality Impact Analysis identifies the potential for significant short-term impacts resulting from air pollutants generated by NO<sub>x</sub> emissions from on-site equipment related to

construction activities and long-term impacts resulting from operational emissions from both stationary sources and mobile sources. These potential impacts are fully analyzed in Section 3.6 of the EIR at pages 3-89 through 3-102, inclusive.

## 2 Findings

Changes or alterations have been required in, or incorporated into, the Project which substantially lessen the air quality impacts listed above, and will avoid certain effects caused by the Project. Nevertheless, impacts from NO<sub>x</sub> emissions will remain significant after adoption of all feasible mitigation and specific economic, legal, social, technological, or other considerations make infeasible the alternatives identified in the EIR. These considerations are described further in Section IV of this Exhibit A.

## 3 Facts in Support of Findings

a Construction-related impacts Construction activities will result in the generation of air pollutants. Construction-related emissions would primarily be due to (i) dust generated from earthmoving, excavation and other construction activities, (ii) exhaust emissions from construction equipment, and (iii) motor vehicle emissions associated with construction activity. Analysis of the construction emissions indicates that all emission levels will remain well below established thresholds except for NO<sub>x</sub> emissions. Based on the analysis set forth in the EIR, these emissions will be substantially reduced by implementation of standard conditions, uniform codes, Project design features, and mitigation measures identified in the EIR, and will cease at the completion of construction activities. Nevertheless, these impacts remain significant. All feasible mitigation measures have been adopted. The City Council rejects, as infeasible, the potential mitigation measure of extending the construction period to reduce daily NO<sub>x</sub> emissions below SCAQMD thresholds. The extension of construction will not reduce total Project emissions, but merely reduce the daily average of NO<sub>x</sub> emissions. Thus, this mitigation does not provide a long term environmental benefit. Furthermore, the social cost of this mitigation is longer exposure of nearby residents and businesses to construction impacts. The City Council finds that it is socially unacceptable to expose nearby residents and businesses to a longer period of disruption from construction impacts in order to reduce the daily average of emissions, but not total emissions. Thus, this mitigation measure is infeasible for social reasons.

b Operational impacts Operational emissions generated by the Project were estimated using URBEMIS7G, a computer program developed by the California Air Resources Board for estimating emissions generated by land use projects. Pursuant to the computer generated results, total operational emissions for the Project will remain significantly below established thresholds and, therefore, will not create a significant impact on air quality. Accordingly, the Project will not have a significant impact on long term air quality and no mitigation is necessary.

G Noise

1 Potential Impacts

The Noise Impact Analysis identifies the potential for significant noise impacts during construction from construction equipment (earth-moving equipment such as backhoes, bulldozers, pile drivers, skip loaders, fork lifts, horizontal drill rigs, concrete mixers, concrete pumps, tower cranes, and other equipment) and long-term impacts from the addition of Project traffic and from Project operations. These potential impacts are fully analyzed in Section 3.7 of the EIR at pages 3-103 through 3-115, inclusive.

2 Finding

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant noise impacts. Implementation of the identified mitigation measures and design changes will reduce noise impacts to a less than significant level.

3 Facts in Support of Finding

a Construction noise impacts Project construction will generate high noise levels intermittently on-site and on adjacent properties during construction. Noise levels will fluctuate depending on the construction phase, the equipment used, and the duration of the activity. Distance between the noise source and the receptor will also impact noise. Construction related noise will be short-term in nature. Compliance with the City's noise ordinance will reduce the Project construction-related noise impacts to the greatest extent feasible. In addition, construction related noise will be further mitigated by prohibiting the use of heavy equipment before 8:00 a.m. daily and restricting pile driving activities (if necessary) to between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday. Potential construction related noise impacts along residential streets will be mitigated by requiring construction vehicles to abide by a Construction Haul Route Plan to be reviewed and approved by the Directors of Building and Transportation prior to the issuance of building permits for the Project. Said plan shall provide for construction haul routes that avoid the use of residential streets. With implementation of these mitigation measures, the Project's construction-related noise impacts will be less than significant.

b Operational noise impacts Most noise generated by implementation of the Project will be traffic-generated noise. Traffic noise levels associated with the Project were estimated using the Federal Highway Administration's Highway Traffic Noise Prediction Model. The analysis identified no perceptible increase in noise levels associated with Project traffic and, therefore, the Project traffic will not create a significant noise impact. Compliance with required noise standards for on-site mechanical equipment will mitigate any potential noise impacts from mechanical operations to a less than significant level. Compliance with applicable building codes will ensure that exterior to interior noise impacts to Project residents are less than significant.

## H Geology

### 1 Potential Impacts

Section 3.6 of the EIR identifies the potential for significant impacts resulting from faulting and seismicity (which includes ground rupture, ground shaking, seismically induced ground failure or liquefaction, seismically induced compaction and ground lurching) and from soil and slope instability and erosion caused by Project grading and excavation. These potential impacts are fully analyzed in Section 3.6 at pages 3-116 through 3-127, inclusive.

### 2 Finding

Changes or alterations have been required in, or incorporated into, the Project which mitigate or avoid the significant effects on the environment and reduce these impacts to a less than significant level.

### 3 Facts in Support of Finding

a. Ground rupture Available geotechnical data suggests that the potential for surface rupture at the project site is very low. However, to mitigate any potential ground rupture impacts, the Project applicant will be required to have a state-licensed geologist perform geophysical surveys and a series of subsurface tests to ascertain the potential subsurface faulting and to incorporate any recommended mitigation measures to reduce risks associated with subsurface faulting into the design of the Project. With implementation of these mitigation measures, the Project's impacts from subsurface faulting will be less than significant.

b. Ground Shaking Due to the proximity of the site to active faults, the project site is likely to experience strong ground movement. However, compliance with mandatory local and state building codes is expected to achieve the greatest seismic safety feasible and reduce seismic risk to acceptable levels. Accordingly, the Project's impacts from seismically induced ground shaking will be less than significant.

c. Liquefaction/Landsliding The project site does not lie within a seismic hazard zone as defined by the Seismic Hazards Mapping Act. Neither liquefaction nor landslides are expected to occur on the project site. Therefore, impacts due to liquefaction or landsliding will be less than significant.

d. Expansive Soils On site soils have moderate shrink swell capacity. State and local building codes anticipate hazards associated with expansive soils and require appropriate building design. The Project applicant will be required to conduct a soil test under the applicable provisions of state and local law before a building permit is issued for the Project. Based on the results of the soil test, the Project applicant will be required to design the Project's footings/foundation to meet established standards for the specific soil conditions present on the

project site. Compliance with these building code provisions will ensure that Project impacts due to soil conditions will be less than significant.

## I Hazards and Hazardous Materials

### 1 Potential Impacts

Section 3.9 of the EIR analyzes the Project's potential to cause significant impacts on human health from hazards that could result from project construction and operation, including hazards associated with exposure to hazardous materials used, generated, stored, or transported as a result of the Project and the project site's proximity to potential sources of hazardous materials. These potential impacts are fully analyzed in Section 3.9 at pages 3-128 through 3-134, inclusive.

### 2 Finding

Changes or alterations have been required in, or incorporated into, the Project which mitigate or avoid the significant effects on the environment and reduce these impacts to a less than significant level.

### 3 Facts in Support of Finding

a Building Demolition There is no data to suggest that prior on-site uses have generated or used hazardous materials that have resulted in any soil contamination at the project site. However, there is a potential that the existing commercial structure on the site, which will be demolished to implement the Project, could contain asbestos, lead, PCBs or other hazardous substances. To mitigate any potential impacts from the presence of such hazardous substances, the Project applicant will be required to have an environmental assessor approved by the City test the structure for Asbestos Containing Building Materials (ACBM), PCBs, lead or other hazardous substances prior to the issuance of demolition permits for the Project. If any hazardous substances are detected, the Project applicant will be required to retain qualified environmental experts to supervise the removal and disposal of such substances. With implementation of these mitigation measures, the Project's impacts associated with building demolition will be less than significant.

b Construction impacts Construction activities on the project site such as soil excavation, loading activities, movement of construction equipment and pile driving could generate fugitive dusts that become airborne. To ensure that construction dusts generated by such activities do not impact nearby populations, the Project will be required to comply with all applicable state and local regulations to control dust, including daily watering of exposed soils, covering soil piles, and halting excavation and grading activities during windy conditions. In addition, any potential impacts from the use of various products such as paints, solvents, glues and cements will be reduced to less than significant levels through compliance with California General Construction Activity Storm Water Permit requirements and Best Management Practices. Compliance with these standard practices will ensure that the Project's construction-related impacts are less than significant.

c Operational impacts The proposed Project includes residential and commercial office uses. Hazardous materials that would be used, stored or transported in connection with these uses will be limited to commercial and household-type maintenance products. The proposed Project will not include any use that involves the use of large quantities of hazardous materials. Therefore, impacts associated with operation of the proposed Project would be considered less than significant.

d Unidentified subsurface hazards Although the history of on-site use at the Project site does not suggest the existence of previously unidentified subsurface hazardous substances, to ensure that the Project does not have a significant impact as the result of the presence of such a substance, the Project applicant will be required to prepare and submit a Construction Risk Management Plan (the "CRM Plan") to the Director of Public Works for review and approval prior to issuance of any demolition or construction permits for the project. The CRM Plan shall incorporate the recommendations of an environmental assessor's report and shall identify procedures for identifying any hazardous materials that may be encountered during construction. If materials that could present a threat to human health or the environment are discovered, construction in that immediate area shall cease immediately until appropriate standard remedial action has been taken. With implementation of these mitigation measures, the Project's impacts associated with the presence of unidentified hazardous substances will be less than significant.

#### IV Significant and Unavoidable Environmental Impacts

##### A Impacts that Cannot Be Mitigated to a Level of Insignificance

The EIR identified one impact as potentially significant and unavoidable. Based on the information provided in the EIR and the record of decision, the City Council finds that this impact can be mitigated to some degree, but that such mitigation would not reduce the impacts to a level of insignificance and further mitigation is infeasible. Therefore, as required by Section 21081 of CEQA, and as shown below in more detail, the City Council finds that specific economic, legal, social, technological, or other considerations make infeasible any alternatives identified in the EIR. The significant and unavoidable impacts of the Project are described below, along with measures that would partially mitigate the impacts.

##### Air Quality

The temporary air quality impacts generated during construction will remain significant with respect to NO<sub>x</sub> emissions even after implementation of feasible mitigation and compliance with mandatory code requirements and adopted standards. These impacts will cease at the completion of construction activities.

##### B Additional Impacts Which May Not Be Fully Mitigated

The City Council finds that all feasible mitigation measures have been applied, and that based on the record before the City Council all significant impacts will be mitigated to a level

of insignificance except for temporarily significant air quality impacts resulting from construction. In the event that any other environmental impact identified in the EIR cannot, through full compliance with mitigation measures imposed herein, be fully mitigated over time, the City Council finds that specific economic, legal, social, technological, or other considerations make infeasible any additional mitigation measures or alternatives identified in the record and that the Statement of Overriding Considerations adopted concurrently herewith applies with equal force and effect to such impacts.

## V Project Alternatives

The alternatives identified in the EIR either would not sufficiently achieve the basic objectives of the Project or would do so only with unacceptable adverse environmental impacts. Accordingly, and for any one of the reasons set forth herein or in the EIR, the City Council finds that specific economic, social, or other considerations make infeasible each of the Project alternatives, including the "No Project - No Changes to the Project Site" alternative (Alternative 4), identified in the EIR, and each is hereby rejected. The City Council further finds that a good faith effort was made to incorporate alternatives into the preparation of the EIR, and that all reasonable alternatives were considered in the review process of the EIR and the ultimate decision on the Project.

CEQA requires agencies reviewing the environmental impacts of a project to consider a range of reasonable alternatives (CEQA Guidelines Section 15126(d), 14 Cal Code of Reg § 15126(d)). The range of alternatives considered in an EIR should include those which can feasibly attain most of the basic objectives of the project. As defined by CEQA, "feasible" means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors" (CEQA Guidelines Section 15365, 14 Cal Code of Reg § 15365).

The EIR analyzed a total of four alternatives to the proposed Project. The alternatives considered were "Alternative 1 - Prior Version of Project," "Alternative 2 - No Project Code-Conforming With Senior Housing," "Alternative 3 - No Project Code Conforming with Market Rate Housing," and "Alternative 4 - No Project No Changes to the Project Site."

Alternative 1 would consist of a commercial building comprised of 4,106 square feet of retail space, 110,918 square feet of office space, 36,522 square foot supermarket, and 737 parking spaces in a subterranean structure. Alternative 2 would construct a 60-foot tall, 140-unit senior housing project on the RMCP-zoned Crescent lots with an approximately 29,000 square foot market on the ground floor and a 30,468 square foot office building on the Wilshire parcel. This alternative would conform to all code requirements and would not require the zoning code amendments requested by the Project. Alternative 3 would include development of a new 28-foot tall, 66-unit condominium complex on the Crescent parcels and a 3-story, 45-foot tall commercial building on the Wilshire parcel with 10,000 square feet of retail space and 20,000 square feet of office space. This alternative would not require the zoning code amendments requested by the Project. Alternative 4 would leave the site in its existing condition.

The City Council has carefully considered the attributes and environmental impacts of all of the alternatives analyzed in the EIR and has compared them with those of the proposed Project. As required by CEQA, the City Council finds that each of the alternatives is infeasible for various environmental, economic, technical, social and other reasons set forth below. The Project as proposed represents the combination of features that, in the City Council's opinion, best achieves the Project's objectives while minimizing environmental impacts.

A Alternative 1 – Prior Version of Project

1 Summary of Alternative

Under Alternative 1 the previously proposed Triangle Gateway Project would be constructed. This alternative entails construction of a commercial building comprised of 4,106 square feet of retail space, 110,918 square feet of office space, 36,522 square foot supermarket, and 737 parking spaces in a subterranean structure. This alternative was included in the EIR to allow the City Council to compare the scope and effect of the proposed Project against the previous proposal for the project site.

2 Reasons For Rejecting Alternative

Alternative 1 would avoid few of the impacts associated with development of the Project on adjoining properties. Like the Project, Alternative 1 requires a zoning code amendment to create a new C-3P zone (a variation of the C-3 zone). The C-3 P Zone would apply to the entire site and would authorize new, more intense uses for the eight lots fronting Crescent Drive which are currently zoned RMCP. Unlike the Project, Alternative 1 would also require a General Plan Amendment and authorization to reverse the direction of the alley between Wilshire Boulevard and Clifton Way. Although Alternative 1 would result in a building with less overall height and building mass, the smaller setbacks and less street-level landscaping provided by this alternative make it less pedestrian-friendly than the proposed Project. This alternative would result in greater employment growth than the Project and would not provide additional housing. This alternative would have similar impacts on public services and utilities to the Project. Alternative 1 would generate more than four and one-half (4½) times the traffic associated with the Project and would result in significantly greater traffic impacts on local streets, some of which would be unmitigable. This alternative would result in slightly greater impacts to air quality and noise and would have comparable geology impacts.

Although Alternative 1 would produce a development of less overall mass, thus mitigating one impact of concern raised by those commenting on the Project, it would conflict with the City's General Plan and zoning designation for the site, and it fails to achieve the Project's objective to develop luxury apartments and the City's stated goal to provide an adequate transition between the Business Triangle and the adjacent residential uses along the eastside of Crescent Drive. Moreover, Alternative 1 would produce a development that is incompatible with surrounding development, both in style and intensity of use, and would impair the harmonious development of

the area. Finally, Alternative 1 would be environmentally inferior because it would have significantly greater traffic impacts, which the City Council finds unacceptable.

For any one of these reasons, the City Council has determined Alternative 1 to be infeasible.

B Alternative 2 – No Project Code-Conforming With Senior Housing

1 Summary of Alternative

Alternative 2 would involve development of a 30,468 square foot office building on the portion of the site zoned C-3. The portion of the site zoned RMCP would be developed with a 60-foot tall senior housing project with a 29,000 square foot market on the ground floor. This alternative was considered as a “No Project” alternative because it is a reasonable consequence of not proceeding with the Project. Given the location of the site, it is reasonable to assume that some development will occur.

2 Reasons For Rejecting Alternative

Alternative 2 would be consistent with the intent of the General Plan and Zoning Code and would not require any amendments to either document. Alternative 2 would be comparable in scale and mass to the proposed Project and would introduce similar building heights on the respective parcels. Therefore, Alternative 2 would be expected to have the same visual and view impacts as the Project. However, Alternative 2 is less pedestrian-friendly than the Project and would not provide the same opportunity to foster the General Plan’s goal to improve the circulation and pedestrian flow between the retail activity in the Business Triangle and the rest of the Wilshire corridor. Like the Project, this alternative will also require the modification of the parking covenant. Alternative 2 would further the City’s housing goals by providing 140 senior housing units and, like the Project, would have less than significant growth inducing effects. Due to the greater number of dwelling units and the inclusion of the market, this alternative would have a greater impact on public services and utilities. Alternative 2 would generate three times greater traffic than the Project and would result in substantially greater impacts to traffic circulation on local streets and at local intersections. It is likely that Alternative 2 would result in permanent, significant, and unmitigable traffic impacts at two intersections. This alternative would have slightly less air quality impacts than the Project, but it has the potential to generate greater noise impacts. This alternative would have similar impacts from geology and construction-related activities.

Despite some apparently reduced impacts, Alternative 2 does not present an environmentally superior alternative. In fact, it would significantly increase impacts with respect to traffic congestion on local streets and at local intersections. The long term environmental impacts on traffic congestion would outweigh any benefits achieved by the small reduction of other impacts. Based on the foregoing, the City Council has determined Alternative 2 (Code Conforming with Senior Housing) to be not environmentally superior and therefore infeasible.

C Alternative 3 – No Project Code Conforming with Market Rate Housing

1 Summary of Alternative

Alternative 3 would involve development of a three-story commercial building with 10,000 square feet of retail space and 20,000 square feet of office space on the portion of the site zoned C-3. The portion of the site zoned RMCP would be developed with a 28-foot tall, 66-unit condominium complex with underground parking or, alternatively, a 40-foot tall condominium complex with a separate parking structure. This alternative was considered as a "No Project" alternative because it is a reasonable consequence of not proceeding with the Project. Given the location of the site, it is reasonable to assume that some development will occur. Appellants also requested that this Alternative examine the potential impacts and feasibility of developing sixty-six rental units, rather than sixty-six condominium units. Since the Responses to Comments in the EIR indicate that the environmental impacts of developing sixty-six rental units would be the same as developing condominium units, these findings address this Alternative both with condominium units and with rental units.

2 Reasons For Rejecting Alternative

Alternative 3 would produce short-term construction-related impacts similar to the proposed Project (e.g., traffic, noise, air quality). This alternative would be consistent with the General Plan and Zoning Code and would not require amendments to either document. Alternative 3 would have less impact to aesthetics than the Project because of its lower profile, while long-term impacts to air quality, geology, and human health from hazards would be similar to the Project. This alternative would have similar impacts on police and fire services but would place less demand on schools and recreational services than the Project. Alternative 3 will generate slightly less traffic than the Project and, like the Project, will result in no significant impacts to local streets or intersections. This alternative would provide a good transition buffer between the Business Triangle and the adjacent residential uses along the east side of Crescent Drive.

Alternative 3 is environmentally superior to the Project. However, an economic analysis demonstrates that this Alternative developed with rental housing is financially infeasible and would result in a return on investment too low to attract investors. This analysis was prepared by a professional engineer with real estate experience and familiarity with the Project. Based upon the credentials of the author, his familiarity with the Project, and the detail of the analysis set forth in the report, the City Council finds this analysis credible. Although the City Council received oral testimony from an appellant that the appellant was aware of other developers who would construct a project in conformance with Alternative 3, the appellant did not identify any such developer nor explain how such developer would construct the project in an economically feasible manner. Furthermore, no evidence was presented as to why the conclusions of the economic feasibility study were incorrect. In sum, no substantial and credible evidence was presented to rebut the conclusions of the economic analysis. Accordingly, the City Council has determined Alternative 3 (Code Conforming with Market Rate Rental Housing) to be economically infeasible.

Additionally Alternative 3 with condominium units or with rental units would result in fewer apartment units being constructed which would be socially unacceptable. The City Council recognizes its obligation to encourage the production of additional housing to meet the goals of its Housing Element. This Project would promote these Housing Element goals by providing eighty-eight units of market rate rental housing. Eighty-eight units of market rate housing represents approximately 65% of the market rate housing units needed to meet the 2005 goal of the City's Housing Element for additional market rate housing. Constructing sixty six condominium units or rental housing units would reduce the amount of housing being constructed contrary to the goals of the City's Housing Element and contrary to the City's public policy goal of building sufficient housing to meet the needs of the community and to meet the City's share of the regional housing need. The City Council finds that the City is not often presented with an opportunity to encourage the production of a significant amount of housing that is compatible with surrounding development and produces little or no long term environmental impact. The City Council finds that it would be socially irresponsible and unacceptable to reduce the number of units in such a project and therefore Alternative 3 is infeasible for social reasons, whether it includes condominium units or rental housing units.

Furthermore, the City Council believes that it should encourage a variety of housing products within the City in order to accommodate different needs. The production of new rental units would improve the variety of housing products in the City as this would be the first rental housing to be developed in the City in approximately twenty years. Any substantial reduction in the amount of such housing (whether a result of developing sixty six condominium units or sixty six rental units) would be contrary to the goals and objectives of the General Plan as described above, and would also diminish the availability of new rental housing in the City, which would be socially unacceptable by itself due to the diminishing supply of rental housing. Therefore, the City Council also rejects this Alternative 3 as infeasible for social reasons due to the need for additional rental housing even if there were not a need for other types of market rate housing.

The City Council hereby finds that each of the reasons set forth above would be an independent ground for rejecting Alternative 3 as infeasible and by itself, independent of any other reason, would justify rejection of Alternative 3 as infeasible.

D Alternative 4 – No Project No Changes to the Project Site

1 Summary of Alternative

The No Project alternative would leave the site in its existing condition with a 20,900 square foot commercial building and a 244-space surface parking lot.

2 Reasons For Rejecting Alternative

The No Project Alternative would avoid the impacts associated with development of the Project. These impacts include insignificant increases in traffic volumes on adjacent residential

streets, short term significant impacts to air quality associated with construction activity insignificant noise increases, and an insignificant increased demand on public services and utilities. Local residents would likely consider or perceive the impacts of this alternative to be considerably less than the proposed Project.

Although the No Project Alternative would produce less localized construction and nuisance impacts, it would provide none of the benefits associated with the Project and would fail to achieve any of the Project's objectives as described in Section 2.4 of the EIR. Therefore, this alternative is not feasible.

Furthermore, Alternative 4 would not produce any additional housing for the City. It would result in fewer apartment units being constructed which would be socially unacceptable. The City Council recognizes its obligation to encourage the production of additional housing to meet the goals of its Housing Element. This Project would promote these Housing Element goals by providing eighty-eight units of market rate rental housing. Eighty-eight units of market rate housing represents approximately 65% of the market rate housing units needed to meet the 2005 goal of the City's Housing Element for additional market rate housing. Developing no housing on this site would be contrary to the goals of the City's Housing Element and contrary to the City's public policy goal of building sufficient housing to meet the needs of the community and to meet the City's share of the regional housing need. The City Council finds that the City is not often presented with an opportunity to encourage the production of a significant amount of housing that is compatible with surrounding development and produces little or no long term environmental impact. The City Council finds that it would be socially irresponsible and unacceptable to reject such a project and therefore Alternative 4 is infeasible for social reasons.

Furthermore, the City Council believes that it should encourage a variety of housing products within the City in order to accommodate different needs. The production of new rental units would improve the variety of housing products in the City as this would be the first rental housing to be developed in the City in approximately twenty years. To reject the construction of such housing would be contrary to the goals and objectives of the General Plan as described above, and would also diminish the availability of new rental housing in the City, which would be socially unacceptable by itself due to the diminishing supply of rental housing. Therefore, the City Council also rejects this Alternative 4 as infeasible for social reasons due to the need for additional rental housing even if there were not a need for other types of market rate housing.

The City Council hereby finds that each of the reasons set forth above would be an independent ground for rejecting Alternative 4 as infeasible and by itself, independent of any other reason, would justify rejection of Alternative 4 as infeasible.

## EXHIBIT B

## Statement of Overriding Considerations

The following Statement of Overriding Considerations in connection with the proposed construction of a mixed use development project consisting of a four-story, 39,975 square-foot office/retail building fronting Wilshire Boulevard with a height of 45 feet and a residential component comprised of 88 apartment units with modulated height up to a maximum height of five-stories and 60 feet on property generally located at 131-191 Crescent Drive/9355-9373 Wilshire Boulevard (the Project), as more fully described in Section 20 of the EIR, and consisting of requests for a planned development, amendments to an existing parking covenant, and a zoning code amendment, is hereby adopted by the City Council of the City of Beverly Hills ( City Council ) pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. ( CEQA ) and Section 15093 of the CEQA Guidelines

CEQA 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 the project. If the benefits of the project outweigh the unavoidable adverse effects, those effects may be considered acceptable (CEQA Guidelines section 15093(a)). 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 (CEQA Guidelines section 15093(b)). Those reasons are provided in this Statement of Overriding Considerations.

The City Council finds that the economic, social and other benefits of the Project outweigh the single, temporary, significant and unavoidable impact to air quality identified in the EIR and discussed in Article IV of Exhibit A, and any other remaining significant effects found to be unavoidable. In making this finding, the City Council has balanced the benefits of the Project against its unavoidable impacts and has indicated its willingness to accept those adverse impacts. The City Council finds that each one of the following benefits of the Project, independent of the other benefits, would warrant approval of the Project notwithstanding the unavoidable environmental impacts of the Project:

A The Project will add 88 market rate housing units to the City's rental housing stock. This Project represents the first increase in the City's rental housing stock in approximately two decades. Eighty-eight units of market rate housing also helps the City meet its share of the regional housing needs. The eighty-eight units comprise approximately 65 percent of the market rate units the City must produce by 2005 to meet its Housing Element goals.

B The Project expands the variety of housing opportunities available in the City by introducing a mixed-use overlay zone (the M-PD-2 Zone) and providing a mixed commercial/residential development that would not otherwise be provided in the City. The mixed-

use overlay zone specifically implements Objective 4.3 of the City's Housing Element, which provides that the City should develop standards for mixed commercial and residential uses

C The proposed Project implements several goals of the City's General Plan by providing an opportunity to construct a quality mixed-use development that would not otherwise be provided in the community. The Project will result in a unified development oriented towards and along Wilshire Boulevard, its design complements the scale and character of the adjacent residential neighborhood, and it incorporates urban design amenities that enhance the pedestrian experience and will serve as a visual and pedestrian link between commercial areas along Wilshire Boulevard and the Business Triangle

D The proposed Project will enhance its section of Wilshire Boulevard and will therefore contribute to the economic vitality of the City

## EXHIBIT C

## "Mitigation Measures"

- 1 The Project shall be reviewed by the City of Beverly Hills' Architectural Commission in accordance with the provisions of Article 30, Chapter 3, Title 10 of the Beverly Hills Municipal Code. In its review, the Commission shall consider the building mass and finish materials, other details of the building facade, upper story setbacks, proposed landscaping, pedestrian accommodations and exterior lighting with respect to the criteria set forth in Section 10-3 3010, and apply appropriate conditions of approval to ensure compliance with these criteria. At a minimum, the Architectural Commission's review shall ensure that the Project complies with the following: (1) The Applicant provides a landscaping and street tree plan satisfactory to the Architectural Commission and the Department of Recreation and Parks. Said plan shall, at a minimum, provide the amount of landscaping described in the EIR, (2) The Applicant provides a lighting plan that demonstrates to the satisfaction of the Architectural Commission that the exterior lighting proposed for the Project is consistent with Sections 10-4 314 and 5-6 1101, (3) The final building plans for the Project provide building setbacks, modulation, and massing that is consistent with the project as described in the EIR or improves upon the setbacks, massing, and modulation shown on the plans analyzed in the EIR, (4) No project design or landscape features are modified, or eliminated, without prior review and approval by the City.
- 2 The Applicant shall pay school impact fees in accordance with the most current rate schedule and shall submit proof of payment to the Director of Building & Safety prior to the issuance of the building permits.
- 3 The Applicant shall pay park impact fees (Quimby fees) in accordance with the most current rate schedule and shall demonstrate payment to the Director of Building & Safety prior to issuance of the building permits.
- 4 The Applicant shall submit a Solid Waste Management Plan to the Directors of Planning and Public Works for their review and approval prior to issuance of building permits for the first project component. The plan shall discuss the implementation of source reduction and recycling and shall demonstrate that the project includes measures consistent with the City's AB939 compliance requirements, including but not be limited to: (1) Provision of clearly marked, separate recycling areas for glass, aluminum, office paper, newspaper, and plastics, (2) Provision of recycling bins for glass, aluminum, and plastic next to each beverage machine in each public and employee area and in any other common area where employees and visitors may generate recyclable material, (3) Provision of bins for cardboard recycling during project construction and operation, (4) Provision of a central area for white office paper and newspaper on each floor within each

area and building proposed for office purposes, (5) Promotion of recycling efforts by publicizing the project's recycling program to employees, residents, and visitors, (6) Use of reduced and recyclable packaging for commercial products offered by project components, where possible, (7) Arrangements for the recycling of scrap wood during construction, (8) Arrangements for the recycling of green waste generated by project landscaping, installation, and maintenance, (9) Determination of the number design and placement of waste containers on the project site, (10) Determination of access and turning radius adequacy for waste collection vehicles

- 5 Prior to issuance of any occupancy permit for the project, the Applicant shall demonstrate to the satisfaction of the Director of Transportation that the project complies with the City's Transportation Demand and Trip Reduction Measures under the Congestion Management Program
- 6 A comprehensive Parking Management Plan shall be submitted to the Director of Planning for review and approval prior to issuance of the project occupancy permits. The plan shall address the utilization of the subterranean garage by the respective tenants and operators and shall ensure the effective utilization of the tandem parking by (1) specifying how such parking will be restricted to tenants, rather than visitors, and/or (2) by requiring the use of commercial tandem parking spaces by employees of the same organization, and/or (3) by providing for an attendant service to move cars, and/or (4) by specifying some other method deemed acceptable by the Director of Planning. It shall also provide for weekend use of commercial/office parking by non-project users and shall provide for a method of directing UPS/FedEx and other trucks and/or large vans to the loading area off the alley.
- 7 The project Applicant shall prepare a comprehensive Construction Parking and Hauling Plan and said plan shall be submitted to and approved by the Directors of Planning and Building & Safety prior to the issuance of building permits. Said plan shall demonstrate to the satisfaction of the Directors of Planning and Building & Safety that adequate provisions for parking for covenanted uses and construction workers have been made prior to issuance of construction and grading permits for the project. Adequate provisions shall be defined as demonstration that the Applicant has entered into a contract for the provision of the necessary parking. Such parking shall be located no more than 500 feet from the project site, unless a shuttle service is provided at the project developer's expense, which satisfactorily meet the needs of the covenanted users. The plan shall prohibit any construction-related parking on nearby residential streets or in the alley.
- 8 The Director of Transportation shall consult with the Applicant to ensure that the project and/or the project's Parking Management Plan includes measures to (1) restrict left hand turns into and out of the southern entrance on Crescent Drive, (2) ensure that entry to the northerly driveway in the alley is controlled through key-card access and that all parking for Spago guests in the parking structure is provided by valet, and (3) to provide project

residents and employees with information about proper routing to and from the building Any measures shall be reviewed and approved by the Director of Transportation prior to issuance of the Certificate of Occupancy for the project

- 9 The Applicant shall modify the design of the motor court to the satisfaction of the Directors of Transportation and Planning to accommodate all vehicles, including larger vehicles, that will use the motor court and parking garage Consideration should be given to relocating the pedestrian walkway to the southerly side of the driveway to provide more visibility for both pedestrians and vehicles and cutting back the pedestrian island (towards Crescent Drive) to provide for unimpeded left-turns from the garage onto Crescent Drive The revised plan shall show the size of all parking spaces and shall demonstrate to the satisfaction of the Director of Planning that all spaces shall comply with the City Code requirements, including minimum dimensions for parking spaces The revised plan shall be submitted to the Director of Planning for review and approval prior to issuance of the grading and construction permits for the project
- 10 The Applicant shall install signage in the alley in the vicinity of the loading area The signage shall clearly direct any truck arriving at the loading area to pull as far south as possible so that a second truck can access the northerly loading space without protruding into the pedestrian walkway The proposed signage shall be reviewed and approved by the Directors of Planning and Transportation prior to installation and shall be installed prior to issuance of any occupancy permit for the project
- 11 The Applicant shall be required to comply with the following restrictions on the use of the loading area and alley (1) Two trucks of greater than 30 feet are prohibited from using the loading area at the same time, (2) Commercial vehicles other than small vans (e g couriers) shall be prohibited from using the loading area between the hours of 4 00 p m and 6 00 p m Monday through Friday The project operator shall designate an employee to monitor the loading area and deliveries to ensure compliance with the restrictions set forth in this provision
- 12 The Applicant shall submit a Construction Management Plan to the Director of Planning prior to issuance of any grading or construction permits At a minimum, the Construction Management Plan shall address the following (1) construction delivery schedules, (2) truck hauling/construction traffic routing and access, (3) access to and from the site by construction workers, (4) use of the alley, (5) construction parking (on street construction parking shall be prohibited), and (6) management of vehicular ingress/egress from/to public rights-of-way (e g flagmen, etc ) The plan shall demonstrate that any construction impacts to alley operations, on-street parking, or associated with truck assess have been reduced to a level consistent with normal construction activity within the City
- 13 The Applicant shall ensure that the construction contractors shall (1) Use adequate water for dust control (preferably using reclaimed water), (2) Terminate any construction

activities involving earth disturbance during high wind conditions (winds greater than 25 miles per hour), (3) Operate street sweepers, or roadway-washing trucks, on adjacent roadways to remove dirt dropped by construction vehicles, or dried mud carried off by trucks moving dirt, or bringing construction materials, (4) Cover trucks or wet-down loads of any dirt hauled to or from the project site, (5) Perform low-NOx emission tune-ups on all equipment operating on-site for more than 60 days, (6) Require on-site contractors to operate a congestion relief program including provision of rideshare incentives for construction personnel, provision of off-street parking for construction personnel, limitation of lane closures to non-peak traffic hours, scheduling the receipt of construction materials for non-peak traffic periods where possible

- 14 The Applicant shall not use, or permit to be used, construction vehicles, nor load or unload construction materials or debris, nor permit the same to be done, before 8 a m
- 15 The Applicant shall restrict pile driving, if required, to the hours of 9 a m to 4 p m on Mondays through Fridays
- 16 Prior to the issuance of building permits, the Applicant shall submit a Construction Haul Route Plan that avoids the use of residential streets to the City of Beverly Hills Building & Safety Department and the Department of Transportation for review and approval and shall implement the approved Construction Hauling Plan
- 17 Prior to issuance of building permits, the Applicant shall perform additional, on-site tests specifically designed to investigate potential subsurface faulting as recommended by the project's geotechnical consultant. The phasing and nature of the testing shall be reviewed and approved by the Director of Building and Safety prior to the tests being conducted. Testing shall be performed by a state-licensed geologist approved by the City. Examples of further investigation at the site, which may be required by the Director of Building & Safety include, but are not limited to (1) Performing surface geophysical surveys (similar to those which were performed by Pratt et al (1998) across areas west of the site) to identify the continuity or discontinuity of subsurface stratigraphy, (2) Performing a series of closely spaced cone penetration tests and use of the data (along with the existing geotechnical borehole data) to define the continuity (or lack thereof) of subsurface layers, (3) Performing core borings, or large diameter borings, for down-hole inspection of subsurface conditions to collect data for correlation with previously collected data, (4) Excavating and logging trenches in the vicinity of the building site and perpendicular to the suspected trace of faulting. Upon completion of the tests, the Applicant shall prepare and submit a report and recommendations to the Director of Building & Safety for review and approval. All required mitigation measures to reduce risks associated with subsurface faulting shall be made a condition of the project. The Applicant shall demonstrate compliance with the required measures prior to issuance of any building permit, or on a time schedule deemed appropriate by the Director of Building & Safety. Should the results of additional geotechnical investigation indicate the need for the

redesign of the project, the nature of the redesign shall be reviewed by the Director of Planning and Community Development in order to determine if the redesigned project requires additional environmental review

- 18 Testing shall be done at the Applicant's expense by an environmental assessor approved by the City for Asbestos Containing Building Materials (ACBM), PCBs, and other hazardous substances potentially present on site. The report shall be submitted for review and approval by the Director of Public Works prior to the issuance of the demolition permit for the project. If any hazardous substances are detected in the existing structures or the soil on the project site, prior to the issuance of the demolition permit for the project, the Applicant shall (i) retain a qualified environmental expert approved by the City to supervise the removal and disposal of such substances, and (ii) comply with all requirements imposed by any federal, state, or local regulatory agency with respect to the removal and disposal of such materials from the project site.
- 19 A Construction Risk Management Plan shall be prepared and submitted to the Director of Public Works for review and approval prior to issuance of any demolition or construction permits for the project. The Plan shall incorporate the recommendations of the environmental assessors report and shall identify procedures for identifying any hazardous materials that may be encountered during construction. If materials that could present a threat to human health or the environment are discovered, construction in that immediate area shall cease immediately. Furthermore, a qualified professional shall evaluate the finding(s) and make appropriate recommendations. Work shall not resume in that area until the City determines that appropriate actions have been implemented to protect human health and the environment.

EXHIBIT "D"

"Mitigation Monitoring Plan"



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**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><b>Aesthetics/Visual Quality.</b></p> <p><input type="checkbox"/> <b>1. Mass, Scale and Landscape Compatibility.</b></p> <p>The following mitigation measure is designed to ensure that project design features, building materials, and lighting is consistent with the applicant's proposal, which forms the basis of the less than significant impact judgments detailed above</p> <p>Architectural Review - BHMC Title 10, Chapter 3, Article 30, requires architectural review for all new development in the City. The project shall be reviewed by the City of Beverly Hills Architectural Commission. In its review, the Commission shall consider the building mass and finish materials, other details of the building façade, upper story setbacks, proposed landscaping, and pedestrian accommodations, with respect to criteria set forth in Section 10-3 3010, and apply conditions of approval to ensure compliance with the criteria. Commission review shall be designed to ensure (1) Landscaping and Street Trees. The applicant shall provide a landscaping and street tree plan to the satisfaction of the Architectural Review Committee and City' Recreation and Parks Department. Said plan shall at a minimum provide the amount of landscaping described in this EIR,</p> <p>(2) Exterior lighting along the Crescent Drive and Clifton Way frontages. The applicant shall provide a lighting plan and shall demonstrate to the satisfaction of the Architectural Review Committee that lighting is consistent with BHMC Section 10-4 314 and 5-6 1101,</p> <p>(3) Design features. The Architectural Review Committee shall review the final building plans to ensure that building setbacks, modulation and massing is consistent with the project as described in the EIR, or improves upon the setbacks, massing and modulation shown on the project plans at the time of the EIR Analysis,</p>	<p>Department of Planning &amp; Community Development,</p> <p>Department of Recreation and Parks,</p> <p>Department of Building &amp; Safety</p>	<p>Plans and specifications of all design features and building materials including exterior lighting and landscaping shall be filed with the Department of Planning and Community Development to be reviewed and approved by the City's Architectural Commission. In addition, landscape plan shall include proposed street trees which will be reviewed by the Department of Recreation and Parks to comply with this measure. After Architectural Commission approval, approved plans shall be filed with the Department of Building &amp; Safety</p>	<p>The building permits shall be not be issued until the obligations under this measure are met to the satisfaction of the Directors of Planning &amp; Community Development, Recreation and Parks and Building &amp; Safety Departments</p>



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**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><input type="checkbox"/> <b>4. Solid Waste</b></p> <p>The applicant shall submit a Solid Waste Management Plan to the City's Planning Director and Public Works Director for review and approval, prior to issuance of building permits for the first project component. The plan shall discuss the implementation of source reduction and recycling and shall demonstrate that the project includes measures consistent with the City's AB939 compliance requirements, including but not be limited to (1) Provision of clearly marked, separate recycling areas for glass, aluminum, office paper, newspaper and plastics, (2) Provision of recycling bins for glass, aluminum and plastic next to each beverage machine in each public and employee area and in any other common area where employees and visitors may generate recyclable material, (3) Provision of bins for cardboard recycling during project construction and operation, (4) Provision of a central area for white office paper and newspaper on each floor within each area and building proposed for office purposes, (5) Promotion of recycling efforts by publicizing the project's recycling program to employees, residents and visitors, (6) Use of reduced and recyclable packaging for commercial products offered by project components, where possible, (7) Arrangements for the recycling of scrap wood during construction, (8) Arrangements for the recycling of green waste generated by project landscaping installation and maintenance, (9) Determination of the number design and placement of waste containers on the project site, (10) Determination of access and turning radius adequacy for waste collection vehicles</p>	<p>Department of Planning &amp; Community Development, Department of Public Works Department of Building and Safety</p>	<p>A Solid Waste Management Program shall include notes and specific instructions outlining the process for implementation of this mitigation measure. The responsible departments shall review the program to ensure that the plan is in compliance with this measure during construction and after completion of the project. The plan check engineers will also review the plan to ensure that the plan complies with this requirement in order to issue the building permits.</p>	<p>This measure shall apply to both construction and operational activities. It is effective upon the issuance of building permits and shall remain effective throughout the life of the project.</p>

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**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><b>Traffic, Circulation and Parking</b></p> <p><input type="checkbox"/> <b>5. Congestion Management Program Compliance.</b></p> <p>Prior to issuance of any occupancy permit for the project, the applicant shall demonstrate to the satisfaction of the Director of Transportation, that the project complies with the City's Transportation Demand and Trips Reduction Measures under the Congestion Management Program</p>	<p>Department of Transportation</p>	<p>The certificate of occupancy shall not be issued for the project until the developer complies with this measure under the Congestion Management Program</p>	<p>This measure is effective upon the issuance of a certificate of occupancy for the commercial component of the project and shall remain effective throughout the life of the project</p>
<p><input type="checkbox"/> <b>6. Parking Operations.</b></p> <p>A comprehensive parking management plan shall be submitted to the Director of Planning for review and approval prior to issuance of the project occupancy permits. A draft version of the plan shall be submitted to the Director of Planning prior to certification of the EIR and project approval. The plan shall address the utilization of the subterranean garage by the respective tenants and operators, and shall ensure the effective utilization of the tandem parking by (1) specifying how such parking will be restricted to tenants, rather than visitors, and/or (2) by requiring the use of commercial tandem parking spaces by employees of the same organization, and/or (3) by providing for an attendant service to move cars, and/or (4) by specifying some other method deemed acceptable by the Director of Planning. It shall also provide for weekend use of commercial/office parking by non-project users and shall provide for a method of directing UPS/FedEx and other trucks and/or large vans to the loading area off the alley</p>	<p>Department of Planning &amp; Community Development</p> <p>Department of Building &amp; Safety</p>	<p>The parking Management Plan shall be filed with Department of Planning &amp; Community Development for review and approval. The approved Parking management Plan shall be maintained on file in the Department of Building and Safety Department, Code Enforcement Division, who will have the authority and procedures to address any complaints that might arise</p>	<p>The parking Management plan is effective immediately upon issuance of building permits for the project. The plan shall remain effective throughout the life of the project</p>

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**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><input type="checkbox"/> <b>7. Short-Term Parking Impacts During Construction</b></p> <p>The project applicant shall prepare a comprehensive construction parking and hauling plan, and said plan shall be submitted to and approved by the Directors of Planning and Building &amp; Safety prior to the issuance of building permits. Said plan shall demonstrate to the satisfaction of the Directors of Planning and Building &amp; Safety that adequate provisions for parking for covenanted users and construction workers have been made prior to issuance of construction and grading permits for the project. Adequate provisions shall be defined as demonstration that the applicant has entered into a contract for the provision of the necessary parking. Such parking shall be located no more than 500 feet from the project site unless a shuttle service is provided at the project developer's expense which satisfactorily meet the needs of the covenanted users. The plan shall prohibit any construction-related parking on nearby residential streets or in the alley.</p>	<p>Department of Planning &amp; Community Development  Department of Building &amp; Safety</p>	<p>The comprehensive construction parking plan shall be maintained on file in the Department of Building &amp; Safety. The Department's plan check engineers shall review the plan to ensure that the plan complies with this measure.</p>	<p>The comprehensive construction parking plan shall be submitted prior to the issuance of building permits and shall be effective immediately upon issuance of building permits for the project, and shall remain effective throughout the construction period.</p>

**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><input type="checkbox"/> <b>8. Circulation and Access Impacts.</b></p> <p>The applicant shall consult with the City Engineering Division to ensure that the project and/or the project's parking management plan includes measures to (1) restrict left hand turns into and out of the southern entrance on Crescent Drive, (2) ensure that entry to the northerly driveway in the alley is controlled through key-card access and that all parking for Spago guests in the parking structure is provided by valet, and (3) to provide project residents and employees with information about proper routing to and from the building. Any measures shall be reviewed and approved by the Director of Transportation prior to issuance of the certificate of occupancy for the project.</p> <p>The applicant shall modify the design of the motor court to the satisfaction of the Engineering Division and the Building &amp; Safety Department to accommodate all vehicles that would use the parking garage to the satisfaction of the City. Consideration should be given to relocating the pedestrian walkway to the southerly side of the driveway to provide more visibility for both pedestrians and vehicles, and cutting back the pedestrian island (towards Crescent Drive) to provide for unimpeded left-turns from the garage onto Crescent Drive.</p> <p>The revised plan shall show the size of all parking spaces and shall demonstrate to the satisfaction of the Director of Planning that all spaces shall comply with City Code requirements, including minimum dimensions for parking spaces. The revised plan shall be submitted to the Director of Planning for review and approval prior to issuance of the grading and construction permits for the project.</p>	<p>City Engineering Division Department of Building &amp; Safety Department of Planning &amp; community Development</p>	<p>The measure will be included in the Parking Management Plan, which will be maintained on file in the Department of Building and Safety. In the event that substantial problems arise, the Director of Building and Safety Department may impose operational or physical conditions on the project beyond those specifically stated in the parking management plan to address such problems, after consultation with the Engineering Division. In addition, revised plans shall be provided regarding the design of the motor court and parking configuration for evaluation by the Engineering Division and the Building and Safety Department prior to issuance of building permits.</p>	<p>The Parking Management Plan is effective immediately upon issuance of building permits for the project, and shall remain effective throughout the life of the project. The revised plans shall be provided before issuance of grading and building permits.</p>

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**The Crescent Project  
Mitigation Monitoring Program**

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Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><b>9. Commercial Delivery and Loading –</b></p> <p>The applicant shall be responsible for the cost of signage to be placed in the alley in the vicinity of the loading area. The signage shall direct any truck arriving at the loading area to pull as far south as possible so that a second truck can access the northerly loading space without protruding into the pedestrian walkway. The proposed signage shall be reviewed and approved by the Engineering Division and the Planning Department prior to installation and shall be installed prior to issuance of any occupancy permit for the project.</p> <p>The applicant shall be required to comply with the following restrictions on the use of the loading area and alley: (1) Two trucks of greater than 30 feet are prohibited from using the loading area at the same time, (2) Commercial vehicles other than small vans (e.g. couriers) shall be prohibited from using the loading area between the hours of 4:00 p.m. and 6:00 p.m. Monday through Friday. The project operator shall designate an employee to monitor the loading area and deliveries to ensure compliance with the restrictions set forth in this provision.</p>	<p>Department of Planning &amp; Community Development</p> <p>Department of Building &amp; Safety</p> <p>City Engineering Division</p>	<p>Plans for signage and marking shall be submitted to Building and Safety Department. Installation of signage shall be subject to approval of Departments of Building &amp; Safety, Transportation and Planning &amp; Community Development. In addition, the City's parking enforcement shall enforce this measure regarding the operation of loading facility.</p>	<p>All the required signage and marking shall be in place prior to the issuance of certificate of occupancy. This measure shall apply to operational activities of the loading facility which shall be effective throughout the life of the project.</p>

Completed

**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><input type="checkbox"/> <b>10. Short-Term Impacts During Construction</b></p> <p>The applicant shall submit a construction management plan to the Director of Building &amp; Safety prior to issuance of any grading or construction permits. At a minimum the construction management plan shall address the following (1) construction delivery schedules, (2) truck hauling/construction traffic routing and access, (3) access to and from the site by construction workers, (4) use of the alley, (5) construction parking (on street construction parking shall be prohibited), and (6) management of vehicular ingress/egress from/to public rights-of-way (e.g. flagmen, etc.) The plan shall demonstrate that any construction impacts to alley operations, on-street parking, or associated with truck access have been reduced to a level consistent with normal construction activity within the City.</p>	<p>Department of Planning &amp; Community Development</p> <p>Department of Building &amp; Safety</p> <p>Department of Public Works</p>	<p>The Construction Management Plan shall be reviewed by the Planning &amp; Community Department and filed with the Building &amp; Safety Department prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that it complies with the requirements noted in the Construction management Plan.</p>	<p>This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.</p>

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**The Crescent Project  
Mitigation Monitoring Program**

Completed	Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<input type="checkbox"/>	<p><b>Air Quality</b></p> <p><b>11. Construction Activity Impacts</b></p> <p>The applicant shall ensure that the construction contractors shall (1) Use adequate water for dust control (preferably using reclaimed water), (2) Terminate any construction activities involving earth disturbance during high wind conditions (winds greater than 25 miles per hour) (3) Operate street sweepers or roadway-washing trucks on adjacent roadways to remove dirt dropped by construction vehicles or dried mud carried off by trucks moving dirt or bringing construction materials, (4) Cover trucks or wetting-down loads of any dirt hauled to or from the project site, (5) Perform low-NO<sub>x</sub> emission tune-ups on all equipment operating on-site for more than 60 days, (6) Require on-site contractors to operate a congestion relief program including provision of ndeshare incentives for construction personnel, provision of off-street parking for construction personnel, limitation of lane closures to non-peak traffic hours, scheduling the receipt of construction materials for non-peak traffic periods where possible</p>	<p>Department of Building &amp; Safety</p> <p>Department of Public Works</p>	<p>The primary contractor shall submit an affidavit attesting to the compliance with this measure to the Department of Building &amp; Safety Any cleaning of the public right-of-way shall be to the specifications of the City Engineer</p>	<p>The affidavit shall be submitted prior to the commencement of any work on the project site This measure shall be in effect until the issuance of the certificate of occupancy</p>
<input type="checkbox"/>	<p><b>Noise</b></p> <p><b>12. Construction Noise Impacts</b></p> <p>The applicant shall not use construction vehicles nor load or unload construction materials or debris before 8 a m</p> <p>The applicant shall restrict pile driving, if required, to the hours of 9 a m to 4 p m on Mondays through Frndays</p> <p>Prior to the issuance of building permits, the applicant shall submit a construction haul route plan that avoids the use of residential streets to the City of Beverly Hills Building &amp; Safety Department and the Department of Transportation for review and approval and shall implement the approved construction hauling plan</p>	<p>Department of Building &amp; Safety</p>	<p>The primary contractor shall submit a program and an affidavit attesting to the compliance with this measure to the Department of Building &amp; Safety</p>	<p>The program and affidavit shall be submitted prior to the commencement of any work on the project site This measure shall be in effect until the issuance of the certificate of occupancy</p>

Completed

**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><b>Geology</b></p> <p><input type="checkbox"/> <b>13. Seismic</b></p> <p>Prior to issuance of building permits, the applicant shall perform additional on-site tests specifically designed to investigate potential subsurface faulting as recommended by the project's geotechnical consultant. The phasing and nature of the testing shall be reviewed and approved by the Director of Building and Safety prior to the tests being conducted. Testing shall be performed by a state licensed geologist approved by the City. Examples of further investigation at the site which may be required by the Director of Building &amp; Safety include, but are not limited to: (1) Performing surface geophysical surveys (similar to those which were performed by Pratt et al (1998) across areas west of the site) to identify the continuity or discontinuity of subsurface stratigraphy, (2) Performing a series of closely spaced cone penetration tests and use of the data (along with the existing geotechnical borehole data) to define the continuity (or lack thereof) of subsurface layers, (3) Performing core borings or large diameter borings for down-hole inspection of subsurface conditions, to collect data for correlation with previously collected data, (4) Excavating and logging trenches in the vicinity of the building site, and perpendicular to the suspected trace of faulting. Upon completion of the tests, the applicant shall prepare and submit a report and recommendations to the Director of Building &amp; Safety for review and approval. All required mitigation measures to reduce risks associated with subsurface faulting shall be made a condition of the project. The applicant shall demonstrate compliance with the required measures prior to issuance of any building permit or on a time schedule deemed appropriate by the Director of Building &amp; Safety.</p>	<p>Department of Building &amp; Safety</p>	<p>The construction plans filed with the Department of Building &amp; Safety shall comply with this requirement. The plan check engineers will review the plans to ensure that they comply with this requirement.</p>	<p>This requirement shall be met prior to the issuance of relevant building permits.</p>

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Completed

**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p>Should the results of additional geotechnical investigation indicate the need for the redesign of the project, the nature of the redesign shall be reviewed by the Director of Planning and Community Development in order to determine if the redesigned project requires additional environmental review</p>	<p>Department of Building &amp; Safety</p>	<p>The construction plans filed with the Department of Building &amp; Safety shall comply with this requirement. The plan check engineers will review the plans to ensure that they comply with this requirement.</p>	<p>This requirement shall be met prior to the issuance of relevant building permits.</p>
<p><b>Hazards</b></p> <p><input type="checkbox"/> <b>14 Related to Building Demolition</b></p> <p>Testing shall be done at the applicant's expense by an environmental assessor approved by the City, for Asbestos Containing Building Materials (ACBM), PCBs and other hazardous substances potentially present on site. The report shall be submitted for review and approval by the Director of public works, prior to the issuance of the demolition permit for the project. If any hazardous substances are detected in the existing structures or the soil on the project site, prior to the issuance of the demolition permit for the project, the applicant shall (i) retain a qualified environmental expert approved by the City to supervise the removal and disposal of such substances, and (ii) comply with all requirements imposed by any federal, state, or local regulatory agency with respect to the removal and disposal of such materials from the project site.</p>	<p>Department of Public Works Department of Building &amp; Safety</p>	<p>The remediation plans shall include notes and specific instructions outlining the process for implementation of this mitigation measure. The plan check engineers will review the plans to ensure that they comply with this requirement.</p>	<p>This measure shall be in effect until the issuance of the certificate of occupancy.</p>

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<b>The Crescent Project Mitigation Monitoring Program</b>			
<b>Mitigation Measures</b>	<b>Responsible Agency</b>	<b>Monitoring Procedure and Reporting Mechanism</b>	<b>Implementation Schedule</b>
A Construction Risk Management Plan shall be prepared and submitted to the Director of Public Works for review and approval prior to issuance of any demolition or construction permits for the project. The Plan shall incorporate the recommendations of the environmental assessors report and shall identify procedures for identifying any hazardous materials that may be encountered during construction. If materials that could present a threat to human health or the environment are discovered, construction in that immediate area shall cease immediately. Furthermore, a qualified professional shall evaluate the finding(s) and make appropriate recommendations. Work shall not resume in that area until the City determines that appropriate actions have been implemented to protect human health and the environment.	Department of Public Works  Department of Building & Safety	The remediation plans shall include notes and specific instructions outlining the process for implementation of this mitigation measure. The plan check engineers will review the plans to ensure that they comply with this requirement.	This measure shall be in effect until the issuance of the certificate of occupancy.

**ATTACHMENT F**  
**FISCAL PROJECTIONS**

**AKA Beverly Hills**  
**5 Yr Revenue & Occupancy Tax/Municipal Surcharge Pr**

Y1 - Rental Revs & Taxes/Surcharges			Y2 - Rental Revs & Taxes/Surcharges			Y3 - Rental Revs & Taxes/Surcharges		
	<30 Days	20% (TOT & Surcharge)		<30 Days	20% (TOT & Surcharge)		<30 Days	20% (TOT & Surcharge)
Jan	\$563,806	\$112,761	Jan	\$586,358	\$117,272	Jan	\$609,812	\$121,962
Feb	\$549,865	\$109,973	Feb	\$571,859	\$114,372	Feb	\$594,734	\$118,947
Mar	\$608,779	\$121,756	Mar	\$633,130	\$126,626	Mar	\$658,455	\$131,691
Apr	\$693,632	\$138,726	Apr	\$721,377	\$144,275	Apr	\$750,232	\$150,046
May	\$763,187	\$152,637	May	\$793,714	\$158,743	May	\$825,463	\$165,093
Jun	\$738,568	\$147,714	Jun	\$768,110	\$153,622	Jun	\$798,835	\$159,767
July	\$778,839	\$155,768	July	\$809,992	\$161,998	July	\$842,392	\$168,478
Aug	\$778,839	\$155,768	Aug	\$809,992	\$161,998	Aug	\$842,392	\$168,478
Sept	\$717,564	\$143,513	Sept	\$746,266	\$149,253	Sept	\$776,117	\$155,223
Oct	\$741,483	\$148,297	Oct	\$771,142	\$154,228	Oct	\$801,988	\$160,398
Nov	\$717,564	\$143,513	Nov	\$746,266	\$149,253	Nov	\$776,117	\$155,223
Dec	\$741,483	\$148,297	Dec	\$771,142	\$154,228	Dec	\$801,988	\$160,398
	<u>\$8,393,606</u>	<u>\$1,678,721</u>		<u>\$8,729,350</u>	<u>\$1,745,870</u>		<u>\$9,078,524</u>	<u>\$1,815,705</u>

Y4 - Rental Revs & Taxes/Surcharges			Y5 - Rental Revs & Taxes/Surcharges			Total Rental Revs & Taxes/Surcharges - 5Yr		
	<30 Days	20% (TOT & Surcharge)		<30 Days	20% (TOT & Surcharge)		<30 Days	20% (TOT & Surcharge)
Jan	\$634,205	\$126,841	Jan	\$659,573	\$131,915	Jan	\$3,053,754	\$610,751
Feb	\$618,523	\$123,705	Feb	\$643,264	\$128,653	Feb	\$2,978,245	\$595,649
Mar	\$684,793	\$136,959	Mar	\$712,185	\$142,437	Mar	\$3,297,343	\$659,469
Apr	\$780,241	\$156,048	Apr	\$811,451	\$162,290	Apr	\$3,756,933	\$751,387
May	\$858,481	\$171,696	May	\$892,820	\$178,564	May	\$4,133,665	\$826,733
Jun	\$830,788	\$166,158	Jun	\$864,020	\$172,804	Jun	\$4,000,321	\$800,064
July	\$876,087	\$175,217	July	\$911,131	\$182,226	July	\$4,218,441	\$843,688
Aug	\$876,087	\$175,217	Aug	\$911,131	\$182,226	Aug	\$4,218,441	\$843,688
Sept	\$807,162	\$161,432	Sept	\$839,448	\$167,890	Sept	\$3,886,557	\$777,311
Oct	\$834,067	\$166,813	Oct	\$867,430	\$173,486	Oct	\$4,016,109	\$803,222
Nov	\$807,162	\$161,432	Nov	\$839,448	\$167,890	Nov	\$3,886,557	\$777,311
Dec	\$834,067	\$166,813	Dec	\$867,430	\$173,486	Dec	\$4,016,109	\$803,222
	<u>\$9,441,665</u>	<u>\$1,888,333</u>		<u>\$9,819,331</u>	<u>\$1,963,866</u>		<u>\$45,462,476</u>	<u>\$9,092,495</u>

**Notes:**

Based upon historical operating data at three properties on the East Coast, two in NYC (AKA Central Park & AKA Times Square) and one in DC (AKA White House).

Assumes 85% occupancy and an average nightly rate of \$518 for stays between 7-29 days at AKA Beverly Hills

Based upon 20% TOT/Surcharges to City of Beverly Hills

# **ATTACHMENT G**

## **PUBLIC NOTICE**



## **NOTICE OF PUBLIC HEARING**

**DATE:** November 21, 2013  
**TIME:** 7:00 PM, or as soon thereafter as the matter may be heard  
**LOCATION:** Commission Meeting Room 280A  
Beverly Hills City Hall  
455 North Rexford Drive  
Beverly Hills, CA 90210

The Planning Commission of the City of Beverly Hills, at its SPECIAL meeting on Thursday, November 21, 2013, will hold a public hearing beginning at 7:00 PM, or as soon thereafter as the matter may be heard to consider the following entitlements for the property located at the northwest corner of Wilshire Boulevard and North Crescent Drive at **9355 Wilshire Boulevard and 155 North Crescent Drive:**

**Zone Amendments:** A request to amend the M-PD-2 (Mixed-Use Planned Development) Overlay Zone that applies to the subject property. As proposed, Article 19.3 of the City's Zoning Code would be amended to allow restaurant uses within the subject property, and to allow the existing apartments to be used as "serviced residences" that could be rented for periods of less than 30 days (currently, all rentals must be a minimum of 30 days), in addition, staff recommends zone text amendments to address the growing trend of short term rentals in single family residential zones;

**Planned Development Permit Amendment:** A request to amend the previously approved Planned Development Permit for the subject property. The proposed amendments would modify the project's existing conditions of approval, and would establish provisions for restaurant and "serviced residence" uses within the subject property; and

**Development Agreement:** As a component of the entitlements listed above, the applicant proposes a development agreement. The development agreement would set forth the City's rights, the applicant's rights, and would contain provisions for public benefits to be provided to the City by the applicant.

This project has been assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines, and the environmental regulations of the City. An Environmental Impact Report (EIR) was previously certified by the City Council on December 3, 2002 for the existing development on the subject site. Therefore, an addendum to the original EIR has been prepared in order to evaluate the project changes outlined above, and will be presented to the Planning Commission for consideration.

Any interested person may attend the meeting and be heard or present written comments to the Commission.

According to Government Code Section 65009, if you challenge the Commission's action in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City, either at or prior to the public hearing.

If there are any questions regarding this notice, please contact **Ryan Gohlich, Senior Planner** in the Planning Division at 310.285.1194, or by email at [rgohlich@beverlyhills.org](mailto:rgohlich@beverlyhills.org). Copies of the project plans and associated application materials are on file in the Community Development Department, and can be reviewed by any interested person at 455 North Rexford Drive, Beverly Hills, CA 90210.

Sincerely,

  
Ryan Gohlich, Senior Planner

Mailed November 7, 2013

**ATTACHMENT H**

**PRIOR PLANNING COMMISSION RESOLUTIONS**

**ATTACHMENT I**  
**PRIOR CITY COUNCIL RESOLUTIONS**

## RESOLUTION NO 02-R-11251

RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS DENYING AN APPEAL AND CONDITIONALLY APPROVING A PLANNED DEVELOPMENT FOR A MIXED-USE PROJECT AT 131-191 NORTH CRESCENT DRIVE/9355-9373 WILSHIRE BOULEVARD ("THE CRESCENT PROJECT")

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

Section 1 Thomas White, on behalf of the Municipal League of Beverly Hills and the Beverly Hills South Homeowners Association, Beverly Lamer, and Larry Larson (hereinafter collectively referred to as the "Appellants") have submitted appeals of a Planning Commission decision conditionally approving a Planned Development to allow construction of a mixed use development project consisting of a four-story, 39,975 square-foot office/retail building fronting Wilshire Boulevard with a height of 45 feet and a residential component comprised of 88 apartment units with modulated height up to a maximum height of five-stories and 60 feet on property generally located at 131-191 Crescent Drive/9355-9373 Wilshire Boulevard ("The Crescent Project") (the "Project") The appeals of the Planning Commission decision to the City Council were timely filed

Section 2 On July 31 and August 28, 2002, the Planning Commission held duly noticed public hearings to consider the application for the Project filed by J H Snyder Company on behalf of Pacific Partnership and C/L Limited Partnership (hereinafter collectively referred to as the "Applicant") Evidence, both written and oral, was presented at said hearings Based upon the

evidence presented to it, the Planning Commission approved the Project subject to certain conditions

Section 3 On November 14, 2002, the City Council held a duly noticed public hearing to consider the appeal of the Project. At said hearing, the City Council also considered concurrent requests by the Applicant for a Zoning Code amendment to establish a mixed-use planned development overlay zone to be known as the M-PD-2 Zone (proposed Article 19.3) and an amendment to the 1957 Covenant restricting the use of the properties along Crescent Drive and an amendment to the 1982 Covenant dedicating certain parking spaces along Crescent Drive to off-site uses. Evidence, both written and oral, including the staff report, supporting documentation, and the record of the proceedings before the Planning Commission on the dates set forth in Section 2, was presented at said hearing. At the conclusion of the public hearing, the City Council directed staff to prepare a resolution approving the Project subject to certain conditions.

Section 4 The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq* ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq*), and the City's Local CEQA Guidelines. The City prepared an initial study and, based on the information contained in the initial study, ordered the preparation of an environmental impact report (the "EIR") for the Project. On December 3, 2002, the City Council adopted Resolution No 02-R-11242 certifying the EIR and making environmental findings in connection therewith, including adopting a Statement of Overriding Considerations and a Mitigation Monitoring Program.

Those findings and the mitigation monitoring program are hereby incorporated by this reference and made a part of this Resolution

Section 5 On December 3, 2002, the City Council adopted Ordinance No 02-O-2417 entitled "AN ORDINANCE OF THE CITY OF BEVERLY HILLS ESTABLISHING A MIXED-USE PLANNED DEVELOPMENT OVERLAY ZONE AND REGULATIONS PERTAINING THERETO AND AMENDING THE BEVERLY HILLS MUNICIPAL CODE," approving the Zoning Code amendment requested by the Applicant. The City Council further adopted Resolution No 02-R-11243 making the necessary amendments to the 1957 and 1982 Covenants to allow the development of the Project.

Section 6 The project site encompasses an entire block (9 lots), located between the City's central business district (the "Business Triangle") to the west, multi-family residential, office uses and a mini-park to the east, mixed retail uses, including a bakery/café, convenience retail, parking and a surface parking lot (with entitlement for senior housing) to the north and commercial uses to the south along Wilshire Boulevard. Eight of the lots front on Crescent Drive and are zoned RMCP (the "Crescent lots"). The remaining lot occupies the southern portion of the project site and fronts on Wilshire Boulevard (the "Wilshire lot"). The Wilshire lot is currently developed with a two-story commercial building with a floor area of approximately 20,900 square feet and an 18,480 square foot surface parking lot. A 45,750 square foot surface public parking lot covers the Crescent lots and provides parking for nearby businesses on Canon Drive.

The Crescent lots are encumbered by a 1957 covenant (the "1957 Covenant") that restricts the use of these lots. The project site is further obligated by separate covenant (the "1982 Covenant") to provide 192 parking spaces to Spago Restaurant and Coldwell Banker. The Project proposes to replace the covenanted parking spaces with parking spaces in the proposed parking structure that will be located under the residential component of the Project. As noted above, the City Council adopted Resolution No. 02-R-11243 making the necessary modifications to the 1957 and 1982 Covenants to allow development of the Project on the Crescent lots.

The Project proposes a planned development consisting of two components: a commercial component comprised of a four-story, 45-foot high, 39,975 square foot structure facing Wilshire Boulevard and a residential component comprised of an 88-unit apartment complex (including 12 townhouse units along the Crescent Drive frontage), with variable height up to a maximum of five stories and 60 feet, facing Crescent Drive. Parking for the Project will be provided in 534 parking spaces located under the residential component of the development. The parking structure will provide 307 parking spaces in subterranean and above-grade garages for the commercial portion of the Project, and 227 parking spaces in an at- and below-grade structure for the residential portion of the Project. The commercial parking will be accessed via the southern most entry driveway on Crescent Drive and from two driveways off the alley, while the residential parking will be accessed from the northern most driveway on Crescent Drive.

Section 7 Based upon the evidence presented, including the staff report and oral testimony, the City Council hereby finds that the Project will advance the objectives of the M-PD-2 Zone for the following reasons:

7.1 The proposed Project is consistent with and implements the City's General Plan. The Project conforms to the land use designations for the project site. Additionally, the Project advances several primary goals and objectives of the General Plan. The General Plan Land Use Element designates the Crescent lots as a Transitional Use District, while the Wilshire lot is designated Low Density Commercial. The Transitional Use District designation permits multiple-family residential and commercial parking uses, and the Low Density Commercial designation permits commercial uses with a maximum floor area ratio of 2.0 and a maximum height of 45 feet. The Zoning Code amendment referenced above does not authorize new land uses for any portion of the project site. The Project will permit slightly increased density and heights than the current underlying zoning but is consistent with the floor area ratios and density limits anticipated by the General Plan. Additionally, the Project will advance several of the goals and objectives set forth in the General Plan. Specifically, the Project furthers the following General Plan goals:

(a) The Land Use Element of the General Plan sets forth the following goal: *Transitional conflicts resulting from the juxtaposition of commercial and residential uses should be mitigated through a program which would provide adequate buffers between conflicting uses.*

The Project, as revised and approved, will further this goal by providing a buffer between the residential uses situated along the east side of Crescent Drive and the higher intensity commercial uses of the Business Triangle to the west. The Project, though slightly larger in scale than the residential uses on the east side of Crescent Drive, is comparable in scale and mass to adjacent development on the west side of Crescent Drive. The design of the residential component concentrates the height and mass of the building away from Crescent Drive and against the alley, thereby shielding surrounding development on Crescent Drive from the intrusive effects

of the commercial uses along Canon Drive. Moreover, the residential nature of the use is comparable in intensity and harmonious with nearby residential development. Implementation of the Project will remove the possibility for other potentially more intrusive development on the site and will help preserve the existing character of the neighborhood to the maximum extent feasible.

(b) The Land Use Element also sets forth a goal to “*recommend that certain anchor locations be set aside to permit development of a higher intensity development which is not otherwise provided in the community*”. Such anchor locations “*should encourage unified development oriented towards and along Wilshire Boulevard planned to complement the scale and character of adjacent residential areas*” and “*should incorporate measures to enhance streets, sidewalks and roadways in order to encourage pedestrian circulation between these areas and the Business Triangle*”.

The Project provides an opportunity to construct a quality mixed-use development that would not otherwise be encouraged by the underlying zone. The project site is located on an important site at the tip of the Business Triangle. The development of this site will set the tone for the rest of the Wilshire corridor and the Business Triangle. The Project provides sufficient floor area to allow the Applicant to construct a commercial building that includes high quality amenities and high quality architectural design. Moreover, the Project provides an opportunity for the City to improve the circulation and pedestrian flow between the retail activity in the Business Triangle and the rest of the Wilshire corridor. The Project design will contribute to the urban design amenities that will serve as a visual and pedestrian link between commercial areas along Wilshire Boulevard and the Business Triangle.

(c) The Housing Element sets forth a goal to seek opportunities to expand rental housing affordable to lower income households. Although the Project, by itself, would not specifically advance this goal, the Project is consistent with Beverly Hills Ordinance No. 82-O-1839 which was adopted to implement this goal. Moreover, implementation of the Project adds 88 units to the City's rental housing stock (representing the first increase in this housing area in almost two decades) and helps the City meet its share of the regional housing needs by providing 88 market rate housing units (which represents over 65 percent of the market rate units the City must produce by 2005).

(d) The Housing Element also sets forth a goal to "*Maintain the general scale and character of the City through directed revitalization*." The General Plan sets forth the following objectives and programs for implementing this goal: (1) Maintain the general height and density limits, while permitting selected, limited increases in height or other standards to meet other objectives, provided such modifications result in development generally compatible with the surrounding area, (2) Permit a limited increase in maximum allowable heights, taking into consideration road width and other factors, in selected multifamily residential areas.

The Project will further this goal and these objectives by replacing a surface parking area with subterranean parking and 88 rental housing units that are compatible with the existing neighborhood in scale and preserve the character and "rhythm" of the street. The Project's parking, modern features and design will be consistent with the character and quality of life generally associated with the City and the surrounding neighborhood. The limited increased height will meet other objectives described in this resolution, including shielding the residential uses on the east side of Crescent Drive from impacts of the commercial uses to the west. In addition, Crescent Drive, at

the Project site, is much wider than the typical multi-family residential street Crescent Drive is four lanes wide with an additional parking lane on each side of the street

(e) The Housing Element further sets forth a goal to *“expand the variety of housing product on a limited basis beyond single family detached, rental apartment and condominium units”* and sets forth the following objective to implement this goal *“Develop standards for mixed residential-commercial structures, with and without low income housing components, including additional height, in areas currently zoned for commercial use and consider appropriateness of various areas ”*

The Project will further this goal and objective by creating a mixed-use overlay zone (the M-PD-2 Zone) and providing a mixed commercial/residential development that would not otherwise be provided in the City Implementation of the Project expands the housing opportunities available in the City and helps the City fulfill its obligations under the Housing Element and State housing law

7.2 As conditioned, the proposed Project is compatible with existing and anticipated development in the vicinity and promotes harmonious development of the area The Project incorporates many design elements, including architectural modulations, ample setbacks and lush landscaping, designed to integrate the Project with both the commercial areas along Wilshire Boulevard and the residential areas along Crescent Drive The Project provides greater opportunity for landscaped area along Crescent Drive and Clifton Way and will include approximately forty percent (40%) green space area throughout the entire development The Applicant is also voluntarily dedicating land at the corner of Wilshire Boulevard and Crescent Drive to allow for the realignment of Wilshire Boulevard and Crescent Drive to provide better traffic circulation at that

intersection. Additionally, the arrangement of uses on the site reflects their context to Crescent Drive and the allowable uses under the current zoning. Exterior lighting has been limited to avoid spillage into adjacent residential uses.

The Project will be required to prepare and submit construction management plans and to conform all construction activities to said plans to minimize construction impacts on adjacent land uses. Said plans will address interim replacement parking to accommodate the 192 covenant parking spaces that will be displaced by construction activities. Thus, the Project will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.

7.3 As conditioned, the proposed Project is compatible with the scale and massing of the surrounding neighborhood. The northerly facade of the commercial building will not provide any openings towards the residential component of the Project (facing north). This will be advantageous with respect to privacy. In addition, the north wall will be visually enhanced by architectural articulation. A five-foot landscaped setback is provided along the Crescent Drive commercial frontage. This setback will serve as a visual, streetscape transition to the increased landscape setback in front of the residential component of the development to the north. The proposed four-story commercial building is compatible with the Wilshire Boulevard streetscape. The Project provides a two-foot setback on Wilshire Boulevard to provide planting opportunities. Along Wilshire Boulevard, the absence of a landscaped setback provides a more spacious area for pedestrians and more contact with ground-floor commercial development and will serve as a visual and pedestrian link between the retail activity in the Business Triangle and the commercial areas along the Wilshire corridor. Planter boxes and other street furniture will be introduced to further

enhance the pedestrian environment consistent with the urban setting along Wilshire Boulevard. The residential component of the Project incorporates substantial modulation into its design and blends well with surrounding residential development along Crescent Drive. While the Project is 60 feet in height, the height and mass of the building is concentrated away from Crescent Drive, as more fully discussed in Section 7.4 below. The entire Project, including the Wilshire Boulevard facade, will be reviewed by the Architectural Commission.

7.4 The proposed Project provides pedestrian-friendly amenities along the street level, and setbacks that are generally consistent with other development along the west side of Crescent Drive between Wilshire Boulevard and Santa Monica Boulevard. In addition to those amenities discussed above for the commercial portion of the Project, the proposed Project differs from the City's Site A structures to the north in its absence of retail frontage along Crescent Drive. Instead, its Crescent Drive frontage is residential in character with an ample landscaped front yard setback and a number of walkways leading to building entrances, which contribute to the pedestrian experience. Furthermore, the Project will add two and one-half feet (2½') to the width of the sidewalk and add street trees. The Project will screen activities associated with commercial establishments on Canon Drive from the residential uses on Crescent Drive. In particular, valet operations that currently occur in the open lot during the evening will be enclosed in the Project. On the south side, the commercial building facade is softened by landscaping and modulation. The proposed Project provides considerable modulation along Crescent Drive. While the Project is 60 feet in height, the height and mass of the building is concentrated away from Crescent Drive. The residential building forms an "E" with the spine along the alley at the west side of the site and the legs extending toward Crescent Drive. The green space atop the roof of the parking structure creates

the voids between the legs of the "E" and substantially reduces the mass of the building as viewed from the street. The top story is stepped back from Crescent Drive approximately 35 feet so that the building appears one story lower from the street. The proposed architectural treatments, setbacks (including upper floor setbacks), modulation, and landscaping reduce the mass of the structure as viewed from the street. The Project is comparable in scale and mass to other existing and proposed structures on the west side of Crescent Drive. Further, the Project's building facade, architectural details and landscaping are subject to review and approval by the Architectural Commission.

7.5 As conditioned, the proposed Project will not unduly induce significantly greater traffic on nearby neighborhood streets. The EIR prepared for the Project demonstrates that while the proposed Project will generate more traffic than the existing uses on the project site, the incremental traffic increase on adjacent streets is not significant. The net weekday traffic generated by the Project is estimated to be about 1,296 daily trips, of which 103 will occur in the morning peak hour and 179 in the afternoon peak hour. This traffic will not have a significant impact to any neighborhood street. Access to the Project will be provided via four driveways: two on Crescent Drive, and two on the southbound alley between Canon Drive and Crescent Drive. The northernmost driveway on Crescent Drive is designed to exclusively serve the residential component of the Project and entry will be restricted. The southernmost driveway on Crescent Drive will serve the parking areas designed for the commercial structure, which is proposed to be restricted to right-turn in, right-turn out movements. Left turn ingress/egress at the commercial driveway on Crescent Drive will be prohibited and signage and arrow markings on the pavement will be provided. The driveway will be channelized to force right-turn movements to further reduce any impacts on adjacent residential streets. The northernmost driveway off the alley will be dedicated for Spago

Restaurant's exclusive use and entry will be limited to key-card access. The southerly driveway off the alley will also be key-card operated and will provide a second access to the commercial parking area, this driveway will be accessed from the north and egressed to the south via the alley. Vehicles leaving the Project via the alley will access Wilshire Boulevard via a right-turn movement. Gaps in the westbound traffic stream, resulting from the traffic signal operation at the intersection of Wilshire Boulevard at Crescent Drive, will provide adequate opportunity for the southbound alley traffic to enter Wilshire Boulevard. In fact, the Project provides an opportunity to align the Crescent Drive/Wilshire Boulevard intersection and improve traffic circulation in the area. As noted in Section 7.2, the Applicant is voluntarily dedicating land at the corner of Wilshire Boulevard and Crescent Drive for the purpose of realigning the intersection of Wilshire Boulevard and Crescent Drive, thereby improving conditions at this intersection.

7.6 As conditioned, the proposed Project has sufficiently mitigated adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, pedestrian safety hazards, and significant parking impacts as a result of patron or employee parking demand. In addition to the traffic mitigation measures discussed above, the Project will replace the 244 marked parking spaces in the existing on-site parking lots that will be displaced by the Project with 534 parking spaces contained within four and one-quarter (4¼) levels of parking (2¼ levels below grade, one at grade, and one level above the grade level) located within the residential component of the Project. Conditions will be imposed on the Project to reduce parking impacts, including the following: (1) on-site parking will be provided to all commercial and residential tenants of the development, (2) all commercial patrons will be provided one-hour free, validated on-site parking, (3) free on-site parking will be provided to employees of the commercial building at all times, and (4) a Loading Management Plan

and a Parking Management Plan satisfactory to the Directors of Planning and Transportation will be provided. The EIR concluded that the Project's supply of parking is adequate to meet the parking demand generated by the Project and the uses on Canon Drive which utilize the existing parking. The Project will effectively utilize tandem spaces in the subterranean garage. A loading bay to accommodate loading/unloading vehicles will be provided at the southerly end of the alley. The largest truck to be accommodated will be 30 feet. The EIR concludes that the proposed loading spaces will be adequate to handle the delivery demands of the Project if two trucks of greater than 30 feet are prohibited from using the loading area at the same time. This prohibition has been made a condition of Project approval. The Applicant is proposing to dedicate additional land at the corner of Crescent Drive and Wilshire Boulevard to facilitate a better alignment of Crescent Drive which will improve vehicular circulation and pedestrian safety.

7.7 As conditioned, the Project will foster the uniform development of all parcels in the M-PD-2 Zone. The proposed Project encompasses all nine lots between Wilshire Boulevard and Crescent Drive and the alley between Canon Drive and provides the City with the opportunity to ensure that the entire block is developed in a unified manner, an objective that has been expressly stated by the City.

7.8 As part of the certification of the EIR and adoption of Zoning Code amendment for the Project, the City Council adopted a Statement of Overriding Considerations for the Project's unmitigable construction impacts. For the reasons stated in the Statement of Overriding Considerations and those discussed in Sections 7.1 through 7.7, inclusive, above, the proposed Project will promote the public health, safety and welfare and will not be detrimental to the public health, safety and welfare.

Section 8 As proposed and conditioned, the Project meets the objectives of the M-PD-2 Zone as set forth in Section 7 of this resolution. Therefore, as authorized by Article 19.3 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code, the City Council hereby approves the following elements of the planned development, as proposed and conditioned.

8.1 Pursuant to Beverly Hills Municipal Code Section 10-3.1934, the City Council hereby approves the commercial office uses and residential rental uses of the planned development, as proposed and conditioned.

8.2 Pursuant to Beverly Hills Municipal Code Section 10-3.1937(c), the City Council hereby approves the unoccupied architectural features of the planned development, as proposed and conditioned.

Section 9 Based upon the evidence presented, the City Council hereby denies the appeals and conditionally approves the Planned Development subject to the following mitigation measures and conditions.

A. Mitigation Measures. The Project shall be subject to the following physical mitigation measures:

A-1 The Project shall be reviewed by the City of Beverly Hills' Architectural Commission in accordance with the provisions of Article 30, Chapter 3, Title 10 of the Beverly Hills Municipal Code. In its review, the Commission shall consider the building mass and finish materials, other details of the building facade, upper story setbacks, proposed landscaping, pedestrian accommodations and exterior lighting with respect to the criteria set forth in

Section 10-3 3010, and apply appropriate conditions of approval to ensure compliance with these criteria At a minimum, the Architectural Commission's review shall ensure that the Project complies with the following (1) The Applicant provides a landscaping and street tree plan satisfactory to the Architectural Commission and the Department of Recreation and Parks Said plan shall, at a minimum, provide the amount of landscaping described in the EIR, (2) The Applicant provides a lighting plan that demonstrates to the satisfaction of the Architectural Commission that the exterior lighting proposed for the Project is consistent with Sections 10-4 314 and 5-6 1101, (3) The final building plans for the Project provide building setbacks, modulation, and massing that is consistent with the Project as described in the EIR or improves upon the setbacks, massing, and modulation shown on the plans analyzed in the EIR, (4) No project design or landscape features are modified, or eliminated, without prior review and approval by the City

A-2 The Applicant shall pay school impact fees in accordance with the most current rate schedule and shall submit proof of payment to the Director of Building & Safety prior to the issuance of the building permits

A-3 The Applicant shall pay park impact fees in accordance with the most current rate schedule and shall demonstrate payment to the Director of Building & Safety prior to issuance of the building permits

A-4 The Applicant shall submit a Solid Waste Management Plan to the Directors of Planning and Public Works for their review and approval prior to issuance of building permits for the first project component and the Applicant shall comply with that approved plan The plan shall discuss the implementation of source reduction and recycling and shall demonstrate that the

Project includes measures consistent with the City's AB939 compliance requirements, including but not be limited to (1) Provision of clearly marked, separate recycling areas for glass, aluminum, office paper, newspaper, and plastics, (2) Provision of recycling bins for glass, aluminum, and plastic next to each beverage machine in each public and employee area and in any other common area where employees and visitors may generate recyclable material, (3) Provision of bins for cardboard recycling during project construction and operation, (4) Provision of a central area for white office paper and newspaper on each floor within each area and building proposed for office purposes, (5) Promotion of recycling efforts by publicizing the Project's recycling program to employees, residents, and visitors, (6) Use of reduced and recyclable packaging for commercial products offered by project components, where possible, (7) Arrangements for the recycling of scrap wood during construction, (8) Arrangements for the recycling of green waste generated by project landscaping, installation, and maintenance, (9) Determination of the number design and placement of waste containers on the project site, (10) Determination of access and turning radius adequacy for waste collection vehicles

A-5 Prior to issuance of any occupancy permit for the Project, the Applicant shall demonstrate to the satisfaction of the Director of Transportation that the Project complies with the City's Transportation Demand and Trip Reduction Measures under the Congestion Management Program

A-6 A comprehensive Parking Management Plan shall be submitted to the Director of Planning for review and approval prior to issuance of the Project occupancy permits and the Applicant shall comply with that approved Plan. The plan shall address the utilization of the

subterranean garage by the respective tenants and operators and shall ensure the effective utilization of the tandem parking by (1) specifying how such parking will be restricted to tenants, rather than visitors, and/or (2) by requiring the use of commercial tandem parking spaces by employees of the same organization, and/or (3) by providing for an attendant service to move cars, and/or (4) by specifying some other method deemed acceptable by the Director of Planning. It shall also provide for weekend use of commercial/office parking by non-project users and shall provide for a method of directing UPS/FedEx and other trucks and/or large vans to the loading area off the alley.

A-7 The project Applicant shall prepare a comprehensive Construction Parking and Hauling Plan and said Plan shall be submitted to and approved by the Directors of Planning and Building & Safety prior to the issuance of building permits and the Applicant shall comply with that approved Plan. Said Plan shall demonstrate to the satisfaction of the Directors of Planning and Building & Safety that adequate provisions for parking for covenanted uses and construction workers have been made prior to issuance of construction and grading permits for the Project. Adequate provisions shall be defined as demonstration that the Applicant has entered into a contract for the provision of the necessary parking. Such parking shall be located no more than 500 feet from the project site, unless a shuttle service is provided at the Project developer's expense, which satisfactorily meets the needs of the covenanted users. The Plan shall prohibit any construction-related parking on nearby residential streets or in the alley.

A-8 The Director of Transportation shall consult with the Applicant to ensure that the Project and/or the Project's Parking Management Plan includes measures to (1) restrict left hand

turns into and out of the southern entrance on Crescent Drive, (2) ensure that entry to the northerly driveway in the alley is controlled through key-card access and that all parking for Spago guests in the parking structure is provided by valet, and (3) to provide project residents and employees with information about proper routing to and from the building. Any measures shall be reviewed and approved by the Director of Transportation prior to issuance of the Certificate of Occupancy for the Project and the Applicant shall comply with those approved measures.

A-9 The Applicant shall modify the design of the motor court to the satisfaction of the Directors of Transportation and Planning to accommodate all vehicles that will use the parking garage to the satisfaction of the City. Consideration should be given to relocating the pedestrian walkway to the southerly side of the driveway to provide more visibility for both pedestrians and vehicles and cutting back the pedestrian island (towards Crescent Drive) to provide for unimpeded left-turns from the garage onto Crescent Drive. The revised plan shall show the size of all parking spaces and shall demonstrate to the satisfaction of the Director of Planning that all spaces shall comply with the City Code requirements, including minimum dimensions for parking spaces. The revised plan shall be submitted to the Director of Planning for review and approval prior to issuance of the grading and construction permits for the Project.

A-10 The Applicant shall install signage in the alley in the vicinity of the loading area. The signage shall clearly direct any truck arriving at the loading area to pull as far south as possible so that a second truck can access the northerly loading space without protruding into the pedestrian walkway. The proposed signage shall be reviewed and approved by the

Directors of Planning and Transportation prior to installation and shall be installed prior to issuance of any occupancy permit for the Project

- A-11 The Applicant shall be required to comply with the following restrictions on the use of the loading area and alley (1) Two trucks of greater than 30 feet are prohibited from using the loading area at the same time, (2) Commercial vehicles other than small vans (e.g. couriers) shall be prohibited from using the loading area between the hours of 4 00 p.m. and 6 00 p.m. Monday through Friday. The project operator shall designate an employee to monitor the loading area and deliveries to ensure compliance with the restrictions set forth in this provision
- A-12 The Applicant shall submit a Construction Management Plan to the Director of Planning for review and approval prior to issuance of any grading or construction permits and the Applicant shall comply with that approved Plan. At a minimum, the Construction Management Plan shall address the following (1) construction delivery schedules, (2) truck hauling/construction traffic routing and access, (3) access to and from the site by construction workers, (4) use of the alley, (5) construction parking (on street construction parking shall be prohibited), and (6) management of vehicular ingress/egress from/to public rights-of-way (e.g. flagmen, etc.) The plan shall demonstrate that any construction impacts to alley operations, on-street parking, or associated with truck access have been reduced to a level consistent with normal construction activity within the City
- A-13 The Applicant shall ensure that the construction contractors shall (1) Use adequate water for dust control (preferably using reclaimed water), (2) Terminate any construction activities involving earth disturbance during high wind conditions (winds greater than 25 miles per

hour), (3) Operate street sweepers, or roadway-washing trucks, on adjacent roadways to remove dirt dropped by construction vehicles, or dried mud carried off by trucks moving dirt, or bringing construction materials, (4) Cover trucks or wetting-down loads of any dirt hauled to or from the project site, (5) Perform low-NOx emission tune-ups on all equipment operating on-site for more than 60 days, (6) Require on-site contractors to operate a congestion relief program including provision of rideshare incentives for construction personnel, provision of off-street parking for construction personnel, limitation of lane closures to non-peak traffic hours, and scheduling the receipt of construction materials for non-peak traffic periods where possible

A-14 The Applicant shall not use, or permit to be used, construction vehicles, nor load or unload construction materials or debris, nor permit the same to be done, before 8 a m

A-15 The Applicant shall restrict pile driving, if required, to the hours of 9 a m to 4 p m on Mondays through Fridays

A-16 Prior to the issuance of building permits, the Applicant shall submit a Construction Haul Route Plan that avoids the use of residential streets to the City of Beverly Hills Building & Safety Department and the Department of Transportation for review and approval and shall implement the approved Construction Hauling Plan

A-17 Prior to issuance of building permits, the Applicant shall perform additional, on-site tests specifically designed to investigate potential subsurface faulting as recommended by the Project's geotechnical consultant The phasing and nature of the testing shall be reviewed and approved by the Director of Building and Safety prior to the tests being conducted Testing shall be performed by a state-licensed geologist approved by the City Examples of

further investigation at the site, which may be required by the Director of Building & Safety include, but are not limited to (1) Performing surface geophysical surveys (similar to those which were performed by Pratt et al (1998) across areas west of the site) to identify the continuity or discontinuity of subsurface stratigraphy, (2) Performing a series of closely spaced cone penetration tests and use of the data (along with the existing geotechnical borehole data) to define the continuity (or lack thereof) of subsurface layers, (3) Performing core borings, or large diameter borings, for down-hole inspection of subsurface conditions to collect data for correlation with previously collected data, (4) Excavating and logging trenches in the vicinity of the building site and perpendicular to the suspected trace of faulting Upon completion of the tests, the Applicant shall prepare and submit a report and recommendations to the Director of Building & Safety for review and approval All required mitigation measures to reduce risks associated with subsurface faulting shall be made a condition of the Project The Applicant shall demonstrate compliance with the required measures prior to issuance of any building permit, or on a time schedule deemed appropriate by the Director of Building & Safety Should the results of additional geotechnical investigation indicate the need for the redesign of the Project, the nature of the redesign shall be reviewed by the Director of Planning and Community Development in order to determine if the redesigned project requires additional environmental review

- A-18 Testing shall be done at the Applicant's expense by an environmental assessor approved by the City for Asbestos Containing Building Materials (ACBM), PCBs, and other hazardous substances potentially present on site The report shall be submitted for review and approval by the Director of Public Works prior to the issuance of the demolition permit for the Project

If any hazardous substances are detected in the existing structures or the soil on the project site, prior to the issuance of the demolition permit for the Project, the Applicant shall (i) retain a qualified environmental expert approved by the City to supervise the removal and disposal of such substances, and (ii) comply with all requirements imposed by any federal, state, or local regulatory agency with respect to the removal and disposal of such materials from the project site

A-19 A Construction Risk Management Plan shall be prepared and submitted to the Director of Public Works for review and approval prior to issuance of any demolition or construction permits for the Project. The Plan shall incorporate the recommendations of the environmental assessors report and shall identify procedures for identifying any hazardous materials that may be encountered during construction. If materials that could present a threat to human health or the environment are discovered, construction in that immediate area shall cease immediately. Furthermore, a qualified professional shall evaluate the finding(s) and make appropriate recommendations. Work shall not resume in that area until the City determines that appropriate actions have been implemented based on those recommendations to protect human health and the environment.

**B. Project Conditions:** The Project shall be comply with the following conditions

B-1 Prior to issuance of building permits and subject to the review and approval of the Transportation Department, the Applicant shall provide a Parking Operation Plan (1) to designate replacement parking for the 192 covenant parking spaces displaced during the construction phase, including specifying which parking lots will be used to accommodate such parking, (2) to provide the hours of valet operations, if required, (3) to demonstrate that

an adequate number of valet attendants are available during morning and evening peak workday hours. The Parking Operation Plan shall include a map identifying routes and parking lots to be utilized and shall include written verification from the owner of the proposed replacement parking that such parking will be available to the Applicant throughout the construction period. The Applicant shall comply with the approved Parking Operation Plan.

- B-2 No uses other than those specifically approved in Section 8 of this Resolution shall be permitted as part of this planned development. This condition shall not be construed to bar the applicant from requesting a modification at a later date to permit additional uses as part of this planned development.
- B-3 No rooftop uses are approved or permitted as part of this planned development. This condition shall not be construed to bar the applicant from requesting a modification at a later date to permit rooftop uses as part of this planned development.
- B-4 Prior to issuance of occupancy permits and subject to the review and approval of the Directors of Planning and Transportation, the Applicant shall provide a Loading Management Plan to minimize loading-related impacts from the Project on adjacent land uses. The Loading Management Plan shall designate a delivery monitor to monitor the loading area and deliveries in order to control the circulation activities and to prevent overcrowding in the loading area. The City hereby retains the authority to impose additional conditions on the Project to address loading and delivery problems should they arise. The Applicant shall comply with the approved Loading Management Plan and any additional

conditions imposed after adoption of this resolution and after adoption of the Loading Management Plan, in order to address loading and delivery problems

- B-5 The Project shall provide on-site parking for its residential and commercial tenants at all times
- B-6 The Project shall provide one-hour free, validated on-site parking for all patrons of the commercial component at all times. In addition, the rate charged for parking after the first hour shall not exceed the amount charged at the nearest city parking structure. Signage satisfactory to the Director of Planning shall be posted at the driveway entrance indicating the availability of the free parking in the garage for patrons of the commercial component
- B-7 The Project shall provide free, on-site parking to employees of all commercial tenants at all times
- B-8 The Project shall be designed to prohibit left turn egress from the Commercial (southern) driveway on Crescent Drive. The applicant shall channelize the driveway to restrict turning movements to right turns only and shall install "Right Turn Only" signs and arrow markings on the pavement, or such other restrictive devices as required by the Director of Transportation and City Engineer
- B-9 Prior to the issuance of occupancy permits for the Project, the applicant shall install a sign substantially indicating "Yield to Pedestrians Crossing" to warn drivers entering/exiting the residential and commercial garage
- B-10 The rear facade of the commercial component of the Project shall be visually enhanced by architectural articulation

B-11 Prior to the issuance of the building permits, the Applicant shall record a lot-tie covenant, satisfactory to the City Attorney, tying together all nine lots of the Project site

C General Conditions The Project shall comply with all of the following conditions

C-1 The Project shall comply with the applicable standard conditions and shall obtain all necessary permits from the Public Works/Engineering Department. The Standard Conditions List is attached hereto as Exhibit A and incorporated herein by this reference.

C-2 The Applicant shall comply with the requirements of the street tree mitigation plan of the Recreation and Parks Department, attached hereto as Exhibit B and incorporated herein by this reference.

C-3 Except as otherwise provided by these conditions, the Project shall be constructed and operated in substantial compliance with the plans submitted to and approved by the City Council at its meeting of November 14, 2002.

C-4 A cash deposit of \$5,000 shall be deposited with the City to ensure compliance with the conditions of this Resolution regarding construction activities. Such deposit shall be returned to Applicant upon completion of all construction activities and in the event that no more than two violations of such conditions or the Beverly Hills Municipal Code occur. In the event that three or more such violations occur, the City may (a) retain the deposit to cover costs of enforcement, (b) notify the Applicant that the Applicant may request a hearing before the City within ten days of the notice, and (c) issue a stop work notice until such time that an additional deposit of \$10,000 is deposited with the City to cover the costs associated with subsequent violations. Work shall not resume for a minimum of two days after the day that the additional deposit is received by the City. If the Applicant timely requests a hearing,

said deposit will not be forfeited until after such time that the Applicant has been provided an opportunity to appear and offer evidence to the City, and the City determines that substantial evidence supports forfeiture. Any subsequent violation will trigger forfeiture of the additional deposit, the issuance of a stop work notice, and the deposit of an additional \$10,000, pursuant to the procedure set forth herein above. All amounts deposited with the City shall be deposited in an interest bearing account. The Applicant shall be reimbursed all interest accruing on monies deposited. The requirements of this condition are in addition to any other remedy that the City may have in law or equity and shall not be the sole remedy of the City in the event of a violation of the conditions of this Resolution or the Beverly Hills Municipal Code.

- C-5 Within three working days after approval of this Resolution, the Applicant shall remit to the City a cashier's check, payable to the County Clerk, in the amount of \$25.00 for a documentary handling fee in connection with Fish and Game Code requirements. If the Department of Fish and Game determines that this Project is not exempt from a filing fee imposed pursuant to Fish and Game Code Section 711.4, then the Applicant shall also pay to the Department such fee and any fine which the Department determines to be owed.
- C-6 These conditions shall run with the land and shall remain in full force for the duration of the life of the Project.
- C-7 This Resolution approving a Planned Development, Mixed-Use project for commercial and residential uses and replacement of covenanted parking (collectively, "the discretionary approvals") shall not become effective until the owner of the project site records a covenant,

satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of this resolution as an exhibit. The Applicant shall deliver the executed covenant to the Department of Planning and Community Development within 60 days after the City Council's adoption of this resolution. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this resolution approving the discretionary approvals shall be null and void and of no further effect. Notwithstanding the foregoing, the Director of Planning and Community Development may, upon a request by the Applicant, grant a waiver from the 60-day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that would affect the discretionary approvals.

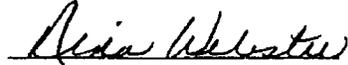
C-8 The City reserves the right to make modifications and/or impose additional conditions which may become necessary to enable implementation of the specific conditions set forth in this Resolution and the Applicant shall comply with all such modified or additional conditions.

Section 10 The City Clerk shall certify to the adoption of this resolution, and shall cause this resolution and her certification to be entered in the Book of Resolutions of the Council of this City. This resolution shall become effective upon the effective date of Ordinance No. 02-O-2417.

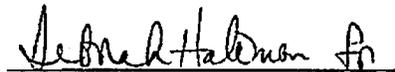
Adopted December 17, 2002

  
MERALEE GOLDMAN  
Mayor of the City of Beverly Hills, California

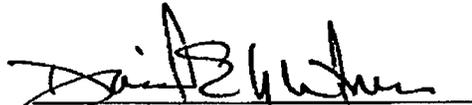
ATTEST

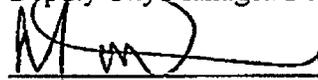
 (SEAL)  
NINA WEBSTER  
City Clerk

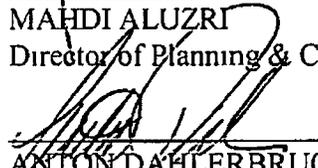
APPROVED AS TO FORM

  
LAURENCE S WIENER  
City Attorney

APPROVED AS TO CONTENT

  
DAVID LIGHTNER  
Deputy City Manager/Development

  
MAHDI ALUZRI  
Director of Planning & Community Development

  
ANTON DAHLERBRUCH  
Deputy City Manager/Community/  
Director of Transportation

  
RONALD B CLARK  
Director of Building & Safety

  
DAVID D GUSTAVSON  
Director of Civil Engineering

*EXHIBIT A*  
*PUBLIC WORKS/ENGINEERING*  
*STANDARD CONDITIONS LIST*

CITY OF BEVERLY HILLS  
STANDARD CONDITIONS LIST  
FOR THE PLANNING COMMISSION

September 6, 2002

ENGINEERING, UTILITIES AND RECREATION & PARKS:

1. The applicant shall remove and replace all defective sidewalk surrounding the existing and proposed buildings.
2. The applicant shall remove and replace all defective curb and gutter surrounding the existing and proposed buildings.
3. The applicant shall comply with all applicable statutes, ordinances and regulations concerning the conversion of residential rental units into condominiums, including, but not limited to, the requirement that the applicant pay the City of Beverly Hills the condominium conversion tax of \$5,638.80, if a certificate of occupancy is issued prior to approval of the final subdivision map by the City Council. (The tax figure is adjusted annually )
4. The applicant shall remove all unused landings and driveway approaches. These parkway areas, if any, shall be landscaped and maintained by the adjacent property owner. This landscape material cannot exceed six to eight inches in height and cannot be planted against the street trees. Care shall be taken to not damage or remove the tree existing tree roots within the parkway area. Remove and replace all defective alley and driveway approaches surrounding the existing and proposed buildings.
5. The applicant shall protect all existing street trees adjacent to the subject site during construction of the proposed project. Every effort shall be made to retain mature street trees. No street trees, including those street trees designated on the preliminary plans, shall be removed and/or relocated unless written approval from the Recreation and Parks Department and the City Engineer is obtained. (See attached Trees and Construction document.)

Removal and/or replacement of any street trees shall not commence until the applicant has provided the City with an improvement security to ensure the establishment of any relocated or replaced street trees. The security amount will be determined by the Director of Recreation and Parks, and shall be in a form approved by the City Engineer and the City Attorney.

Standard Conditions List  
For the Planning Commission  
September 6, 2002

6. The applicant shall provide that all roof and/or surface drains discharge to the street. All curb drains installed shall be angled at 45 degrees to the curb face in the direction of the normal street drainage flow. The applicant shall provide that all groundwater discharges to a storm drain. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Connection to a storm drain shall be accomplished in the manner approved by the City Engineer and the Los Angeles County Department of Public Works. No concentrated discharges onto the alley surfaces will be permitted.
7. The applicant shall provide for all utility facilities, including electrical transformers required for service to the proposed structure(s), to be installed on the subject site. No such installations will be allowed in any City right-of-way.
8. The applicant shall underground, if necessary, the utilities in adjacent streets and alleys per requirements of the Utility Company and the City.
9. The applicant shall make connection to the City's sanitary sewer system through the existing connections available to the subject site unless otherwise approved by the City Engineer and shall pay the applicable sewer connection fee.
10. The applicant shall make connection to the City's water system through the existing water service connection unless otherwise approved by the City Engineer. The size, type and location of the water service meter installation will also require approval from the City Engineer.
11. The applicant shall provide to the Engineering Office the proposed demolition/construction staging for this project to determine the amount, appropriate routes and time of day of heavy hauling truck traffic necessary for demolition, deliveries, etc., to the subject site.
12. The applicant shall obtain the appropriate permits from the Civil Engineering Department for the placement of construction canopies, fences, etc., and construction of any improvements in the public right-of-way, and for use of the public right-of-way for staging and/or hauling certain equipment and materials related to the project.
13. The applicant shall remove and reconstruct any existing improvements in the public right-of-way damaged during construction operations performed under any permits issued by the City.

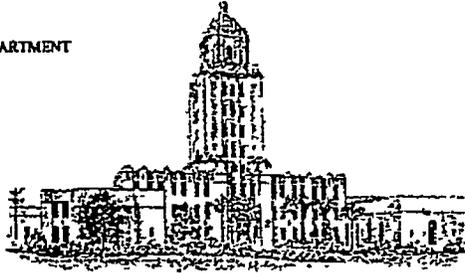
Standard Conditions List  
For the Planning Commission  
September 6, 2002

14. During construction all items in the Erosion, Sediment, Chemical and Waste Control section of the general construction notes shall be followed
15. Condensate from HVAC and refrigeration equipment shall drain to the sanitary sewer, not curb drains.
16. Water discharged from a loading dock area must go through an interceptor/clarifier prior to discharging to the storm drain system. A loading dock is not to be confused with a loading zone or designated parking space for loading and unloading
17. Organic residuals from daily operations and water used to wash trash rooms cannot be discharged to the alley. Examples are grocery stores, mini markets and food services.
18. All ground water discharges must have a permit (NPDES) from the Regional Water Quality Control Board. Examples of ground water discharges are, rising ground water and garage sumps.
19. Storm water runoff from automobiles going into a parking garage shall be discharged through a clarifier before discharging into the storm drain system. In-lieu of discharging runoff through a clarifier, parking lots can be cleaned every two weeks with emphasis on removing grease and oil residuals which drip from vehicles. Maintain records of cleaning activities for verification by a City inspector
20. After completion of architectural review of a new or modified commercial structure, and prior to issuance of the certificate of occupancy, the applicant is required to comply with the Public Art Ordinance. An application is required to be submitted to the Fine Art Commission for review and approval of any proposed art piece or, as an alternative, the applicant may choose to pay an in-lieu art fee.

**EXHIBIT B**  
**RECREATION AND PARKS**  
**STREET TREE MITIGATION PLAN**

RECREATION AND PARKS DEPARTMENT  
455 N Roxford Drive  
Beverly Hills, CA 90210-4817  
(310) 285-2536  
FAX: (310) 385-0840

STEVE MILLER, DIRECTOR



## CITY OF BEVERLY HILLS

### Trees and Construction

The City of Beverly Hills and its Residents hold our urban forest in high regard. We appreciate your regard for our City trees as you contemplate your project. We look forward to reviewing your mitigation plan as it relates to City trees that may be impacted by the proposed activities included in this project.

The applicant should identify any City and/or protected tree or trees within the proposed area of construction, and/or like tree or trees in close proximity to the construction site, that may be impacted. The location of these trees should be noted on the initial plan submittal. A plan that works to alleviate, or minimize, the potential that the health and vigor of a City and/or protected tree or trees will be affected during the construction process (a mitigation plan) should accompany the original plan submittal.

A mitigation plan should focus on retaining and protecting an existing City and/or protected tree or trees. This plan should include a valuation of the tree or trees that may be impacted by the proposed project. If more than one tree is involved, each tree should be valued in a separate treatment. This valuation should be performed by an International Society of Arboriculture (ISA) Certified Arborist using the standard valuation method recognized by the ISA.

Elements of the mitigation plan should include:

1. Definition of what can be done to avoid any impact on the tree or trees, as well as what steps will be taken to protect the tree or trees that may be impacted by construction activities, for the duration of the project.
2. If the well being of the tree or trees is suspected to be impacted or deemed unavoidable, a proposal to box, maintain and re-install the tree or trees after construction activities have been completed should be submitted. Any proposal for the boxing, care and re-installation of any tree or trees should include a resume of experience specific to tree moving from the firm submitting the plan. This proposal should include a contingency plan to replace the tree(s) with the installation of a forty-eight (48) inch box size should the tree or trees decline within twenty four (24) months after the time the tree or trees are re-installed into the site.
3. An offer of bond that is consistent with the value of the tree or trees based upon the previously described valuation of the tree or trees by an ISA Certified Arborist.
4. The ISA certification number and contact information for the ISA Certified Arborist assisting with the project mitigation plan.

To access a listing of ISA Certified Arborists in your area, visit <http://www.isa-arbor.com/arborists/arbsearch.html>

To learn more about the valuation of trees, visit <http://www2.champaign.isa-arbor.com/consumer/values.html>

Contact the Department of Recreation and Parks Urban Forest Supervisor at (310) 550-4638 or at [kpfaizgraf@ci.beverly-hills.ca.us](mailto:kpfaizgraf@ci.beverly-hills.ca.us) if you are in need of further assistance.

RESOLUTION NO 02-R-11242

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BEVERLY HILLS CERTIFYING THE ENVIRONMENTAL IMPACT REPORT FOR THE CRESCENT PROJECT, MAKING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT, ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS, AND ADOPTING A MITIGATION MONITORING PROGRAM

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

Section 1 A formal application has been submitted for a planned development, amendments to existing parking covenants, and a zoning code amendment to allow construction of a mixed use development project consisting of a four-story, 39,975 square-foot office/retail building fronting Wilshire Boulevard with a height of 45 feet and a residential component comprised of 88 apartment units with modulated height up to a maximum height of five-stories and 60 feet on property generally located at 131-191 Crescent Drive/9355-9373 Wilshire Boulevard (collectively referred to herein as the "Project"), as more fully described in Section 2.0 of the Draft Environmental Impact Report dated July 2002 (the "DEIR") In accordance with the California Environmental Quality Act ("CEQA") (Cal Pub Res Code §21000 *et seq*) and the State Guidelines (the "Guidelines") (14 Cal Code Regs §15000 *et seq*) promulgated with respect thereto, the City analyzed the Project's potential impacts on the environment

Section 2 Pursuant to Section 15063 of the Guidelines, the City prepared an Initial Environmental Study (the "Initial Study") for the Project. The Initial Study concluded that there was substantial evidence that the Project might have a significant environmental impact on several specifically identified resources and governmental services, including aesthetics, air quality, geology, population and housing, land-use and planning, noise, public services and utilities, transportation/circulation, and hazards and hazardous materials.

Section 3 Pursuant to Guidelines Sections 15064 and 15081, and based upon the information contained in the Initial Study, the City ordered the preparation of an environmental impact report (the "EIR") for the Project. The City contracted with an independent consultant for the preparation of the EIR and, on April 12, 2002, prepared and sent a Notice of Preparation of the EIR to responsible, trustee, and other interested agencies and persons in accordance with Guidelines Section 15082(a).

Section 4 The independent consultant completed the DEIR, together with those certain technical appendices (the "Appendices"), on July 15, 2002. The City circulated the DEIR and the Appendices to the public and other interested persons between July 15, 2002, and August 14, 2002, for a 30-day comment period pursuant to Guidelines Sections 15087(c) and 15105. The Planning Commission held a duly noticed public hearing on July 31, 2002, and August 28, 2002, at which times it received oral and documentary evidence from the public regarding the Project and the DEIR.

Section 5 During the public review and comment process, the City received written and oral comments regarding the adequacy of the DEIR. The City prepared written responses to all comments and made minor revisions and additions to the DEIR in response to the comments. After reviewing the responses to comments and the revisions to the DEIR, City staff concluded that the information and issues raised by the comments and the responses thereto did not constitute new information requiring recirculation of the DEIR pursuant to Public Resources Code Section 21092.1 or Guidelines Section 15088.5.

Section 6 The Final Environmental Impact Report (the "EIR") is comprised of three volumes: the DEIR dated July 15, 2002, the Appendices dated July 15, 2002, and the Comments and Responses to Comments on the DEIR dated August 19, 2002. The Planning Commission held a duly noticed public hearing on the DEIR and the EIR on July 15, 2002, and August 28, 2002 (the "PC Hearings") at which time evidence, both written and oral, was presented to and considered by the Planning Commission. Notice of the time, place and purpose of the PC Hearings was provided in accordance with applicable law. Based upon the record of the PC Hearings, the Planning Commission voted to certify the completeness and adequacy of the EIR, to make certain environmental findings, to conditionally approve the planned development for the project, and to recommend that the City Council approve the zoning amendment and amend the parking covenants.

Section 7 The City Council held a duly noticed *de novo* public hearing on the EIR and the Project on November 14, 2002 (the "Hearing") at which time evidence, both written

and oral, was presented to and considered by the City Council. Notice of the time, place and purpose of the Hearing was provided in accordance with applicable law. Based upon the record of the Hearing, the City Council voted to certify the completeness and adequacy of the EIR, to introduce the zoning amendment, to amend the parking covenant, and to conditionally approve the planned development for the Project.

Section 8 The findings made in this Resolution are based upon the information and evidence set forth in the EIR and upon other substantial evidence which has been presented in the record of this proceeding. The documents, staff reports, technical studies, appendices, plans, specifications, and other materials that constitute the record of proceedings on which this Resolution is based are on file and available for public examination during normal business hours in the Department of Planning and Community Development and with the Director of Planning and Community Development, who serves as the custodian of these records.

Section 9 The City Council finds that pursuant to Guideline Sections 15087(e) and 15105, agencies and interested members of the public have been afforded ample notice and opportunity to comment on the EIR.

Section 10 The City Council has independently reviewed and considered the contents of the EIR prior to deciding whether to approve the Project pursuant to Guidelines Section 15084(e). The City Council hereby finds that the EIR reflects the independent judgement of the City and the City Council. The City Council further finds that the additional information

provided in the staff reports, in the responses to comments received after circulation of the DEIR, and in the evidence presented in written and oral testimony presented at the Hearings, does not constitute new information requiring recirculation of the EIR under CEQA. None of the information presented to the City Council after circulation of the DEIR has deprived the public of a meaningful opportunity to comment upon a substantial environmental impact of the Project or a feasible mitigation measure or alternative that the City has declined to implement.

Section 11 The City Council finds that the comments regarding the DEIR and the responses to those comments have been received by the City, that the Planning Commission and the City Council received public testimony regarding the adequacy of the EIR, and that the City Council, as the final decision-making body for the lead agency, has reviewed and considered all such documents and testimony prior to acting on the Project. Pursuant to Guidelines Section 15090, the City Council hereby certifies that the EIR has been completed in compliance with CEQA.

Section 12 Based upon the EIR and the record before the City Council, the City Council finds that the Project will not cause any significant environmental impacts except in the area of short term Air Quality impacts. Explanations for why the impacts other than short term Air Quality were found to be insignificant are contained in the Environmental Findings set forth in Exhibit A to this resolution and more fully described in Section 3.0 of the EIR and the Initial Study (included as Exhibit A to the EIR).

Section 13 Based upon the EIR and the record before the City Council, the City Council finds that the Project will create significant unavoidable impacts to Air Quality from short-term air pollutants associated with construction of the Project. These significant impacts are further described in the "Findings and Facts In Support of Findings" set forth in Exhibit A, which is attached hereto and is incorporated herein by reference, and in Sections 3.0 of the EIR. The significant impacts to Air Quality arising from Project are associated with construction equipment and will be temporary in nature but will generate emissions of air pollutants. Estimated daily average construction emissions will remain below the thresholds of significance established by the South Coast Air Quality Management District with the exception of nitrogen oxide (NO<sub>x</sub>) emissions. The Project's construction-related NO<sub>x</sub> emissions, which are associated with hauling trips over long distances and the operation of heavy construction equipment on-site, will result in short-term, significant, unavoidable impacts to Air Quality. These impacts will be substantially reduced through the application of standard conditions, uniform codes, Project design features, and mitigation measures identified in the EIR, and will cease at the completion of construction activities. Nevertheless, these impacts remain significant. All feasible mitigation measures have been adopted. The changes or alterations required in, or incorporated into, the Project, and a brief explanation of the rationale for this finding with regard to the identified impacts, are contained in Exhibit A. Further explanation for these determinations may be found in Section 3.0 of the EIR.

Section 14 Based upon the EIR and the record before the City Council, the City Council finds that the Project's cumulative impacts are not significant. Further explanation for this determination may be found in Section 3.0 and Section 4.0 of the EIR.

Section 15 Section 5.0 of the EIR describes, and the City Council has fully considered, a reasonable range of alternatives to the Project. These alternatives include "Alternative 1 – Prior Version of the Project (Triangle Gateway)," "Alternative 2 – No Project Code-Conforming with Senior Housing," "Alternative 3 – Code-Conforming with Market Rate Housing," "Alternative 4 – No Project No Change to Project Site." The alternatives identified in the EIR either would not sufficiently achieve the basic objectives of the Project, would do so only with unacceptable adverse environmental impacts, or are not feasible. Accordingly, and for any one of the reasons set forth in Exhibit A, attached hereto and incorporated herein by this reference, or set forth in the EIR, the City Council finds that specific economic, social, or other considerations make infeasible each of the Project alternatives, including the three "No Project" alternatives, identified in the EIR, and each is hereby rejected. The City Council further finds that a good faith effort was made to incorporate alternatives into the preparation of the EIR, and that all reasonable alternatives were considered in the review process of the EIR and the ultimate decision on the Project.

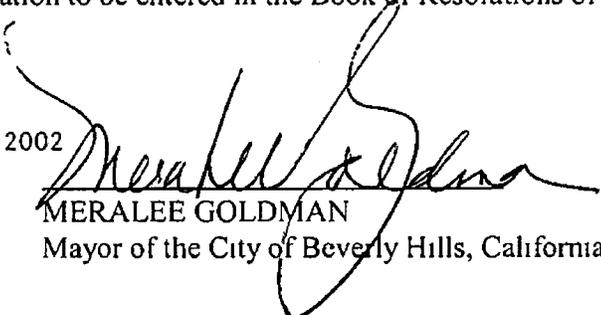
Section 16 For the short term Air Quality impacts identified in the EIR as "significant and unavoidable," the City Council hereby adopts the "Statement of Overriding Considerations" set forth in Exhibit B, which is attached hereto and is hereby incorporated by

reference The City Council finds that each of the overriding benefits, by itself, would justify proceeding with the Project despite any significant and unavoidable air quality impacts identified in the EIR

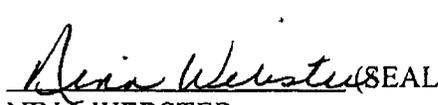
Section 17 The City Council hereby adopts the mitigation measures set forth in Exhibit C, attached hereto and incorporated herein by this reference and imposes each mitigation measure as a condition of Project approval The City Council further adopts the "Mitigation Monitoring Program" which is presented as Exhibit D, attached hereto and incorporated herein by reference City staff shall implement and monitor the mitigation measures as described in Exhibit D

Section 18 The City Clerk shall certify to the adoption of this resolution, and shall cause this resolution and her certification to be entered in the Book of Resolutions of the Council of this City

Adopted December 3, 2002

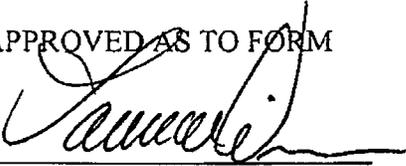
  
 MERALEE GOLDMAN  
 Mayor of the City of Beverly Hills, California

ATTEST

 (SEAL)  
 NINA WEBSTER  
 City Clerk

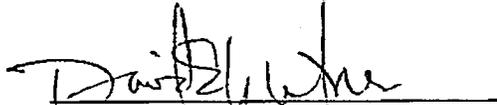
[Signatures continue]

APPROVED AS TO FORM



LAURENCE S WIENER  
City Attorney

APPROVED AS TO CONTENT



DAVID LIGHTNER  
Deputy City Manager/Development



MAHDI ALUZRI  
Director of Planning & Community Development

## EXHIBIT A

## Findings and Facts In Support Of Findings

## I Introduction

Pursuant the requirements of CEQA, the City Council hereby makes the following environmental findings in connection with the proposed construction of a mixed use development project consisting of a four-story, 39,975 square-foot office/retail building fronting Wilshire Boulevard with a height of 45 feet and a residential component comprised of 88 apartment units with modulated height up to a maximum height of five-stories and 60 feet on property generally located at 131-191 Crescent Drive/9355-9373 Wilshire Boulevard (the "Project"), as more fully described in Section 2 0 of the Environmental Impact Report dated July 15, 2002 (the "EIR") The Project includes requests for a planned development, amendments to an existing parking covenant, and a zoning code amendment establishing a mixed-use overlay zone over the project site These findings are based upon evidence presented in the record of these proceedings, both written and oral, the Environmental Impact Report (the "EIR") and all of its contents including, without limitation, the Initial Study, the Draft EIR, the Appendices, the Comments and Responses to Comments on the Draft EIR, and staff and consultants' reports prepared and presented to the Planning Commission and the City Council

## II Project Objectives

As set forth in Section 2 0 of the EIR, the objectives which the Project applicant seeks to achieve with this Project (the "Project Objectives") are as follows

- To develop luxury apartments,
- To develop high-quality office space in a prominent and visible location,
- To develop supporting retail space,
- To accommodate existing covenanted parking obligations to neighboring restaurant and office uses,
- To provide sufficient and convenient parking for on-site uses,
- To produce a development that is harmonious in scale and architectural style with the area, will not interfere with the enjoyment of residential properties in the vicinity, and is consistent with the General Plan, public interest and general welfare, and,
- To meet the objectives specified by the City Council in Resolution 1163 for any project on the site to provide an adequate transition between the business district and nearby residential uses to the east, by
  - Ensuring "that the scale and massing of the development is compatible to the character of Crescent Drive between Wilshire Boulevard and Santa Monica Boulevard (South Roadway) through appropriate height limits, modulation and upper-story setbacks,"

- Providing "pedestrian-friendly amenities at the street level and" providing "street setbacks that are consistent with the rest of the west side of Crescent Drive between Wilshire Boulevard and Santa Monica Boulevard (South Roadway),"
- Limiting "land use and density on the site to that which, in aggregate, will not create unmitigable significant traffic impacts on nearby residential streets unless there is an overriding public policy consideration that otherwise justifies approving the increased density or a more intense land use despite the traffic impacts,"
- Instituting "physical standards, such as alley setbacks, loading facility configurations, and turning radii to address deliveries and loading operations in a manner that minimizes impediments to vehicular circulation, and protects life and property,"
- Providing "that the zoning or any development proposed for the site include all nine lots between Wilshire Boulevard and Clifton Way and between Crescent Drive and the alley between Canon Drive and Crescent Drive to be treated in a unified manner"

### III Significant Environmental Impacts and Adopted Mitigation Measures

The EIR identified the potential for the Project to cause significant environmental impacts in the areas of Land Use and Planning, Aesthetics, Population and Housing, Public Services and Utilities, Transportation/Circulation (traffic), Air Quality, Noise, Geology and Hazards. With the exception of short term impacts to air quality discussed in Section IV below, measures were identified that would mitigate all of these impacts to a level of insignificance.

The City Council finds that the mitigation measures identified in the EIR are feasible and, with the exception of the short term air quality impacts identified in Section IV below, would reduce the Project's impacts to a level of insignificance. The City Council adopts all of the mitigation measures described in the EIR as conditions of approval of the Project and incorporates those into the Project.

#### A Land Use, Plans and Policies

##### 1 Potential Impacts

Section 3.1 of the EIR identifies the potential for long term significant impacts to land use resulting from the Project's potential inconsistency with the General Plan and the increased intensity of the proposed land use. These potential impacts result from the creation of a new Mixed-Use Planned Development Overlay Zone which would increase the allowable density on the Project site and the introduction of a more intense land use to the Project site. These potential impacts were analyzed in detail in Section 3.1 of the EIR at pages 3-2 through 3-14, inclusive.

## 2 Findings

No mitigation is required since the Project will not have a significant impact on land use plans or policies. The requested zoning code amendment is consistent with the intent of the City's General Plan and will have a less than significant impact on the environment, further, the intensity of the land use proposed by the Project was anticipated by the General Plan and the increase in intensity over the existing use of the Project site is minor and will have a less than significant impact on the environment.

## 3 Facts in Support of Findings

a Zoning code amendment The Project includes a request for a zoning code amendment to create a new Mixed-Use Planned Development Overlay Zone. Although the proposed overlay zone will permit higher intensity development, it is consistent with the General Plan Land Use Element. The General Plan Land Use Element designates the majority of the Project site (the eight lots that front along Crescent Drive) as a Transitional Use District, while the Wilshire Boulevard frontage is designated Low Density Commercial. The Transitional Use District designation permits multiple-family residential and commercial parking uses, the Low Density Commercial designation permits commercial uses with a maximum floor area ratio of 2.0 and a maximum height of 45 feet. The requested overlay zone does not authorize new land uses. Rather, the proposed overlay zone will modify existing development standards applicable to the project site, including density and height limits.

The requested increases are consistent with the general density and height limits anticipated by the General Plan. Moreover, the Project implements several of the stated goals of the General Plan. Specifically, the Land Use Element sets forth a goal to "recommend that certain anchor locations be set aside to permit development of a higher intensity development which is not otherwise provided in the community." The Land Use Element further provides that such anchor locations "should encourage unified development oriented towards and along Wilshire Boulevard planned to complement the scale and character of adjacent residential areas" and "should incorporate measures to enhance streets, sidewalks and roadways in order to encourage pedestrian circulation between these areas and the Business Triangle." The Project provides an opportunity to construct a quality mixed-use development that would not otherwise be encouraged by the underlying zone. The project site is located on an important site at the tip of the Business Triangle. The development of this site will set the tone for the rest of the Wilshire corridor and the Business Triangle. The planned development provides for sufficient floor area to allow construction of a commercial building that includes high quality amenities and high quality architectural design. Moreover, the Project provides an opportunity for the City to improve the circulation and pedestrian flow between the retail activity in the City's central business district (the "Business Triangle") and the commercial areas along Wilshire Boulevard (the "Wilshire Corridor"). The Project design will contribute to the urban design amenities that will serve as a visual and pedestrian link between the Wilshire Corridor and the Business Triangle. The Project's lower height along Crescent Drive and pedestrian friendly

landscaping will complement the scale of residential areas across Crescent Drive and will encourage pedestrian circulation from the residential areas and Wilshire Boulevard to the business triangle

Additionally, the proposed overlay zone will establish standards for mixed commercial/residential development, a stated goal of both the Land Use Element and the Housing Element of the General Plan. The proposed overlay zone also provides a transitional buffer between the commercial uses of the Business Triangle and the residential uses along the east side of Crescent, thereby promoting the Land Use Element goal to mitigate "[t]ransitional conflicts resulting from the juxtaposition of commercial and residential uses through a program which would provide adequate buffers between conflicting uses," and furthers Objective 4.3 of the Housing Element by "to expand the variety of housing product available in the City." The Project, as revised and approved, will further this goal by providing a buffer between the residential uses situated along the east side of Crescent Drive and the more intense commercial uses of the Business Triangle to the west. The Project, though slightly larger in scale than the residential uses on the east side of Crescent Drive, is comparable in scale and mass to adjacent development on the west side of Crescent Drive. The design of the residential component concentrates the height and mass of the building away from Crescent Drive and against the alley, thereby shielding surrounding development on Crescent Drive from the intrusive effects of the commercial uses along Canon Drive. Moreover, the residential nature of the use is comparable in intensity and harmonious with nearby residential development. Implementation of the Project will remove the possibility for other potentially more intrusive development on the site and will help preserve the existing character of the neighborhood to the maximum extent feasible.

Finally, the proposed zoning code amendment requires that all development under the proposed overlay zone must be approved through a planned development. The review process to obtain a planned development approval creates a built-in safeguard that requires the proposed Project and all other projects in the zone, to be consistent with the General Plan as well as the Zoning Code.

Thus, the proposed zoning code amendment is consistent with the General Plan and will not have significant effects on the environment.

b. Increased land-use intensity The Project site is currently developed with a two-story commercial building with a floor area of approximately 20,900 square feet and a 244-space surface parking lot. The project site encompasses an entire block (9 lots), located between the Business Triangle to the west, multi-family residential, office uses and a mini-park to the east, mixed retail uses, including a surface parking lot with an entitlement for senior housing, to the north, and commercial uses to the south along Wilshire Boulevard. The current zoning designation permits the proposed commercial and residential/parking uses proposed on the Project site. Moreover, the Zoning Code provides a review process for planned developments to regulate the intensity of development. Although the Project represents a more intense use when compared to the Project site's current condition and the development standards for the underlying zones, no intensification of land use or operation character above that which is provided for the project site in the General

Plan is anticipated. The proposed land use is consistent with the General Plan and will not have significant effects on the environment.

B Aesthetics

1 Potential Impacts

Section 3.2 of the EIR identifies the potential for significant impacts to aesthetics in the form of long term impacts to existing viewsheds, alteration of the visual character of the site, and creation of new sources of light and glare as well as shade and shadow. Development of the Project will permanently alter the existing view from neighboring properties and will clearly change the visual character of the site. Additionally, the Project will add new sources of light and glare to the environment and will create a new source of shade and shadow. These potential impacts were fully analyzed in Section 3.2 of the EIR at pages 3-15 through 3-42, inclusive.

2 Findings

Through the incorporation of project design features and/or the compliance with applicable City codes, the Project will avoid or substantially lessen any significant effects.

3 Facts in Support of Findings

a Alteration of views Development of the Project will alter views of and across the Project site from surrounding properties. However, the City Council finds that this impact will be less than significant. The Project site is currently developed with a two-story, 20,900 square foot commercial building fronting Wilshire Boulevard and a 244-space surface parking lot. The site does not lie within a scenic corridor and limited vistas are visible in the immediate project vicinity. Views of the project site are limited because of the urban nature of the surrounding area and are partially obstructed by existing buildings in the vicinity. Views across the project site are primarily from the residential areas north and east, and these views are obstructed within two or three blocks by the high-rise structures along Wilshire Boulevard. The Project will create views of landscaped areas and architectural facades consistent with adjacent development and will not impair any designated viewshed or introduce a visual incongruity with surrounding land uses. The alteration to existing views will not have a significant impact on adjacent land uses.

b Alteration of visual character Construction and development of a mixed use development project consisting of a four-story, 45-foot tall office building fronting Wilshire Boulevard and an 88-unit apartment complex with modulated height fronting Crescent Drive will permanently alter the visual character of the site. The impacts will be both short term and long term in nature. Short term impacts are expected to occur during the construction phase due to demolition of existing structures, site grading and construction activities which will include, among other things, exposed soil, dirt storage, and staging areas for various construction activities on site. This short-term condition would create a temporary visual distraction typically associated with construction.

activities. The City has standard conditions related to construction which require barriers to be installed around the site to screen construction activities. Given the short term nature of the construction impacts and the screening requirements, the short-term impacts to visual character will not be significant.

The Project includes construction of a 45-foot tall, four-story office building and an 88-unit apartment complex with modulated height. The architectural quality of the Project is visually compatible with surrounding development. The proposed structures will comply with the City's development codes, as amended by the requested zoning code amendment, and will be visually similar in mass, scale and form to the structures to the north, east and west of the site. The commercial building complies with the 45-foot height limit along Wilshire Boulevard and is similar in height and visual mass to nearby commercial development. While the residential component of the Project is 60 feet in height at its highest point, the height and mass of the building is concentrated away from Crescent Drive. The residential building forms an "E" with the spine along the alley at the west side of the site and the legs extending toward Crescent Drive. The green space atop the roof of the parking structure creates the voids between the legs of the "E" and substantially reduces the mass of the building as viewed from the street. The top story is stepped back from Crescent Drive approximately 35 feet so that it appears one story lower from the street. The proposed architectural treatments, setbacks (including upper floor setbacks), modulation, architectural ornamentation, and landscaping reduce the perceived mass of the structure as viewed from the street and make the Project more harmonious with existing development in the vicinity. The Project is comparable in scale and mass to other existing and proposed structures on the west side of Crescent Drive. The expansive, landscaped setback along the Crescent Drive frontage further softens the mass and scale of the structure. Further, the project's building facade, architectural details and landscaping are subject to review and approval by the Architectural Commission. Thus, the alteration of the visual character of the site will not result in a significant impact.

c. Light/Glare The Project site is currently developed with a two-story, 20,900 square foot commercial building fronting Wilshire Boulevard and a 244-space surface parking lot. Development of the Project will create general nighttime building lighting, security lighting, and landscape lighting not currently present at the site. This lighting will be detectable from surrounding sites. This impact will be reduced by the incorporation of both Project design features and compliance with Sections 5-6 1101 and 10-3 314 of the Beverly Hills Municipal Code. These provisions will minimize light impacts and prevent "spillover" onto surrounding properties. Furthermore, the materials proposed for the Project (stucco) will not result in sunlight reflection that will adversely affect neighboring properties. Accordingly, light and glare impacts from the Project will be less than significant and no mitigation is necessary.

d. Shade/Shadow Construction of a new four-story building and a five-story, 60-foot tall apartment complex on the project site will generate new shade and shadow in the area. A shadow analysis conducted by the Independent Consultant retained to prepare the EIR concluded that the proposed Project will cast minimal shadows during the spring, summer and fall, with the longest afternoon shadows falling across the front portions of some buildings along the east side of Crescent

Drive Even during winter months, when the Project will cast the longest shadow, the impact to surrounding residential development is minimal. Although the Project will cast shadows that extend easterly of the mid-block between Crescent Drive and Rexford Drive, these shadows are less than the shadows cast by existing buildings along Crescent Drive. The Project does cast a new shadow over the mini-park on the east side of Crescent Drive. However, the Project's actual impact on the park is minimal since the park is already heavily shaded by mature vegetation. Therefore, no significant shade or shadow impacts will be associated with the Project.

## C Population and Housing

### 1 Potential Impacts

Section 3.3 of the EIR examines the Project's potential to cause significant impacts to the City's population or housing stock. Development of the Project will create 141 new jobs and add 88 new rental units to the City's housing inventory. Therefore, the Project has the potential to result in additional population growth. These potential impacts were analyzed in detail in Section 3.3 of the EIR at pages 3-43 through 3-50, inclusive.

### 2 Findings

No mitigation is required since the Project will not have a significant impact on population or housing. The Project-related growth in employment and housing falls well within forecasted increases and, therefore, would not result in substantial growth.

### 3 Facts in Support of Findings

A proposed project may have a significant impact on population and housing if it induces substantial population growth in an area either directly (by proposing new homes and businesses) or indirectly (through the extension of roads or infrastructure), displaces substantial numbers of existing housing, or displaces substantial numbers of people. The project site is currently developed with a two-story, 20,900 square foot commercial building and a 244-space surface parking lot. The Project will displace the businesses and jobs in the existing commercial building. However, because the Project will replace and add commercial space, the Project will result in a net increase of 141 employees. The Southern California Association of Governments ("SCAG") projects that the number of employees in Beverly Hills will increase by 1,774 employees by the year 2005. The Project-related increase would represent eight percent (8%) of this total and is consistent with anticipated growth for the City. Thus, the project's creation of employment positions will not result in substantial population growth. In addition, the Project will add 88 market-rate housing units to the City. SCAG estimates that by 2005 the City will need an additional 256 housing units, including 139 market-rate units. The Project will not displace either existing housing or zoning for housing. To the contrary, the Project would assist the City in meeting its projected housing needs over the current five-year planning period. Since the additional housing is consistent with forecasted needs,

and would meet the City's housing element goals, the project's housing generation will not result in substantial population growth and the amount of growth generated will be positive, not adverse. Thus, the Project's impacts to population and housing will be less than significant.

D Public Services and Utilities

1 Potential Impacts

The Initial Study indicated that the Project has the potential to cause significant impacts in the areas of fire protection, police protection, schools, parks and solid waste disposal. These potential impacts are fully analyzed in Section 3.4 of the EIR at pages 3-51 through 3-3-61, inclusive.

2 Finding

Compliance with standard conditions and uniform codes and the implementation of the mitigation measures identified in the EIR, the Project will avoid or substantially lessen the significant effects on the environment and reduce these potential impacts to a less than significant level.

3 Facts in Support of Finding

a Fire and police services The Project involves the construction of a 39,975 square foot commercial building and an 88-unit apartment complex, which would increase both the daytime and nighttime populations of the area. This increase could potentially place a greater demand on fire and police services within the area. The addition of project-related traffic to local streets could further increase response times during peak hours. However, the potential increase would be similar in nature to the existing demand for these services in the general area. The small amount of growth from the Project will neither create the need for additional facilities nor increase response times to the extent that they would compromise public health or safety. Accordingly, the Project will result in less than significant impacts on fire and police services.

b Schools The Project includes 88 new multi-family residential units and is expected to generate 36 new students which must be matriculated into the City's schools. The existing capacity in area schools is more than sufficient to accommodate the project-related increase in students. The Project will not result in the need to construct additional facilities. Moreover, the Project will be required to pay school impact fees in accordance with the most current rate schedule adopted by the school district. The school impact fees will be used to assist the school district in meeting the incremental costs associated with expanded enrollment. The project's impacts on area schools are, therefore, expected to be less than significant.

c Parks The proposed Project is expected to add an additional 197 residents to the City. The proposed Project will place additional demands on the City's parks. However, the City

has adopted a park and recreation tax on development to insure that additional development will pay the cost of meeting additional demand upon the City's existing park facilities and programs. The Project will be required to pay that tax. Additionally, the Project is required to provide 17,600 square feet of outdoor living area to serve the recreational needs of its residents. The project far exceeds this requirement, providing 19,595 square feet of outdoor living areas and a total of 29,775 square feet of open space (including landscaped setbacks along Crescent Drive). With the payment of the park impact fees and the provision of outdoor living space described above, the Project will have a less than significant impact on the City's parks.

d Solid waste disposal The Project will increase the amount of solid waste generated by the site. The Project will generate an estimated 592 pounds of waste per day. The Puente Hills Landfill, which accepts the City's solid waste, can accept as much as 13,200 tons of solid waste per day. In addition, the Project will be required to develop and implement a Solid Waste Management Plan to ensure that the Project includes measures consistent with the City's AB939 waste reduction requirements. With implementation of the identified mitigation, the solid waste generated by the Project will not significantly affect the life expectancy of the Puente Hills Landfill. Therefore, the Project's impact on solid waste services would be less than significant.

E Transportation/Circulation

1 Potential Impacts

The traffic study prepared in connection with the EIR identifies the potential for significant traffic impacts due to increased traffic congestion at local intersections, increased traffic volumes on adjacent residential streets, the effect of the Project on Congestion Management Program (CMP) compliance, increased parking demand on local streets, effect of commercial loading and delivery activities on the operation of adjacent business and residences, on-site circulation and access impacts and short-term traffic and parking impacts associated with construction activities. These potential impacts are fully analyzed in Section 3.5 of the EIR at pages 3-62 through 3-88, inclusive.

2 Findings

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen project-related traffic impacts.

3 Facts in Support of Findings

a Increased traffic congestion at local intersections Although the proposed Project will generate more traffic than existing uses on site, the project will not result in significant impacts at any intersection. The traffic analysis studied ten signalized intersections in the vicinity of the project site. Five of the signalized intersections studied will be significantly impacted by cumulative development even without the Project. While Project traffic will contribute to an incremental worsening of the significant impacts at these five intersections, the traffic analysis concluded that

the Project's contribution to these impacts would not be considerable and, thus, is not significant. Conditions at all ten intersections studied will be essentially the same with or without the Project. In addition, all three of the unsignalized intersections studied will continue to operate at acceptable levels of service after implementation of the Project. No mitigation is required since the Project will not result in significant impacts to local intersections.

b. Congestion Management Program Compliance Cumulative development would result in a significant unmitigated impact to the intersection of North Santa Monica Boulevard and Wilshire Boulevard which is designated as a CMP intersection under the Los Angeles County CMP. Although the Project would add additional traffic to this intersection, the project's contribution to this cumulative impact would not be considerable since the Project's contribution would be well below the threshold of significance established under the CMP. As with the local intersections discussed above, conditions would essentially be the same with or without the proposed Project. The Project's contribution to these significant cumulative impacts is thus *de minimus* and no mitigation is required. The proposed Project will create 1,284 debits under the CMP. Cumulative development in the City is anticipated to generate an additional 7,953 debits. However, the City currently has a CMP credit balance of 20,800 credits. Thus, the combined debits generated by the proposed Project, in combination with anticipated cumulative development, is less than significant. No mitigation is required since the Project will not have a significant impact on CMP compliance.

c. Neighborhood traffic impacts Development of the Project will result in increased traffic volumes on residential streets in the Project vicinity. The traffic analysis set forth in the EIR demonstrates that this will not be significant on any residential street in the vicinity of the Project. Thus, the Project's impacts on neighborhood traffic will be less than significant and no mitigation is required.

d. Parking impacts The Project will displace 244 parking spaces of which 192 are under covenant to Spago Restaurant and a Coldwell Banker real estate office. The proposed Project will provide a total of 534 parking spaces within a four and one-quarter level parking garage under the residential component. The 534 parking spaces provided will replace the 192 covenanted parking spaces and fully satisfy the Beverly Hills Municipal Code parking requirements for the proposed Project. Moreover, the parking required by the Beverly Hills Municipal Code exceeds the parking rates recommended by the Institute of Traffic Engineer's by 136 spaces. The potential impacts created by the use of tandem spaces in the parking structure will be mitigated by requiring that a parking management plan for the Project be reviewed and approved by the Director of Planning prior to the issuance of occupancy permits for the Project. The Director shall review the plan to ensure the effective use of tandem parking by (1) restricting such parking to tenants, rather than visitors, and/or (2) by requiring the use of commercial tandem parking spaces by employees of the same organization, and/or (3) by providing for an attendant service to move cars, and/or (4) by specifying some other method acceptable to the Director. The Parking Management Plan shall also provide for weekend use of commercial/office parking by non-project users to accommodate overflow public parking needs in the area. The temporary loss of on-site parking during construction will be mitigated by requiring a comprehensive construction parking and hauling plan to be reviewed.

and approved by the Directors of Planning and Building & Safety prior to the issuance of building permits for the Project. Said plan shall make adequate provisions to obtain off-site parking within 500 feet of the project site to satisfy the parking needs generated by the covenanted parkers and construction workers. With the provision of substitute parking, there will be no impacts to traffic and air quality as a result of the loss of parking and any inconvenience to parkers will be minimized. With implementation of these mitigation measures, the parking impacts associated with the Project will be less than significant.

e. Commercial delivery and loading impacts The Project will include a loading bay at the southerly end of the alley to accommodate commercial deliveries. Loading dock operations may cause a potential conflict with pedestrians along Wilshire Boulevard and could impair circulation in the alley during the p.m. peak hours. This potential conflict will be mitigated by requiring the Project operator to install signage in the alley in the vicinity of the loading area clearly directing delivery trucks to pull as far south as possible so that a second truck can access the northerly loading space without protruding into the pedestrian pathway along Wilshire Boulevard. The Project operator shall further be required to implement the following restrictions on the use of the loading area and alley: (1) two trucks of greater than 30 feet shall be prohibited from using the loading area at the same time, and (2) commercial vehicles other than small vans (e.g. couriers) shall be prohibited from using the loading area between the hours of 4:00 p.m. and 6:00 p.m. Monday through Friday. The Project operator will further be required to designate an employee to monitor the loading area and deliveries to ensure compliance with the foregoing restrictions. With implementation of these mitigation measures, the loading impacts associated with the Project will be less than significant.

f. On-site Circulation Impacts Project access is provided via four driveways – two on Crescent Drive and two on the southbound alley between Canon Drive and Crescent Drive. Both alley driveways will be dedicated for use by the commercial tenants and covenanted parkers and entry will be restricted by key-card access. The northernmost driveway on Crescent Drive will serve the residential component of the Project, while the southerly driveway will serve the commercial component. Circulation and access issues associated with the commercial component are anticipated to be less than significant. The design of the motor court on the residential component has the potential to result in significant circulation impacts because of the small turning radius. This potential impact will be mitigated by requiring the Project applicant to modify the design of the motor court to correct this deficiency prior to the issuance of grading and construction permits for the Project. With implementation of these mitigation measures, the Project's on-site circulation impacts will be less than significant.

## F Air Quality

### 1 Potential Impacts

The Air Quality Impact Analysis identifies the potential for significant short-term impacts resulting from air pollutants generated by NO<sub>x</sub> emissions from on-site equipment related to

construction activities and long-term impacts resulting from operational emissions from both stationary sources and mobile sources. These potential impacts are fully analyzed in Section 3.6 of the EIR at pages 3-89 through 3-102, inclusive.

## 2 Findings

Changes or alterations have been required in, or incorporated into, the Project which substantially lessen the air quality impacts listed above, and will avoid certain effects caused by the Project. Nevertheless, impacts from NO<sub>x</sub> emissions will remain significant after adoption of all feasible mitigation and specific economic, legal, social, technological, or other considerations make infeasible the alternatives identified in the EIR. These considerations are described further in Section IV of this Exhibit A.

## 3 Facts in Support of Findings

a Construction-related impacts Construction activities will result in the generation of air pollutants. Construction-related emissions would primarily be due to (i) dust generated from earthmoving, excavation and other construction activities, (ii) exhaust emissions from construction equipment, and (iii) motor vehicle emissions associated with construction activity. Analysis of the construction emissions indicates that all emission levels will remain well below established thresholds except for NO<sub>x</sub> emissions. Based on the analysis set forth in the EIR, these emissions will be substantially reduced by implementation of standard conditions, uniform codes, Project design features, and mitigation measures identified in the EIR, and will cease at the completion of construction activities. Nevertheless, these impacts remain significant. All feasible mitigation measures have been adopted. The City Council rejects, as infeasible, the potential mitigation measure of extending the construction period to reduce daily NO<sub>x</sub> emissions below SCAQMD thresholds. The extension of construction will not reduce total Project emissions, but merely reduce the daily average of NO<sub>x</sub> emissions. Thus, this mitigation does not provide a long term environmental benefit. Furthermore, the social cost of this mitigation is longer exposure of nearby residents and businesses to construction impacts. The City Council finds that it is socially unacceptable to expose nearby residents and businesses to a longer period of disruption from construction impacts in order to reduce the daily average of emissions, but not total emissions. Thus, this mitigation measure is infeasible for social reasons.

b Operational impacts Operational emissions generated by the Project were estimated using URBEMIS7G, a computer program developed by the California Air Resources Board for estimating emissions generated by land use projects. Pursuant to the computer generated results, total operational emissions for the Project will remain significantly below established thresholds and, therefore, will not create a significant impact on air quality. Accordingly, the Project will not have a significant impact on long term air quality and no mitigation is necessary.

G Noise

1 Potential Impacts

The Noise Impact Analysis identifies the potential for significant noise impacts during construction from construction equipment (earth-moving equipment such as backhoes, bulldozers, pile drivers, skip loaders, fork lifts, horizontal drill rigs, concrete mixers, concrete pumps, tower cranes, and other equipment) and long-term impacts from the addition of Project traffic and from Project operations. These potential impacts are fully analyzed in Section 3.7 of the EIR at pages 3-103 through 3-115, inclusive.

2 Finding

Changes or alterations have been required in, or incorporated into, the Project which avoid or substantially lessen the significant noise impacts. Implementation of the identified mitigation measures and design changes will reduce noise impacts to a less than significant level.

3 Facts in Support of Finding

a Construction noise impacts Project construction will generate high noise levels intermittently on-site and on adjacent properties during construction. Noise levels will fluctuate depending on the construction phase, the equipment used, and the duration of the activity. Distance between the noise source and the receptor will also impact noise. Construction related noise will be short-term in nature. Compliance with the City's noise ordinance will reduce the Project construction-related noise impacts to the greatest extent feasible. In addition, construction related noise will be further mitigated by prohibiting the use of heavy equipment before 8:00 a.m. daily and restricting pile driving activities (if necessary) to between the hours of 9:00 a.m. and 4:00 p.m. Monday through Friday. Potential construction related noise impacts along residential streets will be mitigated by requiring construction vehicles to abide by a Construction Haul Route Plan to be reviewed and approved by the Directors of Building and Transportation prior to the issuance of building permits for the Project. Said plan shall provide for construction haul routes that avoid the use of residential streets. With implementation of these mitigation measures, the Project's construction-related noise impacts will be less than significant.

b Operational noise impacts Most noise generated by implementation of the Project will be traffic-generated noise. Traffic noise levels associated with the Project were estimated using the Federal Highway Administration's Highway Traffic Noise Prediction Model. The analysis identified no perceptible increase in noise levels associated with Project traffic and, therefore, the Project traffic will not create a significant noise impact. Compliance with required noise standards for on-site mechanical equipment will mitigate any potential noise impacts from mechanical operations to a less than significant level. Compliance with applicable building codes will ensure that exterior to interior noise impacts to Project residents are less than significant.

## H Geology

### 1 Potential Impacts

Section 3.6 of the EIR identifies the potential for significant impacts resulting from faulting and seismicity (which includes ground rupture, ground shaking, seismically induced ground failure or liquefaction, seismically induced compaction and ground lurching) and from soil and slope instability and erosion caused by Project grading and excavation. These potential impacts are fully analyzed in Section 3.6 at pages 3-116 through 3-127, inclusive.

### 2 Finding

Changes or alterations have been required in, or incorporated into, the Project which mitigate or avoid the significant effects on the environment and reduce these impacts to a less than significant level.

### 3 Facts in Support of Finding

a. Ground rupture Available geotechnical data suggests that the potential for surface rupture at the project site is very low. However, to mitigate any potential ground rupture impacts, the Project applicant will be required to have a state-licensed geologist perform geophysical surveys and a series of subsurface tests to ascertain the potential subsurface faulting and to incorporate any recommended mitigation measures to reduce risks associated with subsurface faulting into the design of the Project. With implementation of these mitigation measures, the Project's impacts from subsurface faulting will be less than significant.

b. Ground Shaking Due to the proximity of the site to active faults, the project site is likely to experience strong ground movement. However, compliance with mandatory local and state building codes is expected to achieve the greatest seismic safety feasible and reduce seismic risk to acceptable levels. Accordingly, the Project's impacts from seismically induced ground shaking will be less than significant.

c. Liquefaction/Landsliding The project site does not lie within a seismic hazard zone as defined by the Seismic Hazards Mapping Act. Neither liquefaction nor landslides are expected to occur on the project site. Therefore, impacts due to liquefaction or landsliding will be less than significant.

d. Expansive Soils On site soils have moderate shrink/swell capacity. State and local building codes anticipate hazards associated with expansive soils and require appropriate building design. The Project applicant will be required to conduct a soil test under the applicable provisions of state and local law before a building permit is issued for the Project. Based on the results of the soil test, the Project applicant will be required to design the Project's footings/foundation to meet established standards for the specific soil conditions present on the

project site. Compliance with these building code provisions will ensure that Project impacts due to soil conditions will be less than significant.

## I Hazards and Hazardous Materials

### 1 Potential Impacts

Section 3.9 of the EIR analyzes the Project's potential to cause significant impacts on human health from hazards that could result from project construction and operation, including hazards associated with exposure to hazardous materials used, generated, stored, or transported as a result of the Project and the project site's proximity to potential sources of hazardous materials. These potential impacts are fully analyzed in Section 3.9 at pages 3-128 through 3-134, inclusive.

### 2 Finding

Changes or alterations have been required in, or incorporated into, the Project which mitigate or avoid the significant effects on the environment and reduce these impacts to a less than significant level.

### 3 Facts in Support of Finding

a Building Demolition There is no data to suggest that prior on-site uses have generated or used hazardous materials that have resulted in any soil contamination at the project site. However, there is a potential that the existing commercial structure on the site, which will be demolished to implement the Project, could contain asbestos, lead, PCBs or other hazardous substances. To mitigate any potential impacts from the presence of such hazardous substances, the Project applicant will be required to have an environmental assessor approved by the City test the structure for Asbestos Containing Building Materials (ACBM), PCBs, lead or other hazardous substances prior to the issuance of demolition permits for the Project. If any hazardous substances are detected, the Project applicant will be required to retain qualified environmental experts to supervise the removal and disposal of such substances. With implementation of these mitigation measures, the Project's impacts associated with building demolition will be less than significant.

b Construction impacts Construction activities on the project site such as soil excavation, loading activities, movement of construction equipment and pile driving could generate fugitive dusts that become airborne. To ensure that construction dusts generated by such activities do not impact nearby populations, the Project will be required to comply with all applicable state and local regulations to control dust, including daily watering of exposed soils, covering soil piles, and halting excavation and grading activities during windy conditions. In addition, any potential impacts from the use of various products such as paints, solvents, glues and cements will be reduced to less than significant levels through compliance with California General Construction Activity Storm Water Permit requirements and Best Management Practices. Compliance with these standard practices will ensure that the Project's construction-related impacts are less than significant.

c Operational impacts The proposed Project includes residential and commercial office uses. Hazardous materials that would be used, stored or transported in connection with these uses will be limited to commercial and household-type maintenance products. The proposed Project will not include any use that involves the use of large quantities of hazardous materials. Therefore, impacts associated with operation of the proposed Project would be considered less than significant.

d Unidentified subsurface hazards Although the history of on-site use at the Project site does not suggest the existence of previously unidentified subsurface hazardous substances, to ensure that the Project does not have a significant impact as the result of the presence of such a substance, the Project applicant will be required to prepare and submit a Construction Risk Management Plan (the "CRM Plan") to the Director of Public Works for review and approval prior to issuance of any demolition or construction permits for the project. The CRM Plan shall incorporate the recommendations of an environmental assessor's report and shall identify procedures for identifying any hazardous materials that may be encountered during construction. If materials that could present a threat to human health or the environment are discovered, construction in that immediate area shall cease immediately until appropriate standard remedial action has been taken. With implementation of these mitigation measures, the Project's impacts associated with the presence of unidentified hazardous substances will be less than significant.

#### IV Significant and Unavoidable Environmental Impacts

##### A Impacts that Cannot Be Mitigated to a Level of Insignificance

The EIR identified one impact as potentially significant and unavoidable. Based on the information provided in the EIR and the record of decision, the City Council finds that this impact can be mitigated to some degree, but that such mitigation would not reduce the impacts to a level of insignificance and further mitigation is infeasible. Therefore, as required by Section 21081 of CEQA, and as shown below in more detail, the City Council finds that specific economic, legal, social, technological, or other considerations make infeasible any alternatives identified in the EIR. The significant and unavoidable impacts of the Project are described below, along with measures that would partially mitigate the impacts.

##### Air Quality

The temporary air quality impacts generated during construction will remain significant with respect to NO<sub>x</sub> emissions even after implementation of feasible mitigation and compliance with mandatory code requirements and adopted standards. These impacts will cease at the completion of construction activities.

##### B Additional Impacts Which May Not Be Fully Mitigated

The City Council finds that all feasible mitigation measures have been applied, and that based on the record before the City Council all significant impacts will be mitigated to a level

of insignificance except for temporarily significant air quality impacts resulting from construction. In the event that any other environmental impact identified in the EIR cannot, through full compliance with mitigation measures imposed herein, be fully mitigated over time, the City Council finds that specific economic, legal, social, technological, or other considerations make infeasible any additional mitigation measures or alternatives identified in the record and that the Statement of Overriding Considerations adopted concurrently herewith applies with equal force and effect to such impacts.

## V Project Alternatives

The alternatives identified in the EIR either would not sufficiently achieve the basic objectives of the Project or would do so only with unacceptable adverse environmental impacts. Accordingly, and for any one of the reasons set forth herein or in the EIR, the City Council finds that specific economic, social, or other considerations make infeasible each of the Project alternatives, including the "No Project - No Changes to the Project Site" alternative (Alternative 4), identified in the EIR, and each is hereby rejected. The City Council further finds that a good faith effort was made to incorporate alternatives into the preparation of the EIR, and that all reasonable alternatives were considered in the review process of the EIR and the ultimate decision on the Project.

CEQA requires agencies reviewing the environmental impacts of a project to consider a range of reasonable alternatives (CEQA Guidelines Section 15126(d), 14 Cal Code of Reg § 15126(d)). The range of alternatives considered in an EIR should include those which can feasibly attain most of the basic objectives of the project. As defined by CEQA, "feasible" means "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social, and technological factors" (CEQA Guidelines Section 15365, 14 Cal Code of Reg § 15365).

The EIR analyzed a total of four alternatives to the proposed Project. The alternatives considered were "Alternative 1 – Prior Version of Project," "Alternative 2 – No Project Code-Conforming With Senior Housing," "Alternative 3 – No Project Code Conforming with Market Rate Housing," and "Alternative 4 – No Project No Changes to the Project Site."

Alternative 1 would consist of a commercial building comprised of 4,106 square feet of retail space, 110,918 square feet of office space, 36,522 square foot supermarket, and 737 parking spaces in a subterranean structure. Alternative 2 would construct a 60-foot tall, 140-unit senior housing project on the RMCP-zoned Crescent lots with an approximately 29,000 square foot market on the ground floor and a 30,468 square foot office building on the Wilshire parcel. This alternative would conform to all code requirements and would not require the zoning code amendments requested by the Project. Alternative 3 would include development of a new 28-foot tall, 66-unit condominium complex on the Crescent parcels and a 3-story, 45-foot tall commercial building on the Wilshire parcel with 10,000 square feet of retail space and 20,000 square feet of office space. This alternative would not require the zoning code amendments requested by the Project. Alternative 4 would leave the site in its existing condition.

The City Council has carefully considered the attributes and environmental impacts of all of the alternatives analyzed in the EIR and has compared them with those of the proposed Project. As required by CEQA, the City Council finds that each of the alternatives is infeasible for various environmental, economic, technical, social and other reasons set forth below. The Project as proposed represents the combination of features that, in the City Council's opinion, best achieves the Project's objectives while minimizing environmental impacts.

A Alternative 1 – Prior Version of Project

1 Summary of Alternative

Under Alternative 1 the previously proposed Triangle Gateway Project would be constructed. This alternative entails construction of a commercial building comprised of 4,106 square feet of retail space, 110,918 square feet of office space, 36,522 square foot supermarket, and 737 parking spaces in a subterranean structure. This alternative was included in the EIR to allow the City Council to compare the scope and effect of the proposed Project against the previous proposal for the project site.

2 Reasons For Rejecting Alternative

Alternative 1 would avoid few of the impacts associated with development of the Project on adjoining properties. Like the Project, Alternative 1 requires a zoning code amendment to create a new C-3P zone (a variation of the C-3 zone). The C-3 P Zone would apply to the entire site and would authorize new, more intense uses for the eight lots fronting Crescent Drive which are currently zoned RMCP. Unlike the Project, Alternative 1 would also require a General Plan Amendment and authorization to reverse the direction of the alley between Wilshire Boulevard and Clifton Way. Although Alternative 1 would result in a building with less overall height and building mass, the smaller setbacks and less street-level landscaping provided by this alternative make it less pedestrian-friendly than the proposed Project. This alternative would result in greater employment growth than the Project and would not provide additional housing. This alternative would have similar impacts on public services and utilities to the Project. Alternative 1 would generate more than four and one-half (4½) times the traffic associated with the Project and would result in significantly greater traffic impacts on local streets, some of which would be unmitigable. This alternative would result in slightly greater impacts to air quality and noise and would have comparable geology impacts.

Although Alternative 1 would produce a development of less overall mass, thus mitigating one impact of concern raised by those commenting on the Project, it would conflict with the City's General Plan and zoning designation for the site, and it fails to achieve the Project's objective to develop luxury apartments and the City's stated goal to provide an adequate transition between the Business Triangle and the adjacent residential uses along the eastside of Crescent Drive. Moreover, Alternative 1 would produce a development that is incompatible with surrounding development, both in style and intensity of use, and would impair the harmonious development of

the area. Finally, Alternative 1 would be environmentally inferior because it would have significantly greater traffic impacts, which the City Council finds unacceptable.

For any one of these reasons, the City Council has determined Alternative 1 to be infeasible.

B Alternative 2 – No Project Code-Conforming With Senior Housing

1 Summary of Alternative

Alternative 2 would involve development of a 30,468 square foot office building on the portion of the site zoned C-3. The portion of the site zoned RMCP would be developed with a 60-foot tall senior housing project with a 29,000 square foot market on the ground floor. This alternative was considered as a “No Project” alternative because it is a reasonable consequence of not proceeding with the Project. Given the location of the site, it is reasonable to assume that some development will occur.

2 Reasons For Rejecting Alternative

Alternative 2 would be consistent with the intent of the General Plan and Zoning Code and would not require any amendments to either document. Alternative 2 would be comparable in scale and mass to the proposed Project and would introduce similar building heights on the respective parcels. Therefore, Alternative 2 would be expected to have the same visual and view impacts as the Project. However, Alternative 2 is less pedestrian-friendly than the Project and would not provide the same opportunity to foster the General Plan’s goal to improve the circulation and pedestrian flow between the retail activity in the Business Triangle and the rest of the Wilshire corridor. Like the Project, this alternative will also require the modification of the parking covenant. Alternative 2 would further the City’s housing goals by providing 140 senior housing units and, like the Project, would have less than significant growth inducing effects. Due to the greater number of dwelling units and the inclusion of the market, this alternative would have a greater impact on public services and utilities. Alternative 2 would generate three times greater traffic than the Project and would result in substantially greater impacts to traffic circulation on local streets and at local intersections. It is likely that Alternative 2 would result in permanent, significant, and unmitigable traffic impacts at two intersections. This alternative would have slightly less air quality impacts than the Project, but it has the potential to generate greater noise impacts. This alternative would have similar impacts from geology and construction-related activities.

Despite some apparently reduced impacts, Alternative 2 does not present an environmentally superior alternative. In fact, it would significantly increase impacts with respect to traffic congestion on local streets and at local intersections. The long term environmental impacts on traffic congestion would outweigh any benefits achieved by the small reduction of other impacts. Based on the foregoing, the City Council has determined Alternative 2 ( Code Conforming with Senior Housing) to be not environmentally superior and therefore infeasible.

C Alternative 3 – No Project Code Conforming with Market Rate Housing

1 Summary of Alternative

Alternative 3 would involve development of a three-story commercial building with 10,000 square feet of retail space and 20,000 square feet of office space on the portion of the site zoned C-3. The portion of the site zoned RMCP would be developed with a 28-foot tall, 66-unit condominium complex with underground parking or, alternatively, a 40-foot tall condominium complex with a separate parking structure. This alternative was considered as a "No Project" alternative because it is a reasonable consequence of not proceeding with the Project. Given the location of the site, it is reasonable to assume that some development will occur. Appellants also requested that this Alternative examine the potential impacts and feasibility of developing sixty-six rental units, rather than sixty-six condominium units. Since the Responses to Comments in the EIR indicate that the environmental impacts of developing sixty-six rental units would be the same as developing condominium units, these findings address this Alternative both with condominium units and with rental units.

2 Reasons For Rejecting Alternative

Alternative 3 would produce short-term construction-related impacts similar to the proposed Project (e.g., traffic, noise, air quality). This alternative would be consistent with the General Plan and Zoning Code and would not require amendments to either document. Alternative 3 would have less impact to aesthetics than the Project because of its lower profile, while long-term impacts to air quality, geology, and human health from hazards would be similar to the Project. This alternative would have similar impacts on police and fire services but would place less demand on schools and recreational services than the Project. Alternative 3 will generate slightly less traffic than the Project and, like the Project, will result in no significant impacts to local streets or intersections. This alternative would provide a good transition buffer between the Business Triangle and the adjacent residential uses along the east side of Crescent Drive.

Alternative 3 is environmentally superior to the Project. However, an economic analysis demonstrates that this Alternative developed with rental housing is financially infeasible and would result in a return on investment too low to attract investors. This analysis was prepared by a professional engineer with real estate experience and familiarity with the Project. Based upon the credentials of the author, his familiarity with the Project, and the detail of the analysis set forth in the report, the City Council finds this analysis credible. Although the City Council received oral testimony from an appellant that the appellant was aware of other developers who would construct a project in conformance with Alternative 3, the appellant did not identify any such developer nor explain how such developer would construct the project in an economically feasible manner. Furthermore, no evidence was presented as to why the conclusions of the economic feasibility study were incorrect. In sum, no substantial and credible evidence was presented to rebut the conclusions of the economic analysis. Accordingly, the City Council has determined Alternative 3 (Code Conforming with Market Rate Rental Housing) to be economically infeasible.

Additionally Alternative 3 with condominium units or with rental units would result in fewer apartment units being constructed which would be socially unacceptable. The City Council recognizes its obligation to encourage the production of additional housing to meet the goals of its Housing Element. This Project would promote these Housing Element goals by providing eighty-eight units of market rate rental housing. Eighty-eight units of market rate housing represents approximately 65% of the market rate housing units needed to meet the 2005 goal of the City's Housing Element for additional market rate housing. Constructing sixty six condominium units or rental housing units would reduce the amount of housing being constructed contrary to the goals of the City's Housing Element and contrary to the City's public policy goal of building sufficient housing to meet the needs of the community and to meet the City's share of the regional housing need. The City Council finds that the City is not often presented with an opportunity to encourage the production of a significant amount of housing that is compatible with surrounding development and produces little or no long term environmental impact. The City Council finds that it would be socially irresponsible and unacceptable to reduce the number of units in such a project and therefore Alternative 3 is infeasible for social reasons, whether it includes condominium units or rental housing units.

Furthermore, the City Council believes that it should encourage a variety of housing products within the City in order to accommodate different needs. The production of new rental units would improve the variety of housing products in the City as this would be the first rental housing to be developed in the City in approximately twenty years. Any substantial reduction in the amount of such housing (whether a result of developing sixty six condominium units or sixty six rental units) would be contrary to the goals and objectives of the General Plan as described above, and would also diminish the availability of new rental housing in the City, which would be socially unacceptable by itself due to the diminishing supply of rental housing. Therefore, the City Council also rejects this Alternative 3 as infeasible for social reasons due to the need for additional rental housing even if there were not a need for other types of market rate housing.

The City Council hereby finds that each of the reasons set forth above would be an independent ground for rejecting Alternative 3 as infeasible and by itself, independent of any other reason, would justify rejection of Alternative 3 as infeasible.

D Alternative 4 – No Project No Changes to the Project Site

1 Summary of Alternative

The No Project alternative would leave the site in its existing condition with a 20,900 square foot commercial building and a 244-space surface parking lot.

2 Reasons For Rejecting Alternative

The No Project Alternative would avoid the impacts associated with development of the Project. These impacts include insignificant increases in traffic volumes on adjacent residential

streets, short term significant impacts to air quality associated with construction activity insignificant noise increases, and an insignificant increased demand on public services and utilities. Local residents would likely consider or perceive the impacts of this alternative to be considerably less than the proposed Project.

Although the No Project Alternative would produce less localized construction and nuisance impacts, it would provide none of the benefits associated with the Project and would fail to achieve any of the Project's objectives as described in Section 2.4 of the EIR. Therefore, this alternative is not feasible.

Furthermore, Alternative 4 would not produce any additional housing for the City. It would result in fewer apartment units being constructed which would be socially unacceptable. The City Council recognizes its obligation to encourage the production of additional housing to meet the goals of its Housing Element. This Project would promote these Housing Element goals by providing eighty-eight units of market rate rental housing. Eighty-eight units of market rate housing represents approximately 65% of the market rate housing units needed to meet the 2005 goal of the City's Housing Element for additional market rate housing. Developing no housing on this site would be contrary to the goals of the City's Housing Element and contrary to the City's public policy goal of building sufficient housing to meet the needs of the community and to meet the City's share of the regional housing need. The City Council finds that the City is not often presented with an opportunity to encourage the production of a significant amount of housing that is compatible with surrounding development and produces little or no long term environmental impact. The City Council finds that it would be socially irresponsible and unacceptable to reject such a project and therefore Alternative 4 is infeasible for social reasons.

Furthermore, the City Council believes that it should encourage a variety of housing products within the City in order to accommodate different needs. The production of new rental units would improve the variety of housing products in the City as this would be the first rental housing to be developed in the City in approximately twenty years. To reject the construction of such housing would be contrary to the goals and objectives of the General Plan as described above, and would also diminish the availability of new rental housing in the City, which would be socially unacceptable by itself due to the diminishing supply of rental housing. Therefore, the City Council also rejects this Alternative 4 as infeasible for social reasons due to the need for additional rental housing even if there were not a need for other types of market rate housing.

The City Council hereby finds that each of the reasons set forth above would be an independent ground for rejecting Alternative 4 as infeasible and by itself, independent of any other reason, would justify rejection of Alternative 4 as infeasible.

## EXHIBIT B

## Statement of Overriding Considerations

The following Statement of Overriding Considerations in connection with the proposed construction of a mixed use development project consisting of a four-story, 39,975 square-foot office/retail building fronting Wilshire Boulevard with a height of 45 feet and a residential component comprised of 88 apartment units with modulated height up to a maximum height of five-stories and 60 feet on property generally located at 131-191 Crescent Drive/9355-9373 Wilshire Boulevard (the Project), as more fully described in Section 20 of the EIR, and consisting of requests for a planned development, amendments to an existing parking covenant, and a zoning code amendment, is hereby adopted by the City Council of the City of Beverly Hills (City Council) pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. (CEQA) and Section 15093 of the CEQA Guidelines

CEQA 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 the project. If the benefits of the project outweigh the unavoidable adverse effects, those effects may be considered acceptable (CEQA Guidelines section 15093(a)). 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 (CEQA Guidelines section 15093(b)). Those reasons are provided in this Statement of Overriding Considerations.

The City Council finds that the economic, social and other benefits of the Project outweigh the single, temporary, significant and unavoidable impact to air quality identified in the EIR and discussed in Article IV of Exhibit A, and any other remaining significant effects found to be unavoidable. In making this finding, the City Council has balanced the benefits of the Project against its unavoidable impacts and has indicated its willingness to accept those adverse impacts. The City Council finds that each one of the following benefits of the Project, independent of the other benefits, would warrant approval of the Project notwithstanding the unavoidable environmental impacts of the Project.

A The Project will add 88 market rate housing units to the City's rental housing stock. This Project represents the first increase in the City's rental housing stock in approximately two decades. Eighty-eight units of market rate housing also helps the City meet its share of the regional housing needs. The eighty-eight units comprise approximately 65 percent of the market rate units the City must produce by 2005 to meet its Housing Element goals.

B The Project expands the variety of housing opportunities available in the City by introducing a mixed-use overlay zone (the M-PD-2 Zone) and providing a mixed commercial/residential development that would not otherwise be provided in the City. The mixed-

use overlay zone specifically implements Objective 4.3 of the City's Housing Element, which provides that the City should develop standards for mixed commercial and residential uses

C The proposed Project implements several goals of the City's General Plan by providing an opportunity to construct a quality mixed-use development that would not otherwise be provided in the community. The Project will result in a unified development oriented towards and along Wilshire Boulevard, its design complements the scale and character of the adjacent residential neighborhood, and it incorporates urban design amenities that enhance the pedestrian experience and will serve as a visual and pedestrian link between commercial areas along Wilshire Boulevard and the Business Triangle.

D The proposed Project will enhance its section of Wilshire Boulevard and will therefore contribute to the economic vitality of the City.

## EXHIBIT C

## "Mitigation Measures"

- 1 The Project shall be reviewed by the City of Beverly Hills' Architectural Commission in accordance with the provisions of Article 30, Chapter 3, Title 10 of the Beverly Hills Municipal Code. In its review, the Commission shall consider the building mass and finish materials, other details of the building facade, upper story setbacks, proposed landscaping, pedestrian accommodations and exterior lighting with respect to the criteria set forth in Section 10-3 3010, and apply appropriate conditions of approval to ensure compliance with these criteria. At a minimum, the Architectural Commission's review shall ensure that the Project complies with the following: (1) The Applicant provides a landscaping and street tree plan satisfactory to the Architectural Commission and the Department of Recreation and Parks. Said plan shall, at a minimum, provide the amount of landscaping described in the EIR, (2) The Applicant provides a lighting plan that demonstrates to the satisfaction of the Architectural Commission that the exterior lighting proposed for the Project is consistent with Sections 10-4 314 and 5-6 1101, (3) The final building plans for the Project provide building setbacks, modulation, and massing that is consistent with the project as described in the EIR or improves upon the setbacks, massing, and modulation shown on the plans analyzed in the EIR, (4) No project design or landscape features are modified, or eliminated, without prior review and approval by the City.
- 2 The Applicant shall pay school impact fees in accordance with the most current rate schedule and shall submit proof of payment to the Director of Building & Safety prior to the issuance of the building permits.
- 3 The Applicant shall pay park impact fees (Qumby fees) in accordance with the most current rate schedule and shall demonstrate payment to the Director of Building & Safety prior to issuance of the building permits.
- 4 The Applicant shall submit a Solid Waste Management Plan to the Directors of Planning and Public Works for their review and approval prior to issuance of building permits for the first project component. The plan shall discuss the implementation of source reduction and recycling and shall demonstrate that the project includes measures consistent with the City's AB939 compliance requirements, including but not be limited to: (1) Provision of clearly marked, separate recycling areas for glass, aluminum, office paper, newspaper, and plastics, (2) Provision of recycling bins for glass, aluminum, and plastic next to each beverage machine in each public and employee area and in any other common area where employees and visitors may generate recyclable material, (3) Provision of bins for cardboard recycling during project construction and operation, (4) Provision of a central area for white office paper and newspaper on each floor within each

area and building proposed for office purposes, (5) Promotion of recycling efforts by publicizing the project's recycling program to employees, residents, and visitors, (6) Use of reduced and recyclable packaging for commercial products offered by project components, where possible, (7) Arrangements for the recycling of scrap wood during construction, (8) Arrangements for the recycling of green waste generated by project landscaping, installation, and maintenance, (9) Determination of the number design and placement of waste containers on the project site, (10) Determination of access and turning radius adequacy for waste collection vehicles

- 5 Prior to issuance of any occupancy permit for the project, the Applicant shall demonstrate to the satisfaction of the Director of Transportation that the project complies with the City's Transportation Demand and Trip Reduction Measures under the Congestion Management Program
- 6 A comprehensive Parking Management Plan shall be submitted to the Director of Planning for review and approval prior to issuance of the project occupancy permits. The plan shall address the utilization of the subterranean garage by the respective tenants and operators and shall ensure the effective utilization of the tandem parking by (1) specifying how such parking will be restricted to tenants, rather than visitors, and/or (2) by requiring the use of commercial tandem parking spaces by employees of the same organization, and/or (3) by providing for an attendant service to move cars, and/or (4) by specifying some other method deemed acceptable by the Director of Planning. It shall also provide for weekend use of commercial/office parking by non-project users and shall provide for a method of directing UPS/FedEx and other trucks and/or large vans to the loading area off the alley
- 7 The project Applicant shall prepare a comprehensive Construction Parking and Hauling Plan and said plan shall be submitted to and approved by the Directors of Planning and Building & Safety prior to the issuance of building permits. Said plan shall demonstrate to the satisfaction of the Directors of Planning and Building & Safety that adequate provisions for parking for covenanted uses and construction workers have been made prior to issuance of construction and grading permits for the project. Adequate provisions shall be defined as demonstration that the Applicant has entered into a contract for the provision of the necessary parking. Such parking shall be located no more than 500 feet from the project site, unless a shuttle service is provided at the project developer's expense, which satisfactorily meet the needs of the covenanted users. The plan shall prohibit any construction-related parking on nearby residential streets or in the alley
- 8 The Director of Transportation shall consult with the Applicant to ensure that the project and/or the project's Parking Management Plan includes measures to (1) restrict left hand turns into and out of the southern entrance on Crescent Drive, (2) ensure that entry to the northerly driveway in the alley is controlled through key-card access and that all parking for Spago guests in the parking structure is provided by valet, and (3) to provide project

residents and employees with information about proper routing to and from the building. Any measures shall be reviewed and approved by the Director of Transportation prior to issuance of the Certificate of Occupancy for the project.

- 9 The Applicant shall modify the design of the motor court to the satisfaction of the Directors of Transportation and Planning to accommodate all vehicles, including larger vehicles, that will use the motor court and parking garage. Consideration should be given to relocating the pedestrian walkway to the southerly side of the driveway to provide more visibility for both pedestrians and vehicles and cutting back the pedestrian island (towards Crescent Drive) to provide for unimpeded left-turns from the garage onto Crescent Drive. The revised plan shall show the size of all parking spaces and shall demonstrate to the satisfaction of the Director of Planning that all spaces shall comply with the City Code requirements, including minimum dimensions for parking spaces. The revised plan shall be submitted to the Director of Planning for review and approval prior to issuance of the grading and construction permits for the project.
- 10 The Applicant shall install signage in the alley in the vicinity of the loading area. The signage shall clearly direct any truck arriving at the loading area to pull as far south as possible so that a second truck can access the northerly loading space without protruding into the pedestrian walkway. The proposed signage shall be reviewed and approved by the Directors of Planning and Transportation prior to installation and shall be installed prior to issuance of any occupancy permit for the project.
- 11 The Applicant shall be required to comply with the following restrictions on the use of the loading area and alley: (1) Two trucks of greater than 30 feet are prohibited from using the loading area at the same time, (2) Commercial vehicles other than small vans (e.g. couriers) shall be prohibited from using the loading area between the hours of 4:00 p.m. and 6:00 p.m. Monday through Friday. The project operator shall designate an employee to monitor the loading area and deliveries to ensure compliance with the restrictions set forth in this provision.
- 12 The Applicant shall submit a Construction Management Plan to the Director of Planning prior to issuance of any grading or construction permits. At a minimum, the Construction Management Plan shall address the following: (1) construction delivery schedules, (2) truck hauling/construction traffic routing and access, (3) access to and from the site by construction workers, (4) use of the alley, (5) construction parking (on street construction parking shall be prohibited), and (6) management of vehicular ingress/egress from/to public rights-of-way (e.g. flagmen, etc.). The plan shall demonstrate that any construction impacts to alley operations, on-street parking, or associated with truck access have been reduced to a level consistent with normal construction activity within the City.
- 13 The Applicant shall ensure that the construction contractors shall: (1) Use adequate water for dust control (preferably using reclaimed water), (2) Terminate any construction

activities involving earth disturbance during high wind conditions (winds greater than 25 miles per hour), (3) Operate street sweepers, or roadway-washing trucks, on adjacent roadways to remove dirt dropped by construction vehicles, or dried mud carried off by trucks moving dirt, or bringing construction materials, (4) Cover trucks or wet-down loads of any dirt hauled to or from the project site, (5) Perform low-NOx emission tune-ups on all equipment operating on-site for more than 60 days, (6) Require on-site contractors to operate a congestion relief program including provision of rideshare incentives for construction personnel, provision of off-street parking for construction personnel, limitation of lane closures to non-peak traffic hours, scheduling the receipt of construction materials for non-peak traffic periods where possible

- 14 The Applicant shall not use, or permit to be used, construction vehicles, nor load or unload construction materials or debris, nor permit the same to be done, before 8 a m
- 15 The Applicant shall restrict pile driving, if required, to the hours of 9 a m to 4 p m on Mondays through Fridays
- 16 Prior to the issuance of building permits, the Applicant shall submit a Construction Haul Route Plan that avoids the use of residential streets to the City of Beverly Hills Building & Safety Department and the Department of Transportation for review and approval and shall implement the approved Construction Hauling Plan
- 17 Prior to issuance of building permits, the Applicant shall perform additional, on-site tests specifically designed to investigate potential subsurface faulting as recommended by the project's geotechnical consultant. The phasing and nature of the testing shall be reviewed and approved by the Director of Building and Safety prior to the tests being conducted. Testing shall be performed by a state-licensed geologist approved by the City. Examples of further investigation at the site, which may be required by the Director of Building & Safety include, but are not limited to (1) Performing surface geophysical surveys (similar to those which were performed by Pratt et al (1998) across areas west of the site) to identify the continuity or discontinuity of subsurface stratigraphy, (2) Performing a series of closely spaced cone penetration tests and use of the data (along with the existing geotechnical borehole data) to define the continuity (or lack thereof) of subsurface layers, (3) Performing core borings, or large diameter borings, for down-hole inspection of subsurface conditions to collect data for correlation with previously collected data, (4) Excavating and logging trenches in the vicinity of the building site and perpendicular to the suspected trace of faulting. Upon completion of the tests, the Applicant shall prepare and submit a report and recommendations to the Director of Building & Safety for review and approval. All required mitigation measures to reduce risks associated with subsurface faulting shall be made a condition of the project. The Applicant shall demonstrate compliance with the required measures prior to issuance of any building permit, or on a time schedule deemed appropriate by the Director of Building & Safety. Should the results of additional geotechnical investigation indicate the need for the

redesign of the project, the nature of the redesign shall be reviewed by the Director of Planning and Community Development in order to determine if the redesigned project requires additional environmental review

- 18 Testing shall be done at the Applicant's expense by an environmental assessor approved by the City for Asbestos Containing Building Materials (ACBM), PCBs, and other hazardous substances potentially present on site. The report shall be submitted for review and approval by the Director of Public Works prior to the issuance of the demolition permit for the project. If any hazardous substances are detected in the existing structures or the soil on the project site, prior to the issuance of the demolition permit for the project, the Applicant shall (i) retain a qualified environmental expert approved by the City to supervise the removal and disposal of such substances, and (ii) comply with all requirements imposed by any federal, state, or local regulatory agency with respect to the removal and disposal of such materials from the project site.
  
- 19 A Construction Risk Management Plan shall be prepared and submitted to the Director of Public Works for review and approval prior to issuance of any demolition or construction permits for the project. The Plan shall incorporate the recommendations of the environmental assessors report and shall identify procedures for identifying any hazardous materials that may be encountered during construction. If materials that could present a threat to human health or the environment are discovered, construction in that immediate area shall cease immediately. Furthermore, a qualified professional shall evaluate the finding(s) and make appropriate recommendations. Work shall not resume in that area until the City determines that appropriate actions have been implemented to protect human health and the environment.

EXHIBIT "D"

"Mitigation Monitoring Plan"



Completed

**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><b>Aesthetics/Visual Quality.</b></p> <p><input type="checkbox"/> <b>1. Mass, Scale and Landscape Compatibility.</b></p> <p>The following mitigation measure is designed to ensure that project design features, building materials, and lighting is consistent with the applicant's proposal, which forms the basis of the less than significant impact judgments detailed above</p> <p>Architectural Review - BHMC Title 10, Chapter 3, Article 30, requires architectural review for all new development in the City. The project shall be reviewed by the City of Beverly Hills Architectural Commission. In its review, the Commission shall consider the building mass and finish materials, other details of the building façade, upper story setbacks, proposed landscaping, and pedestrian accommodations, with respect to criteria set forth in Section 10-3 3010, and apply conditions of approval to ensure compliance with the criteria. Commission review shall be designed to ensure (1) Landscaping and Street Trees. The applicant shall provide a landscaping and street tree plan to the satisfaction of the Architectural Review Committee and City' Recreation and Parks Department. Said plan shall at a minimum provide the amount of landscaping described in this EIR,</p> <p>(2) Exterior lighting along the Crescent Drive and Clifton Way frontages. The applicant shall provide a lighting plan and shall demonstrate to the satisfaction of the Architectural Review Committee that lighting is consistent with BHMC Section 10-4 314 and 5-6 1101,</p> <p>(3) Design features. The Architectural Review Committee shall review the final building plans to ensure that building setbacks, modulation and massing is consistent with the project as described in the EIR, or improves upon the setbacks, massing and modulation shown on the project plans at the time of the EIR Analysis,</p>	<p>Department of Planning &amp; Community Development,</p> <p>Department of Recreation and Parks,</p> <p>Department of Building &amp; Safety</p>	<p>Plans and specifications of all design features and building materials including exterior lighting and landscaping shall be filed with the Department of Planning and Community Development to be reviewed and approved by the City's Architectural Commission. In addition, landscape plan shall include proposed street trees which will be reviewed by the Department of Recreation and Parks to comply with this measure. After Architectural Commission approval, approved plans shall be filed with the Department of Building &amp; Safety</p>	<p>The building permits shall be not be issued until the obligations under this measure are met to the satisfaction of the Directors of Planning &amp; Community Development, Recreation and Parks and Building &amp; Safety Departments</p>

**The Crescent Project  
Mitigation Monitoring Program**

Completed

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
(4) No project design or landscape features may be modified or eliminated without prior review and approval by the City	See above	See above	See above
<b>Public Services and Utilities</b>			
<input type="checkbox"/> <b>2. Schools.</b>  The applicant shall submit payment of school impact fees in accordance with the most current rate schedule, and shall demonstrate payment to the Director of Building & Safety Department , prior to issuance of the building permits	Department of Building & Safety	The Building & Safety Department will collect the required fees prior to issuance of the building permits	This measure shall be in effect until the issuance of building permits
<input type="checkbox"/> <b>3. Parks.</b>  The applicant shall submit payment of park impact fees (Quimby fees) in accordance with the most current rate schedule, and shall demonstrate payment to the Director of Building & Safety Department, prior to issuance of the building permits	Department of Building & Safety	The Building & Safety Department will collect the required fees prior to issuance of the building permits	This measure shall be in effect until the issuance of building permits

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**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><input type="checkbox"/> <b>4. Solid Waste</b></p> <p>The applicant shall submit a Solid Waste Management Plan to the City's Planning Director and Public Works Director for review and approval, prior to issuance of building permits for the first project component. The plan shall discuss the implementation of source reduction and recycling and shall demonstrate that the project includes measures consistent with the City's AB939 compliance requirements, including but not be limited to (1) Provision of clearly marked, separate recycling areas for glass, aluminum, office paper, newspaper and plastics, (2) Provision of recycling bins for glass, aluminum and plastic next to each beverage machine in each public and employee area and in any other common area where employees and visitors may generate recyclable material, (3) Provision of bins for cardboard recycling during project construction and operation, (4) Provision of a central area for white office paper and newspaper on each floor within each area and building proposed for office purposes, (5) Promotion of recycling efforts by publicizing the project's recycling program to employees, residents and visitors, (6) Use of reduced and recyclable packaging for commercial products offered by project components, where possible, (7) Arrangements for the recycling of scrap wood during construction, (8) Arrangements for the recycling of green waste generated by project landscaping installation and maintenance, (9) Determination of the number design and placement of waste containers on the project site, (10) Determination of access and turning radius adequacy for waste collection vehicles</p>	<p>Department of Planning &amp; Community Development, Department of Public Works Department of Building and Safety</p>	<p>A Solid Waste Management Program shall include notes and specific instructions outlining the process for implementation of this mitigation measure. The responsible departments shall review the program to ensure that the plan is in compliance with this measure during construction and after completion of the project. The plan check engineers will also review the plan to ensure that the plan complies with this requirement in order to issue the building permits.</p>	<p>This measure shall apply to both construction and operational activities. It is effective upon the issuance of building permits and shall remain effective throughout the life of the project.</p>

**The Crescent Project  
Mitigation Monitoring Program**

Completed

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><b>Traffic, Circulation and Parking</b></p>			
<p><input type="checkbox"/> <b>5. Congestion Management Program Compliance.</b></p> <p>Prior to issuance of any occupancy permit for the project, the applicant shall demonstrate to the satisfaction of the Director of Transportation, that the project complies with the City's Transportation Demand and Trips Reduction Measures under the Congestion Management Program</p>	<p>Department of Transportation</p>	<p>The certificate of occupancy shall not be issued for the project until the developer complies with this measure under the Congestion Management Program</p>	<p>This measure is effective upon the issuance of a certificate of occupancy for the commercial component of the project and shall remain effective throughout the life of the project</p>
<p><input type="checkbox"/> <b>6. Parking Operations.</b></p> <p>A comprehensive parking management plan shall be submitted to the Director of Planning for review and approval prior to issuance of the project occupancy permits. A draft version of the plan shall be submitted to the Director of Planning prior to certification of the EIR and project approval. The plan shall address the utilization of the subterranean garage by the respective tenants and operators, and shall ensure the effective utilization of the tandem parking by (1) specifying how such parking will be restricted to tenants, rather than visitors, and/or (2) by requiring the use of commercial tandem parking spaces by employees of the same organization, and/or (3) by providing for an attendant service to move cars, and/or (4) by specifying some other method deemed acceptable by the Director of Planning. It shall also provide for weekend use of commercial/office parking by non-project users and shall provide for a method of directing UPS/FedEx and other trucks and/or large vans to the loading area off the alley</p>	<p>Department of Planning &amp; Community Development</p> <p>Department of Building &amp; Safety</p>	<p>The parking Management Plan shall be filed with Department of Planning &amp; Community Development for review and approval. The approved Parking management Plan shall be maintained on file in the Department of Building and Safety Department, Code Enforcement Division, who will have the authority and procedures to address any complaints that might arise</p>	<p>The parking Management plan is effective immediately upon issuance of building permits for the project. The plan shall remain effective throughout the life of the project</p>

**The Crescent Project  
Mitigation Monitoring Program**

Completed

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><b>7. Short-Term Parking Impacts During Construction</b></p> <p>The project applicant shall prepare a comprehensive construction parking and hauling plan, and said plan shall be submitted to and approved by the Directors of Planning and Building &amp; Safety prior to the issuance of building permits. Said plan shall demonstrate to the satisfaction of the Directors of Planning and Building &amp; Safety that adequate provisions for parking for covenanted users and construction workers have been made prior to issuance of construction and grading permits for the project. Adequate provisions shall be defined as demonstration that the applicant has entered into a contract for the provision of the necessary parking. Such parking shall be located no more than 500 feet from the project site unless a shuttle service is provided at the project developer's expense which satisfactorily meet the needs of the covenanted users. The plan shall prohibit any construction-related parking on nearby residential streets or in the alley.</p>	<p>Department of Planning &amp; Community Development Department of Building &amp; Safety</p>	<p>The comprehensive construction parking plan shall be maintained on file in the Department of Building &amp; Safety. The Department's plan check engineers shall review the plan to ensure that the plan complies with this measure.</p>	<p>The comprehensive construction parking plan shall be submitted prior to the issuance of building permits and shall be effective immediately upon issuance of building permits for the project, and shall remain effective throughout the construction period.</p>

Completed

**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><input type="checkbox"/> <b>8. Circulation and Access Impacts.</b></p> <p>The applicant shall consult with the City Engineering Division to ensure that the project and/or the project's parking management plan includes measures to (1) restrict left hand turns into and out of the southern entrance on Crescent Drive, (2) ensure that entry to the northerly driveway in the alley is controlled through key-card access and that all parking for Spago guests in the parking structure is provided by valet, and (3) to provide project residents and employees with information about proper routing to and from the building. Any measures shall be reviewed and approved by the Director of Transportation prior to issuance of the certificate of occupancy for the project.</p> <p>The applicant shall modify the design of the motor court to the satisfaction of the Engineering Division and the Building &amp; Safety Department to accommodate all vehicles that would use the parking garage to the satisfaction of the City. Consideration should be given to relocating the pedestrian walkway to the southerly side of the driveway to provide more visibility for both pedestrians and vehicles, and cutting back the pedestrian island (towards Crescent Drive) to provide for unimpeded left-turns from the garage onto Crescent Drive.</p> <p>The revised plan shall show the size of all parking spaces and shall demonstrate to the satisfaction of the Director of Planning that all spaces shall comply with City Code requirements, including minimum dimensions for parking spaces. The revised plan shall be submitted to the Director of Planning for review and approval prior to issuance of the grading and construction permits for the project.</p>	<p>City Engineering Division</p> <p>Department of Building &amp; Safety</p> <p>Department of Planning &amp; Community Development</p>	<p>The measure will be included in the Parking Management Plan, which will be maintained on file in the Department of Building and Safety. In the event that substantial problems arise, the Director of Building and Safety Department may impose operational or physical conditions on the project beyond those specifically stated in the parking management plan to address such problems, after consultation with the Engineering Division. In addition, revised plans shall be provided regarding the design of the motor court and parking configuration for evaluation by the Engineering Division and the Building and Safety Department prior to issuance of building permits.</p>	<p>The Parking Management Plan is effective immediately upon issuance of building permits for the project, and shall remain effective throughout the life of the project. The revised plans shall be provided before issuance of grading and building permits.</p>

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**The Crescent Project  
Mitigation Monitoring Program**

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Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><input type="checkbox"/> <b>9. Commercial Delivery and Loading –</b></p> <p>The applicant shall be responsible for the cost of signage to be placed in the alley in the vicinity of the loading area. The signage shall direct any truck arriving at the loading area to pull as far south as possible so that a second truck can access the northerly loading space without protruding into the pedestrian walkway. The proposed signage shall be reviewed and approved by the Engineering Division and the Planning Department prior to installation and shall be installed prior to issuance of any occupancy permit for the project.</p> <p>The applicant shall be required to comply with the following restrictions on the use of the loading area and alley: (1) Two trucks of greater than 30 feet are prohibited from using the loading area at the same time, (2) Commercial vehicles other than small vans (e.g. couriers) shall be prohibited from using the loading area between the hours of 4:00 p.m. and 6:00 p.m. Monday through Friday. The project operator shall designate an employee to monitor the loading area and deliveries to ensure compliance with the restrictions set forth in this provision.</p>	<p>Department of Planning &amp; Community Development</p> <p>Department of Building &amp; Safety</p> <p>City Engineering Division</p>	<p>Plans for signage and marking shall be submitted to Building and Safety Department. Installation of signage shall be subject to approval of Departments of Building &amp; Safety, Transportation and Planning &amp; Community Development. In addition, the City's parking enforcement shall enforce this measure regarding the operation of loading facility.</p>	<p>All the required signage and marking shall be in place prior to the issuance of certificate of occupancy. This measure shall apply to operational activities of the loading facility which shall be effective throughout the life of the project.</p>

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**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<input type="checkbox"/> <b>10. Short-Term Impacts During Construction</b>  The applicant shall submit a construction management plan to the Director of Building & Safety prior to issuance of any grading or construction permits. At a minimum the construction management plan shall address the following: (1) construction delivery schedules, (2) truck hauling/construction traffic routing and access, (3) access to and from the site by construction workers, (4) use of the alley, (5) construction parking (on street construction parking shall be prohibited), and (6) management of vehicular ingress/egress from/to public rights-of-way (e.g. flagmen, etc.). The plan shall demonstrate that any construction impacts to alley operations, on-street parking, or associated with truck access have been reduced to a level consistent with normal construction activity within the City.	Department of Planning & Community Development  Department of Building & Safety  Department of Public Works	The Construction Management Plan shall be reviewed by the Planning & Community Department and filed with the Building & Safety Department prior to issuance of grading permits. The plan check engineer will review the plans to ensure that the plan complies with this measure. The inspectors in the field will also review the work to ensure that it complies with the requirements noted in the Construction management Plan.	This measure shall be met prior to the issuance of any grading or construction permits. This measure shall be in effect until the issuance of the certificate of occupancy.

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**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><input type="checkbox"/> <b>11. Construction Activity Impacts</b></p> <p>The applicant shall ensure that the construction contractors shall (1) Use adequate water for dust control (preferably using reclaimed water), (2) Terminate any construction activities involving earth disturbance during high wind conditions (winds greater than 25 miles per hour) (3) Operate street sweepers or roadway-washing trucks on adjacent roadways to remove dirt dropped by construction vehicles or dried mud carried off by trucks moving dirt or bringing construction materials, (4) Cover trucks or wetting-down loads of any dirt hauled to or from the project site, (5) Perform low-NO<sub>x</sub> emission tune-ups on all equipment operating on-site for more than 60 days, (6) Require on-site contractors to operate a congestion relief program including provision of ndeshare incentives for construction personnel, provision of off-street parking for construction personnel, limitation of lane closures to non-peak traffic hours, scheduling the receipt of construction materials for non-peak traffic periods where possible</p>	<p>Department of Building &amp; Safety Department of Public Works</p>	<p>The primary contractor shall submit an affidavit attesting to the compliance with this measure to the Department of Building &amp; Safety Any cleaning of the public right-of-way shall be to the specifications of the City Engineer</p>	<p>The affidavit shall be submitted prior to the commencement of any work on the project site This measure shall be in effect until the issuance of the certificate of occupancy</p>
<p><input type="checkbox"/> <b>12. Construction Noise Impacts</b></p> <p>The applicant shall not use construction vehicles nor load or unload construction materials or debris before 8 a m</p> <p>The applicant shall restrict pile driving, if required, to the hours of 9 a m to 4 p m on Mondays through Fridays</p> <p>Prior to the issuance of building permits, the applicant shall submit a construction haul route plan that avoids the use of residential streets to the City of Beverly Hills Building &amp; Safety Department and the Department of Transportation for review and approval and shall implement the approved construction hauling plan</p>	<p>Department of Building &amp; Safety</p>	<p>The primary contractor shall submit a program and an affidavit attesting to the compliance with this measure to the Department of Building &amp; Safety</p>	<p>The program and affidavit shall be submitted prior to the commencement of any work on the project site This measure shall be in effect until the issuance of the certificate of occupancy</p>

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**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p><b>Geology</b></p> <p><input type="checkbox"/> <b>13. Seismic</b></p> <p>Prior to issuance of building permits, the applicant shall perform additional on-site tests specifically designed to investigate potential subsurface faulting as recommended by the project's geotechnical consultant. The phasing and nature of the testing shall be reviewed and approved by the Director of Building and Safety prior to the tests being conducted. Testing shall be performed by a state licensed geologist approved by the City. Examples of further investigation at the site which may be required by the Director of Building &amp; Safety include, but are not limited to (1) Performing surface geophysical surveys (similar to those which were performed by Pratt et al (1998) across areas west of the site) to identify the continuity or discontinuity of subsurface stratigraphy, (2) Performing a series of closely spaced cone penetration tests and use of the data (along with the existing geotechnical borehole data) to define the continuity (or lack thereof) of subsurface layers, (3) Performing core borings or large diameter borings for down-hole inspection of subsurface conditions, to collect data for correlation with previously collected data, (4) Excavating and logging trenches in the vicinity of the building site, and perpendicular to the suspected trace of faulting. Upon completion of the tests, the applicant shall prepare and submit a report and recommendations to the Director of Building &amp; Safety for review and approval. All required mitigation measures to reduce risks associated with subsurface faulting shall be made a condition of the project. The applicant shall demonstrate compliance with the required measures prior to issuance of any building permit or on a time schedule deemed appropriate by the Director of Building &amp; Safety.</p>	<p>Department of Building &amp; Safety</p>	<p>The construction plans filed with the Department of Building &amp; Safety shall comply with this requirement. The plan check engineers will review the plans to ensure that they comply with this requirement.</p>	<p>This requirement shall be met prior to the issuance of relevant building permits.</p>

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**The Crescent Project  
Mitigation Monitoring Program**

Mitigation Measures	Responsible Agency	Monitoring Procedure and Reporting Mechanism	Implementation Schedule
<p>Should the results of additional geotechnical investigation indicate the need for the redesign of the project, the nature of the redesign shall be reviewed by the Director of Planning and Community Development in order to determine if the redesigned project requires additional environmental review</p>	<p>Department of Building &amp; Safety</p>	<p>The construction plans filed with the Department of Building &amp; Safety shall comply with this requirement. The plan check engineers will review the plans to ensure that they comply with this requirement.</p>	<p>This requirement shall be met prior to the issuance of relevant building permits.</p>
<p><b>Hazards</b></p> <p><input type="checkbox"/> <b>14 Related to Building Demolition</b></p> <p>Testing shall be done at the applicant's expense by an environmental assessor approved by the City, for Asbestos Containing Building Materials (ACBM), PCBs and other hazardous substances potentially present on site. The report shall be submitted for review and approval by the Director of public works, prior to the issuance of the demolition permit for the project. If any hazardous substances are detected in the existing structures or the soil on the project site, prior to the issuance of the demolition permit for the project, the applicant shall (i) retain a qualified environmental expert approved by the City to supervise the removal and disposal of such substances, and (ii) comply with all requirements imposed by any federal, state, or local regulatory agency with respect to the removal and disposal of such materials from the project site.</p>	<p>Department of Public Works Department of Building &amp; Safety</p>	<p>The remediation plans shall include notes and specific instructions outlining the process for implementation of this mitigation measure. The plan check engineers will review the plans to ensure that they comply with this requirement.</p>	<p>This measure shall be in effect until the issuance of the certificate of occupancy.</p>

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**The Crescent Project  
Mitigation Monitoring Program**

<b>Mitigation Measures</b>	<b>Responsible Agency</b>	<b>Monitoring Procedure and Reporting Mechanism</b>	<b>Implementation Schedule</b>
<p>A Construction Risk Management Plan shall be prepared and submitted to the Director of Public Works for review and approval prior to issuance of any demolition or construction permits for the project. The Plan shall incorporate the recommendations of the environmental assessors report and shall identify procedures for identifying any hazardous materials that may be encountered during construction. If materials that could present a threat to human health or the environment are discovered, construction in that immediate area shall cease immediately. Furthermore, a qualified professional shall evaluate the finding(s) and make appropriate recommendations. Work shall not resume in that area until the City determines that appropriate actions have been implemented to protect human health and the environment.</p>	<p>Department of Public Works Department of Building &amp; Safety</p>	<p>The remediation plans shall include notes and specific instructions outlining the process for implementation of this mitigation measure. The plan check engineers will review the plans to ensure that they comply with this requirement.</p>	<p>This measure shall be in effect until the issuance of the certificate of occupancy.</p>

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**ATTACHMENT J**

**ARCHITECTURAL PLANS**

**(PROVIDED AS A SEPARATE ATTACHMENT)**

**ATTACHMENT K**  
**APPLICANT COMMENTS AND STAFF RESPONSES**

## APPLICANT COMMENTS AND STAFF RESPONSES

- 1. Applicant Comment:** *Single Household Unit. The AKA Beverly Hills is designed to be more transient than any residential zone in the City -- either Single Family or Multi Family. The definition of the Household Unit is not applicable to our business model. Therefore, we request that this definition be removed from our overlay zone.*

**Staff Response:** Staff agrees that the purpose of AKA Beverly Hills' current application is to allow AKA Beverly Hills to be more transient than other residential uses, although less transient than hotel uses. Specifically, AKA Beverly Hills proposes to allow residents to stay at in their dwelling units for as little as seven days. Given the more transient nature of this use, some aspects of the definition of "single housekeeping unit" being recommended to the Planning Commission may not be appropriate for this project and the mixed use overlay zone.

Therefore, staff recommends that the references to the definition of single housekeeping unit be removed from the development agreement and the definition of "serviced residence" in the zoning ordinance. However, staff also recommends that one element of the "single housekeeping unit" be added to the definition of serviced residence in the zoning ordinance. Specifically, staff recommends that the definition be revised to explicitly require that "all residents jointly occupy the dwelling unit under a single written lease." This requirement is already contained in the development agreement.

- 2. Applicant Comment:** *Use of Terrace. The outdoor terrace use is currently allowed. It is not visible from the street. It does not affect our neighbors. We have operated for 2 years, and have not received a single noise complaint. It is important to note that any noise from the terrace would primarily impact our own tenants. We respect our tenants' and neighbors' desire for quiet. Our primary business is a residential living environment. We request the use of the terrace for events/gatherings in the afternoons, and into the early evening hours.*

**Staff Response:** Staff agrees that the use of the outdoor terrace for receptions during the afternoon and early evening hours is unlikely to have an adverse impact on surrounding residences and is controlled, in part, by AKA's need to protect its own residents from excessive noise. Staff recommends modifying the proposed condition so that rather than completely prohibiting events, receptions and parties on the outdoor terrace, the condition will instead prohibit events, receptions and parties on the outdoor terrace after 10:00 p.m.

- 3. Applicant Comment:** *Deliveries. We believe a distinction in types of deliveries is needed. Please clarify. For example, a flower delivery to a tenant should be able to go to the front desk.*

**Staff Response.** Staff does not interpret this condition to prohibit flower deliveries and similar deliveries from the street when the applicant has no knowledge that the delivery is planned and no control over the delivery. Staff recommends modifying the condition to make clear that regular deliveries and scheduled deliveries must be made from the alley.

4. **Applicant Comment:** *Taxis & Limos. There is currently no requirement for a taxi/limo parking set aside within our driveway area. It is not a large area and we currently provide a doorman & valet services. Part of the doorman's daily responsibility is handling pick-ups/drop off's from taxis/limos. Therefore, we request this condition be removed.*

**Staff Response:** Staff recommends that the Applicant be required to accommodate taxis and limousines within the motor court area. Staff believes that this condition is important to protect the neighborhood from the impact of waiting taxis and limousines. However, staff also believes that the condition may be written as a performance standard, requiring the Applicant to accommodate taxis and limousines when they arrive, rather than requiring the Applicant to set aside space during times when no taxi or limousine is present at the site. Therefore, staff recommends revising the condition accordingly.

5. **Applicant Comment:** *Please replace the word "shall" with "may" in the first sentence of Standard Condition No. 5, regarding the Director's ability to approve minor plan changes/amendments.*

**Staff Response:** Staff agrees that the Director's authority to approve minor revisions to plans is permissive and not mandatory and has no objection to the revision requested by the Applicant. Therefore, staff recommends revising the conditioned as requested by the Applicant.

6. **Applicant Comment:** *Please clarify that the revocation process for a violation of conditions is set forth in the Beverly Hills Municipal Code and please cite the specific code.*

**Staff Response:** Any revocation of a permit requires that the permit holder receive due process. Staff agrees that standard condition no. 8 should be amplified to include a reference to the process by which the planned development permit may be revoked. Beverly Hills Municipal Code Section 10-3-3803 sets forth the process to be followed in order to revoke a Conditional Use Permit. Staff believes that the conditional use permit revocation process is the appropriate process to reference as this is the same process that would be used to revoke the permit required for new hotels or for the expansion or intensification of a hotel use.

7. **Applicant Comment:** *Please clarify that Standard Condition No. 11 allows Owner improvements -- i.e., rehabilitation/renovation/any capital improvements -- whose scope of work may exceed the 6 month time restriction.*

**Staff Response:** Standard Condition No. 11 provides that the right to continue the Serviced Residence use of the property will expire if the use ceases for a period of six months. Staff does not interpret a period of renovations or improvements to the building as a cessation of the use. Staff does not object to making this interpretation explicit in the condition. Therefore, staff recommends modifying the condition to provide that a period during which occupancy may cease due to renovations or improvements is not a cessation of use that causes the applicant to lose the right to maintain the Serviced Residence use.

8. **Applicant Comment:** *Please strike the word "cafe" from the definition of "luxury" in the Serviced Residences definition. We do not yet have that entitlement.*

**Staff Response:** Staff does not believe that a "café" is an essential component to a luxury standard for a serviced residence. Therefore, staff recommends that the reference to café be removed from the description of a luxury standard.

# **ATTACHMENT L**

## **REVISED PLANNING COMMISSION RESOLUTION – PLANNED DEVELOPMENT PERMIT**

RESOLUTION NO.

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING A PLANNED DEVELOPMENT PERMIT ASSOCIATED WITH MODIFICATIONS TO CONDITIONS OF APPROVAL AND THE TYPES OF LAND USES ALLOWED WITHIN A PREVIOUSLY APPROVED MIXED-USE DEVELOPMENT ON THE PROPERTY LOCATED AT 9355 WILSHIRE BOULEVARD AND 155 NORTH CRESCENT DRIVE.

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

Section 1. Stanley Stalford, representative on behalf of Metropolitan Crescent Associates, LLC (collectively the “Applicant”), has submitted an application for a Planned Development Permit to amend conditions of approval and permitted land uses associated with a previously approved Planned Development Permit for a mixed- use development. The amendments are intended to allow serviced residences and a restaurant within the mixed-use development on the property located at 9355 Wilshire Boulevard and 155 North Crescent Drive (the “Project”).

Section 2. The existing development on the Project site was approved by the Planning Commission and City Council in 2002. The existing development was approved pursuant to a mixed-use overlay zone, Planned Development Permit, and Environmental Impact Report (EIR). The existing development contains a total of 88 apartment units, 39,975 square feet of commercial space, and 534 parking spaces. Construction was initiated in 2004 and

completed in 2006. Since completion of construction, the project site has operated in accordance with the previously granted entitlements.

Section 3. The Project elements requested by the Applicant include the following:

- Serviced Residences: Allow all 88 apartment units to function as serviced residences, which could be rented for any length of stay, provided the stay is not less than 7 days.
- Restaurant Use: Allow an approximately 2,500 square foot restaurant to be located within the portion of the project site located at the intersection of Wilshire Boulevard and North Crescent Drive. The restaurant would be primarily intended to serve AKA residents, but would also be open to the general public.

Section 4. The Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”)), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the environmental regulations of the City. An Environmental Impact Report (EIR) was previously certified by the City Council on December 3, 2002 for the existing mixed-use development on the subject site. Pursuant to Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, a lead agency (the City of Beverly Hills in this case) may prepare an addendum to a previously certified EIR if some changes or additions to the EIR are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred. Pursuant to CEQA Guidelines Section 15162, no subsequent

EIR shall be prepared for the Project unless, on the basis of substantial evidence in the light of the whole record, one or more of the following is determined:

- (1) Substantial changes are proposed in the project that will require major revisions of the previous EIR due to the involvement of new, significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance identifies one or more significant effects not discussed in the previous EIR, significant effects previously examined will be substantially more severe than shown in the previous EIR, mitigation measures or alternatives previously found not to be feasible or not analyzed in the EIR would be feasible and would substantially reduce one or more significant effects but the project proponents decline to adopt of the measure or alternative.

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

Section 5. Notice of the Project and public hearing was mailed on November 7, 2013 to all single-family property owners within a 500-foot radius of the Project site, all property owners within a 300-foot radius of the Project site, and all residential occupants within

a 300-foot radius of the Project site. Notice was also published in two newspapers of local circulation, the *Beverly Hills Courier* and the *Beverly Hills Weekly*. On November 21, 2013 the Planning Commission considered the application at a duly noticed public hearing. Evidence, both written and oral, was presented at the meeting.

Section 6. In reviewing the request for a Planned Development Permit, the Planning Commission considered whether the Project would satisfy the following objectives of the M-PD-2 Mixed-Use Overlay Zone:

1. To ensure that mixed use development in the M-PD-2 zone is consistent with the general plan and any specific plans adopted for the area;
2. To ensure that mixed use development in the M-PD-2 zone will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;
3. To provide for mixed use development that is compatible with the scale and massing of the surrounding neighborhood, through appropriate height, modulation, upper story setbacks, and/or other similar measures;
4. To provide pedestrian friendly amenities along the street level, and setbacks that are generally consistent with other development along the west side of Crescent Drive between Wilshire Boulevard and Santa Monica Boulevard (South Roadway);
5. To promote a combination of land uses and densities within the M-PD-2 zone that will not unduly induce significantly greater traffic to nearby neighborhood streets; provided, however, that achievement of this objective is to be balanced with other

public policy considerations in the event that such considerations are found to be of an overriding nature;

6. To ensure that mixed use development in the M-PD-2 zone will not create any significant, adverse traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will minimize impediments to vehicular circulation and pedestrian safety;

7. To foster uniform planning and development of all parcels in the M-PD-2 zone to ensure unified development in the overlay zone; and

8. To protect the public health, safety or general welfare.

Section 7. Based on the foregoing, the Planning Commission hereby finds and determines as follows with respect to the objectives of the M-PD-2 Mixed-Use Overlay Zone:

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

- Policy H 2.5 Adaptive Reuse. Support innovative strategies for the adaptive reuse of residential and commercial structures to provide for a wide range of housing types.
- Policy LU 15.1 Economic Vitality and Business Revenue. Sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high-paying jobs.

In addition to advancing the above policies, the Project is located in an area that serves as a transition between commercial and residential uses, and the hybrid land use of serviced residences serves as an appropriate transition. For these reasons, the Project is consistent with the elements of the city's general plan. Furthermore, the Project is not located within any specific plan areas;

2. The Project does not result in alteration to the size, scale, or density of the existing mixed-use building. Additionally, the Project is located in an area that serves as a transition between commercial and residential uses, and the hybrid land use of serviced residences serves as an appropriate transition that will contribute to existing and anticipated development in the vicinity, and will promote harmonious development of the area;

3. The existing mixed-use development on the Project site is already constructed and has been in place since 2006. The Project does not result in alteration to the size, scale, density, or design of the existing mixed-use building;

4. The existing mixed-use development on the Project site is already constructed and has been in place since 2006. The Project does not result in alteration to the size, scale, density, or design of the existing mixed-use building. With respect to pedestrian-oriented amenities, the Project includes the addition of a restaurant in place of an existing financial institution. Restaurants are considered to be a pedestrian-oriented land use, while financial institutions are not considered to be a pedestrian-oriented land use. Replacement of the financial institution with a restaurant will enhance the streetscape and enhance the pedestrian experience along the Project's frontage;

5. Based on trip generation rates set forth in the ITE trip generation manual, the Project will result in a negligible increase of approximately 147 average daily vehicle trips, which represents less than a 2% increase on North Crescent Drive. Because of the limited traffic increase associated with the land uses contemplated under the Project, the Project will not unduly induce significantly greater traffic to nearby neighborhood streets;

6. The existing mixed-use development on the Project site is already constructed and has been in place since 2006. The Project does not result in alteration to any of the development's driveways or traffic control devices. Based on trip generation rates set forth in the ITE trip generation manual, the Project will result in a negligible increase of approximately 147 average daily vehicle trips, which represents less than a 2% increase on North Crescent Drive. Because of the limited traffic increase associated with the land uses contemplated under the Project and the fact that the Project will not modify any existing driveways or traffic control devices, the Project will not create any significant, adverse traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards and will minimize impediments to vehicular circulation and pedestrian safety;

7. The Project does not result in alteration to the size, scale, or density of the existing mixed-use building that was constructed as a unified development of all parcels within the M-PD-2 zone. Additionally, the Project is located in an area that serves as a transition between commercial and residential uses, and the hybrid land use of serviced residences serves as an appropriate transition that fosters uniform planning; and

8. The existing mixed-use development on the Project site is already constructed and has been in place since 2006. The Project does not result in alteration to

the size, scale, density, or design of the existing mixed-use building, does not cause any significant environmental impacts, serves as an appropriate transition between commercial and residential uses, and maintains orderly development of the area.

Section 8. Based on the foregoing, the Planning Commission hereby grants the requested Planned Development Permit, Development Plan Review, and Conditional Use Permit, subject to the following conditions:

Special Conditions

1. The conditions set forth in this resolution incorporate all applicable conditions previously imposed on the subject property pursuant to City Council Resolution No. 02-R-11251 and delete or modify conditions that are no longer applicable. Therefore, this resolution and the conditions set forth herein shall supersede City Council Resolution No. 02-R-11251.

2. No uses other than those specifically authorized pursuant to Article 19.3 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code shall be permitted as part of this planned development. This condition shall not be construed to bar the applicant from requesting a modification at a later date to permit additional uses as part of this planned development.

3. No rooftop uses are approved or permitted as part of this planned development. This condition shall not be construed to bar the applicant from requesting a modification at a later date to permit rooftop uses as part of this planned development. Additionally, the outdoor terrace located above the second floor of the development shall be limited to use by residents of the serviced residences and their guests [after 10:00 p.m.](#).

No private events, receptions, or parties shall be conducted within the outdoor terrace after 10:00 p.m.

4. Prior to issuance of occupancy permits and subject to the review and approval of the Directors of Planning and Transportation, the Applicant shall provide a Loading Management Plan to minimize loading-related impacts from the Project on adjacent land uses. The Loading Management Plan shall designate a delivery monitor to monitor the loading area and deliveries in order to control the circulation activities and to prevent overcrowding in the loading area. Additionally, all regular and scheduled deliveries shall occur from the alley at the rear of the Project site. Incidental deliveries to residents or the reception desk that are not within the control of the Applicant shall not be a violation of this condition. The City shall retain the authority to impose additional conditions on the Project to address loading and delivery problems should they arise.

5. The Project shall provide on-site parking for its residential and commercial tenants at all times. Additionally, the Applicant space shall accommodate be reserved within the Project's motor court for waiting limousines and taxis, and the loading and unloading of passengers. All taxi and limousine activities associated with the Project shall be accommodated occur within the motor court and shall not be directed to permitted within the public right-of-way.

6. The Project shall provide one-hour free, validated on-site parking for all patrons of the commercial component at all times. In addition, the rate charged for parking after the first hour shall not exceed the amount charged at the nearest city parking structure. Signage satisfactory to the Director of Planning shall be posted at the driveway entrance indicating the availability of the free parking in the garage.

7. The Project shall provide free, on-site parking to employees of all commercial tenants at all times.

8. The Project shall be designed to prohibit left turn egress from the Commercial (southern) driveway on Crescent Drive. The applicant shall channelize the driveway to restrict turning movements to right turns only and shall install “Right Turn Only” signs and arrow markings on the pavement, or such other restrictive devices as required by the Director of Transportation and City Engineer.

9. Prior to the issuance of occupancy permits for the Project, the applicant shall install a sign indicating “Yield to Pedestrians Crossing” to warn drivers entering/exiting the residential and commercial garage.

#### Standard Conditions

1. Except as otherwise provided by these conditions, the Project shall be constructed and operated in substantial compliance with the plans submitted to and approved by the City Council at its meeting of November 14, 2002, as amended by the Planning Commission at its meeting of November 21, 2013.

2. These conditions shall run with the land and shall remain in full force for the duration of the life of the Project.

3. This Resolution approving a Planned Development Permit shall not become effective until the owner of the project site records a covenant, satisfactory in form and content to the City Attorney, accepting the conditions of approval set forth in this resolution. The covenant shall include a copy of this resolution as an exhibit.

The Applicant shall deliver the executed covenant to the Department of Planning and Community Development within 60 days of the Planning Commission decision. At the time that the Applicant delivers the covenant to the City, the Applicant shall also provide the City with all fees necessary to record the document with the County Recorder. If the Applicant fails to deliver the executed covenant within the required 60 days, this resolution approving the discretionary approvals shall be null and void and of no further effect. Notwithstanding the foregoing, the Director of Planning and Community Development may, upon a request by the Applicant, grant a waiver from the 60-day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that would affect the discretionary approvals.

4. The City reserves the right to make modifications and/or impose additional conditions which may become necessary to enable implementation of the specific conditions set forth in this Resolution and the Applicant shall comply with all such modified or additional conditions.

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

6. Project Plans are subject to compliance with all applicable zoning regulations, except as may be expressly modified herein. Project plans shall be subject to a complete Code Compliance review when building plans are submitted for plan check.

Compliance with all applicable Municipal Code and General Plan Policies is required prior to the issuance of a building permit.

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

8. VIOLATION OF CONDITIONS: A violation of any of these conditions of approval may result in revocation of this planned development permit pursuant to the procedures set forth in Beverly Hills Municipal Code Section 10-3-3803. ~~termination of the entitlements granted herein.~~

9. Pursuant to the Development Agreement processed in conjunction with the Project, the applicant, and any successors in interest, have agreed to pay a municipal surcharge pursuant to Section 9(d) of the Development Agreement, which agreement must be recorded against the subject property. If, after notice and opt following the procedure set forth in Section 11 of the Development Agreement, the applicant and any successors in interest fail to pay the municipal surcharge, the approval of the serviced residential use pursuant to the Planned Development Permit shall expire, and be of no further effect.

10. If one or more of the applicant, property owner, or any other entity with an interest in the property, challenges any provision of this approval or the related Development Agreement seeking to and invalidate any condition of this entitlement or and provision of the Development Agreement, and is successful in invalidating any condition of this project or the Development Agreement, the approval of the serviced

residential component of the project shall expire and be of no further force or effect, and the use of the residential portion of the property shall be returned to traditional multi-family residential units.

11. If the serviced residences use ceases for a period of 6 consecutive months and the Development Agreement has expired, then the entitlement for the serviced residences shall expire, and be of no further force or effect. A cessation of occupancy due to the maintenance, renovation, improvement or reconstruction of the Project shall not be considered a cessation of use for the purposes of this condition.

12. This resolution shall not become effective unless and until the associated amendment to the text of the Mixed Use Overlay Zone that would allow the serviced residence land use in the zone has been duly adopted by the City Council and has taken effect.

Section 9. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this resolution, and shall cause this resolution and his/her Certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: December 12, 2013

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Brian Rosenstein  
Chair of the Planning Commission of the  
City of Beverly Hills, California

Attest:

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Secretary

Approved as to form:

Approved as to content:

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David M. Snow  
Assistant City Attorney

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Jonathan Lait, AICP  
City Planner

# **ATTACHMENT M**

## **REVISED DRAFT ORDINANCE REGARDING THE PROPOSED ZONING AMENDMENTS**

EXHIBIT A

[DRAFT] ORDINANCE NO. 13-O-

AN ORDINANCE OF THE CITY OF BEVERLY HILLS AMENDING THE MUNICIPAL CODE REGARDING TRANSIENT RESIDENTIAL USES IN THE MIXED USE PLANNED DEVELOPMENT OVERLAY ZONE, SINGLE FAMILY RESIDENTIAL ZONES, AND MULTI-FAMILY RESIDENTIAL ZONES.

WHEREAS, on November 21, 2013 the Planning Commission conducted a duly noticed public hearing to consider proposed municipal code text amendments to the standards for transient uses in the City's single family residential zoning districts and the Mixed Use Planned Development Overlay Zone (M-PD-2), and with respect to proposed modifications to an approved Planned Development Permit to implement a new multi-family transient land use referred to as "serviced residences" for the property at 155 North Crescent Drive and 9355 Wilshire Boulevard; and,

WHEREAS, the Planning Commission considered the potential impacts of unrestricted short-term rentals of single family residences and second units on the stability and character of the City's single family residential neighborhoods, and the potential impacts of short-term rentals of multi-family residences in multi-family residential neighborhoods; and,

WHEREAS, the Planning Commission recommended that the City Council adopt an ordinance to permit serviced residences in the Mixed Use Planned Development Zone, to limit short-term rentals of single family residences and second units, and to provide a definition of transient uses in multi-family residential zones; and,

WHEREAS, on \_\_\_\_\_, 2013, the City Council conducted a duly noticed public hearing to consider the proposed municipal code amendments and introduced the Ordinance; and,

WHEREAS, the Project has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* (“CEQA”), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the environmental regulations of the City. An Environmental Impact Report (EIR) was previously certified by the City Council on December 3, 2002 for the existing mixed-use development on the subject site. Pursuant to Section 15164 of the California Environmental Quality Act (CEQA) Guidelines, a lead agency (the City of Beverly Hills in this case) may prepare an addendum to a previously certified EIR if some changes or additions to the EIR are necessary but none of the conditions described in Section 15162 calling for the preparation of a subsequent EIR have occurred. Pursuant to CEQA Guidelines Section 15162, no subsequent EIR shall be prepared for the Project unless, on the basis of substantial evidence in the light of the whole record, one or more of the following is determined:

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

increase in the severity of previously identified significant effects; or

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

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

In addition, the proposed amendments to the text of the various residential zones do not change the conclusion in the addendum. Further, the residential zone text amendments are exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that the amendments will not have the potential for any impacts on the environment. Further, the amendments would be exempt from CEQA pursuant to Section 15305 for single family residential properties with slopes of less than 20%, as well as Section 15308 as an action to protect the environment of the single family residential areas of the City. The City's multi-family areas are not in areas with 20% or greater slopes.

NOW, THEREFORE, THE COUNCIL OF THE CITY OF BEVERLY HILLS  
DOES ORDAIN AS FOLLOWS:

Section 1. Legislative Findings. The City Council hereby finds as follows:

- A. The City was approached by Metropolitan Crescent Associates, LLC, regarding a proposed “AKA Beverly Hills Project,” which would include authorization to operate an existing residential / mixed use project to provide “serviced residences,” a type of multi-family transient accommodation. “Serviced residences” are luxury dwelling units with full kitchens, laundry facilities, and bathrooms, that are offered, without limitation, housekeeping, valet dry-cleaning and laundry services. At present, a “luxury standard” includes a 24-hour resident service team, high-tech fitness center, full-service business center with executive board room and complimentary high-speed Internet access, a lounge; ~~a cafe~~, en-suite dining, same-day valet dry-cleaning and laundry service, and full-time, on-site management and maintenance. All dwelling units include fully-accessorized kitchens, contemporary furnishings, well-appointed bathrooms, premium cable television and Wi-Fi access.
- B. The request that the City authorize this new type of transient use which, as a hybrid hotel / residential use, does not fit neatly into the City’s traditional land use categories, caused the City to consider how transient

uses allowed in the City's residential and mixed use zones are and should be defined.

C. Concurrent with the request for serviced residences, the City has become more aware of the degree to which dwelling units in the City are being used for short-term rentals through such websites as Airbnb ([www.Airbnb.com](http://www.Airbnb.com)), Vacation Rentals By Owner ([www.vrbo.com](http://www.vrbo.com)), and similar on-line short-term rental websites.

D. Unfettered short-term rentals of single-family and multi family residential properties has the potential to change the character and stability of the City's residential neighborhoods. The Land Use Element of the City's General Plan, includes Goal LU 5 calling for "Complete, Livable, and Quality Neighborhoods." Goal LU 5 is bolstered by the following general plan policies that memorialize the City's commitment to preserving and maintaining the stability of single family residential areas:

1. "Policy LU 5.1 Neighborhood Conservation. Maintain the uses, densities, character, amenities, and quality of the City's residential neighborhoods, recognizing their contribution to the City's identity, economic value and quality of life."
2. In relevant part, "Policy LU 5.8 Encroachment of Incompatible Land Uses. Protect residential neighborhoods from the encroachment of

incompatible nonresidential uses and disruptive traffic, to the extent possible.”

- E. The Land Use Element of the City’s General Plan includes Goal LU 6 regarding Single-Family Residential Neighborhoods calling for “[m]aintenance of the identity, scale, and character of the distinct single-family residential neighborhoods.” Goal LU 6 memorializes the City’s commitment to preserving and maintaining its single-family residential neighborhoods from incompatible and character changing uses such as short-term rental of single family residences.
- F. On November 12, 2013, VRBO listed 73 vacation rentals in Beverly Hills, approximately 45 were described as single family residences including 28 houses, 7 villas, 1 castle, 1 country house, 2 bungalows, and 6 estates. The remaining appeared to be multi-family in nature. In addition, a number of properties in the City were listed as available on the airbnb.com, some in single family neighborhoods and some in multifamily areas.
- G. The impact of short-term rentals in single family residential neighborhoods have been discussed in various news articles, including a September 2, 2013 article in the Los Angeles Times in which residents of the Silver Lake neighborhood in Los Angeles have expressed concerns

about the operation of “virtual hotels, packing homes with throngs of visitors whose sheer presence alters the community feel.” The City of New York also has concerns with the phenomenon, where, according to a Los Angeles Times Article of October 7, 2013, stays of less than 30 days, like in Beverly Hills, generally are not permitted in apartment units.

- H. In multi-family residential neighborhoods, there is a greater likelihood of and expectation of shorter term occupancy of units such as apartments than in single family neighborhoods, however use of properties for stays of shorter than 30 days runs counter to the residential nature of the multi-family zones where hotel uses are prohibited. Existing ordinances prohibit this type of use, but further clarification is warranted.
- I. Protection of the City’s single-family neighborhoods warrants amendment of the City’s single family residential zones to establish a minimum term of any rental or lease, and limit the number of times per year single family residential units, including second units, can be rented for short-term occupancy.
- J. Protection of the City’s multi-family neighborhoods warrants amendment of the City’s single family residential zones to provide a definition of transient use and clarify that short-term stays of less than 30 days are not permitted, with an exception for the hybrid serviced residences use

proposed to be allowed only in the Mixed Use Planned Development Overlay Zone (M-PD-2).

Section 2. Section 100 of Article 1 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to insert a new defined term “Serviced Residence” between the existing defined terms “Second Unit” and “Setback, Front,” as follows, with all other portions of Section 10-3-100 remaining in effect without amendment:

“SERVICED RESIDENCE: A multi family transient use where each dwelling unit includes a full kitchen, laundry facilities and bathroom, no dwelling unit is leased or occupied by any person for less than seven (7) consecutive days, all residents jointly occupy the dwelling unit under a single written lease. and each dwelling unit is maintained and offered services at a luxury standard. By way of illustration, at the time of adoption of the ordinance enacting this definition, a “luxury standard” includes a 24-hour resident service team, high-tech fitness center, full-service business center with executive board room and complimentary high-speed Internet access, a lounge; ~~a cafe~~, en-suite dining, same-day valet dry-cleaning and laundry service, and full-time, on-site management and maintenance. All dwelling units include fully-accessorized kitchens, contemporary furnishings, well-appointed bathrooms, premium cable television and Wi-Fi access. ~~Dwelling units may be occupied by no more than one single housekeeping unit.~~”

Section 3. Section 1935 of Article 19.3 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to revise paragraph B and add a new paragraph J as follows, with all other portions of Section 10-3-1935 remaining in effect without amendment:

“B. Restaurants and bars may be permitted as part of a planned development but only in portions of a mixed use development with an underlying zoning of C-3 or RMCP.”;

“J. Serviced Residence uses may be permitted as part of a planned development but only in those portions of a mixed use development with an underlying zoning of RMCP.”

Section 4. Section 100 of Article 1 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to revise the existing definition of “Single Housekeeping Unit” to read as follows:

“SINGLE HOUSEKEEPING UNIT: A traditional family or the functional equivalent of a traditional family, whose members are a nontransient interactive group of one (1) or more persons, where if consisting of more than one (1) person, such persons jointly occupy a single dwelling unit, jointly use common areas, share household activities and responsibilities (e.g., meals, chores, and expenses), and where, if the unit is rented or leased, all adult members jointly agree to occupy and be responsible for the entire premises of the dwelling unit under a single written rental agreement or lease and the makeup of the household occupying the unit is determined by the residents of the unit rather than the landlord or property manager.”

Section 5. Section 100 of Article 1 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to insert a new defined term “Multi- Family Transient Use” between the existing defined terms “Multi-Family Residential Zone” and “New Car Dealer” as follows, with all other portions of Section 10-3-100 remaining in effect without amendment:

“MULTI-FAMILY TRANSIENT USE: Rental or lease of a multi-family dwelling unit for a period of less than thirty (30) days.”

Section 6. Section 100 of Article 1 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to insert a new defined term “Single-Family Transient Use” between the existing defined terms “Single-Family Residential Zone” and “Single Housekeeping Unit” as follows, with all other portions of Section 10-3-100 remaining in effect without amendment:

“SINGLE-FAMILY TRANSIENT USE: Rental or lease of a single-family residence or second unit for a period of less than six (6) months.”

Section 7. The table of uses set forth in paragraph A of Section 302 of Article 3 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to insert a new row immediately after the “Home Occupations...” row, entitled “Single-Family Transitional Use”, inclusive of new footnote number 4, with all other portions of paragraph 10-3-302 A remaining in effect without amendment:

“

	R-1	R-1.X	R-1.5	R-1.5X	R-1.5X2	R-1.6X	R-1.7X	R-1.8X
Single-Family Transient Use <sup>4</sup>	P <sup>4</sup>							

4. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per

calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 8. Section 401 of Article 4 of Chapter 3 of Title 10 of the Beverly

Hills Municipal Code is amended to read as follows:

“10-3-401: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1. shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 9. Section 501 of Article 4 of Chapter 3 of Title 10 of the Beverly

Hills Municipal Code is amended to read as follows:

“10-3-501: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.X shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A

Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 10. Section 601 of Article 4 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to read as follows:

“10-3-601: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.5 shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 11. Section 701 of Article 4 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to read as follows:

“10-3-701: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.5X shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small

community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 12. Section 801 of Article 4 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to read as follows:

“10-3-801: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.5X2 shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 13. Section 901 of Article 4 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to read as follows:

“10-3-901: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.6X shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 14. Section 1001 of Article 4 of Chapter 3 of Title 10 of the Beverly Hills Municipal Code is amended to read as follows:

“10-3-1001: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.7X shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 15. Section 1101 of Article 4 of Chapter 3 of Title 10 of the Beverly

Hills Municipal Code is amended to read as follows:

“10-3-1101: USES AND BUILDINGS PERMITTED:

Except as otherwise provided in this article, no lot, premises, building or portion thereof in zone R-1.8X shall be erected, constructed, built, altered, enlarged, built upon, used, or occupied for any purpose except as a private one-family residence, small family daycare home, small community care facility, or transitional or supportive housing structured as a single-family residence. A Single-Family Transient Use of a single family residence or second unit, as defined in Section 10-3-100, by a single housekeeping unit is permitted to commence two (2) times per calendar year for each single-family residence or second unit. Use of a single-family residence or second unit for a single-family transient use more than twice per calendar year is prohibited.”

Section 16. The City Council has considered the addendum prepared for this project in accordance with the California Environmental Quality Act in conjunction with the EIR previously certified for the development on the project site, finds that the proposed project will not have any new or substantially increased significant adverse impacts on the environment, and hereby adopts the addendum. Further, the City Council finds that the proposed amendments to the text of the various single-family residential zones do not change the conclusion in the addendum. The City Council finds that the residential zone text amendments are exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that the amendments will not have the potential for any impacts on the environment. Further, the

amendments would be exempt from CEQA pursuant to Section 15305 for single family residential properties with slopes of less than 20%, as well as Section 15308 as an action to protect the environment of the single family residential areas of the City. The City's multi-family areas are not in areas with 20% or greater slopes.

Section 17. The City Council hereby approves this Ordinance and authorizes the Mayor to execute the Ordinance on behalf of the City.

Section 18. Publication. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen (15) days after its passage in accordance with Section 36933 of the Government Code, shall certify to the adoption of this Ordinance and shall cause this Ordinance and his certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.”

Section 19. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this Ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the final decision of any court of competent jurisdiction, the remainder of this Ordinance shall be and remain in full force and effect.

Section 20. Effective Date. This Ordinance shall go into effect and be in full force and effect at 12:01 a.m. on the thirty-first (31st) day after its passage.

Adopted:  
Effective:

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

ATTEST:

\_\_\_\_\_  
(SEAL)  
BYRON POPE  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
JEFFREY C. KOLIN  
City Manager

\_\_\_\_\_  
SUSAN HEALY KEENE  
Director of Community Development

**ATTACHMENT N**  
**REVISED DEVELOPMENT AGREEMENT**

# Draft Development Agreement

CITY OF BEVERLY HILLS

WHEN RECORDED MAIL TO:

City of Beverly Hills  
Attention: City Attorney's Office  
455 North Rexford Drive  
Room 320  
Beverly Hills, CA 90210

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made by and between THE CITY OF BEVERLY HILLS, a California municipal corporation (the "City"), and METROPOLITAN CRESCENT ASSOCIATES, 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 [ owner of a leasehold interest in that certain real property located in the City of Beverly Hills, California and legally described in Exhibit A attached hereto and incorporated herein by reference (the "Property").

B. Developer desires to further develop and operate the Project (as hereafter defined) by adding a restaurant and bar to the Project and expanding the current permitted uses to allow the following uses in addition to the currently permitted uses on the Property: (i) serviced residence uses and (2) restaurant and bar uses, including, without limitation, room service to the serviced residence units.

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. Developer has submitted that certain Application for Zone Change, General Plan Amendment, Specific Plan Amendment, dated February 20, 2013 (the "Application") to the City (in its governmental capacity) for certain approvals, entitlements, findings and permits required for the development and operation of the Project, including, without limitation the following (collectively, and together with any and all Subsequent Project Approvals (as hereafter defined) the "Project Approvals"): (1) a zoning code amendment, (2) a planned development permit

# Draft Development Agreement

amendment, (3) an extended hours permit; and (4) 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.

F. This Agreement eliminates uncertainty in planning and provides for the orderly further 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 further development and operation of the Project with the uses, density and other land use characteristics specified in the Project Approvals. Developer would not enter into this Agreement without the City's agreement that the Project can be developed and used, during the term of this Agreement, with the uses, density and other land use characteristics and approvals specified in the Project Approvals.

H. The City has determined that, as a result of the further development of the Project in accordance with the Project Approvals and this Agreement, substantial benefits will accrue to the public.

I. On [month] [day], 2013, 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 [month] [day], 2013, 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 [month] [day], 2013, the City Council adopted Ordinance No. 13-O- [redacted] approving this Agreement, and such ordinance became effective on [month] [day], 2013.

## 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) “AKA Beverly Hills Project” shall mean the serviced residence use permitted to be operated on the Property by the Project Approvals, whether or not operated under the “AKA” name.

(b) “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 the City’s Zoning Regulations, adopted as of the Effective Date, all as amended pursuant to the Project Approvals. Among other matters, the Applicable Rules set forth and govern the permitted uses of land, the density or intensity of use, the maximum height and size of the buildings and the provisions for reservation or dedication of land for public purposes applicable to the use and development of the Property.

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

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

(e) “Conditions of Approval” shall mean those conditions of approval, if any, which are not set forth in this Agreement and which are otherwise imposed by the City in connection with the City’s approval of the Project Approvals.

(f) “Development Agreement” or “Agreement” means this Agreement.

(g) “Development Agreement Act” means Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code (as the same may be amended and/or re-codified from time to time).

(h) “Discretionary Action(s)” or “Discretionary Approval(s)” means an action that 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).

(i) “Effective Date” shall mean the date this Agreement, fully executed, is recorded in the Official Records of the Los Angeles County Recorder.

(j) “Entitlements” means “Entitlements” as defined in Section 6.

(k) “General Plan” means the General Plan of the City, as it exists as of the Effective Date.

(l) “Gross Room Revenue” means consideration received from lessees of dwelling units at the AKA Beverly Hills Project for the occupancy of units and ancillary space in the AKA Beverly Hills Project. Revenue shall be valued in money, whether to be received in money, goods, labor, or otherwise, including all receipts, cash, credits, property and services of any kind or nature, without any deduction therefrom.

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(m) “Ministerial Permit(s),” or “Ministerial Approval(s)” means a permit or approval that 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.

(n) “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 and/or operate the Project, or any refinancing of any of the foregoing.

(o) “Mortgagee” means, collectively, the holder of the beneficial interest under any Mortgage, together with the successful bidder at a foreclosure sale or a transferee by deed in lieu of foreclosure or similar instrument, who comes into possession of the Property or any part thereof pursuant to foreclosure, deed in lieu or otherwise.

(p) “Municipal Surcharge” means the fee paid pursuant to Section 9(d) of this Agreement.

(q) “Processing Fees” means all application, inspection and other fees and charges required by the City that are applied uniformly to all development related activity, including fees for land use applications.

(r) “Project” means the AKA Beverly Hills Project.

(s) “Project Approvals” means Project Approvals as defined in Recital D above..

(t) “Property” means the real property described in Exhibit “A” attached hereto and defined in Recital A.

(u) “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). Reserved Powers also include the power and authority of the City to enact regulations that apply generally to hotels and serviced residences or multi-family residential uses and serviced residences within the City, including regulations of hotel, serviced residence, or multi-family residential use operations, provided that such regulations do not impact the permitted uses, density, height or square footage of the Project permitted by the Zoning Regulations.

(v) “Serviced Residence” means a multi family transient use where each dwelling unit includes a full kitchen, laundry facilities and bathroom, no dwelling unit is leased or

# Draft Development Agreement

occupied by any person for less than seven (7) consecutive days, and each dwelling unit is maintained and offered services at a luxury standard.

By way of illustration, at the time of adoption of this agreement, a “luxury standard” includes a 24-hour resident service team, high-tech fitness center, full-service business center with executive board room and complimentary high-speed Internet access, a lounge; ~~a cafe~~, en-suite dining, same-day valet dry-cleaning and laundry service, and full-time, on-site management and maintenance. All dwelling units include fully-accessorized kitchens, contemporary furnishings, well-appointed bathrooms, premium cable television and Wi-Fi access.

~~Dwelling units may be occupied by no more than one single housekeeping unit, as defined in the Beverly Hills Municipal Code and a~~All residents shall jointly occupy the entire dwelling unit, under a single written lease.

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

(x) “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. Following adoption or approval, a Subsequent Project Approval shall become a Project Approval.

(y) “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 commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

# Draft Development Agreement

(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 costs of development.”

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

(b) The Project. The Developer intends to develop and operate the Property as described in the Project Approvals, subject to the Applicable Rules, the Project Approvals, and the Conditions of Approval. The Parties hereby agree that, subject to the exercise of the City’s Reserved Powers, for the term of this Agreement, the permitted uses, the density and intensity of use, the maximum height and size of the buildings, provisions for reservation or dedication of land for public purposes and the design, improvement and other guidelines, standards and specifications applicable to the development and use of the Property shall be those set forth in the Project Approvals, the Applicable Rules, this Agreement, and the Conditions of Approval. Subject to the exercise of the City’s Reserved Powers, any Subsequent Project Approvals shall, at the election of Developer, be subject to the Applicable Rules or the rules, regulations, ordinances, resolutions, codes, guidelines, and officially adopted procedures and official policies of the City at the time of such Subsequent Project 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 one (1) year.

Notwithstanding the term set forth above, the obligation to pay the Municipal Surcharge pursuant to Section 9 shall continue indefinitely as provided in Sections 9 and 11.

6. Permitted Uses; Density; Building Heights and Sizes; Required Dedications. The City and Developer hereby agree that the permitted uses of the Property (including, without limitation, as set forth in Recital B hereof), the density and intensity of such uses, and the maximum heights and sizes of the buildings and improvements on the Property, allowed in connection with the development and operation of the Project shall be as set forth in and consistent with prior entitlements as modified by the Project Approvals, and as they may be lawfully amended by Developer from time to time (collectively the “Entitlements”). As set forth in the Project Approvals, the City and Developer agree that Developer shall not reserve or dedicate land for public purposes given the nature of the Project’s site and the presence of necessary public improvements in the area of the Project. Developer shall not cause or permit

# Draft Development Agreement

any use of the Property that is not permitted by the Entitlements, 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 Entitlements.

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

8. 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 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 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 Entitlements, 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 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. For the purposes of this Agreement, the City's determination as to the applicability of California or federal laws to the Project shall be final and conclusive. In the event that any such change or addition shall be required by California or federal law or regulation, the City shall reasonably cooperate with Developer in minimizing the impact of such change upon the Project and the Property.

(c) Changes in Uniform Codes. Notwithstanding any provision of this Agreement to the contrary, construction in connection with the Project shall be subject to changes occurring from time to time in the provisions of the City's building standards codes, including the City's building, mechanical, plumbing and electrical regulations that are based on the recommendations of a multi-state professional organizations and become applicable throughout the City, including the California Building Code and other similar or related uniform codes.

(d) Changes in Processing Fees Under Applicable Rules and Applicability of other Fees. The Project shall be subject to any increase in Processing Fees imposed by the City, provided that such a change is applied on a City-wide basis. Except as provided in Section 9, no

# Draft Development Agreement

fees are imposed on Developer pursuant to this Agreement. Additionally, nothing in this Agreement shall exempt Developer from fees set forth in the Beverly Hills Municipal Code or the City's adopted schedule of rates, fees and charges.

## 9. 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 reasonable and customary costs to process the Project Approvals, including reasonable legal processing costs related to the Project Approvals and preparation of this Agreement, if any.

(c) Processing Fees. Developer agrees to pay all Processing Fees applied to the Project at the rate and amount in effect at the time the fee is required to be paid.

(d) Municipal Surcharge. The owner of the AKA Beverly Hills shall pay to the City, in perpetuity, an amount of six percent (6.0%) of the Gross Room Revenue generated by the AKA Beverly Hills Project on all room occupancies of thirty calendar days or less (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) *Letter of Credit to Secure Municipal Surcharge.* Developer shall provide the City with a letter of credit, or other form of security reasonably acceptable to the City Manager and City Attorney, in the initial amount of two hundred thousand dollars (\$200,000) for the purpose of securing its obligation to pay the Municipal Surcharge. The letter of credit shall be substantially in the form attached hereto as Exhibit B, and shall be in substance and form reasonably satisfactory to the City Attorney, and shall be issued by an issuer reasonably acceptable to the City Manager in good faith. The letter of credit may be drawn by City to pay any monthly installment of the Municipal Surcharge if Developer fails to pay any monthly installment of the Municipal Surcharge within thirty (30) days after its due date (and partial and multiple drawings shall be permitted). The letter of credit may be drawn in full by City if (i) the City receives notice of termination from the issuing bank or if the letter of credit is not extended, renewed or replaced (as shown by delivery to City of a copy of the extension or renewal amendment that is acceptable to the City Attorney, or the original of a replacement letter of credit acceptable to the City Manager and City Attorney from an issuer reasonably acceptable to the City Manager, as applicable, or substitute collateral reasonably acceptable to the City Manager and City Attorney) at least thirty (30) days prior to any fixed expiry date in the letter of credit; or (ii)

# Draft Development Agreement

if the issuer is no longer creditworthy, as reasonably determined by the City Manager and in good faith, and the letter of credit is not replaced with a similar letter of credit reasonably acceptable in form and substance to the City Attorney or substitute collateral reasonably acceptable to the City Manager and City Attorney within thirty (30) days after written notice from the City Manager to Developer that the issuer is no longer creditworthy. Developer hereby covenants to provide such an extension or renewal amendment or replacement letter of credit or such substitute collateral, within such thirty (30) day period such that the letter of credit (and/or such substitute collateral) is maintained in perpetuity. In the event of a full or partial draw under the letter of credit, Developer shall deliver to the City an amendment to the letter of credit raising the available amount thereof to \$200,000 (or additional collateral acceptable to the City Manager and City Attorney) within thirty (30) days.

If the letter of credit has been maintained and not drawn upon in whole or part for a period of two (2) years, the letter of credit may be reduced in amount to one hundred thousand dollars (\$100,000). However, if at any time after such reduction, the letter of credit is drawn upon by City in accordance with the terms hereof, or if Developer transfers its interest in the Property or the Agreement, then Developer shall deliver to City an amendment to the letter of credit raising the available amount thereof to \$200,000.

(iii) *Acknowledgement.* The parties acknowledge and agree that the Municipal Surcharge is not a tax or a levy by City.

(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) two thousand dollars (\$2,000), increased on the first day of 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 percent (18%), or (ii) the highest rate then permitted by applicable law.

(e) *Transient Occupancy Tax.* The operator of the AKA Beverly Hills Project, as "operator" is defined in Beverly Hills Municipal Code Section 3-1-302, shall collect, report and

# Draft Development Agreement

remit the City's transient occupancy tax in accordance with the provisions of the Beverly Hills Municipal Code or their successors.

10. Audit. Developer shall maintain full and accurate records with respect to the Municipal Surcharge. . For the purpose of determining whether the Municipal Surcharge has been properly calculated and paid to the City, City shall have access one time annually, without charge and upon reasonable notice, during normal business hours, to such records, and the right to examine and audit the same and to make copies and transcripts therefrom, and to inspect all program data, documents, proceedings and activities related to the Municipal Surcharge. Such examination and audit shall be at the City's expense unless the examination and audit reveals that Developer has underpaid the Municipal Surcharge by at least ten percent (10%) in any one month. If the examination and audit reveals that Developer has underpaid the Municipal Surcharge by at least ten percent (10%) in any one month, then Developer shall reimburse the City for the cost of the examination and audit and the City shall be entitled to conduct another audit during that year,

11. 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, or failure of Developer to timely provide a letter of credit extension, renewal amendment, replacement letter of credit, letter of credit amendment or substitute collateral as required by Section 9(d)(ii), shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Any such default 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 (if applicable), 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.

Upon a default by City or Developer, after notice and expiration of the thirty (30) day period (if applicable) without cure, the other 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.

12. Termination and Expiration. Upon the expiration of the term or termination of this Agreement, and except as provided below, 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 9(d) and Section 10, nor the obligation to pay any

# Draft Development Agreement

claim of any Party hereto arising out of the provisions of this Agreement prior to the effective date of such termination. Additionally, for a period of four years after expiration or termination of this Agreement, such expiration or termination shall not affect Developer's vested right pursuant to Section 7 to construct a restaurant as permitted by the Entitlements. The obligations under Section 9(d), and the obligation to pay any claim arising before the effective date of expiration or termination, shall continue after expiration or termination in perpetuity or until completed.

13. 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, Developer agrees to make commercially reasonable efforts 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 during the one year term hereof unless: (A) at least thirty (30) days before any transfer, Developer has submitted to City the name of the proposed transferee and financial information regarding the transferee reasonably satisfactory to the City's Chief Financial Officer, and the City determines, prior to transfer, that the proposed transferee is able to satisfactorily fulfill the obligations of this Agreement, and (B) the transferee accepts, in writing, the obligations of Developer under this Agreement. Upon any transfer after the one year term hereof, Developer shall be relieved of all liability and obligations hereunder (without regard to whether any of the same shall survive the termination or expiration hereof). Such writing shall be in form and content reasonably satisfactory to the City Attorney.

## 14. Mortgagee 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

# Draft Development Agreement

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.

(d) *Liability for Past Defaults or Obligations.* Subject to the foregoing, any Mortgagee 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 13 shall prevent City from exercising any remedy it may have for a default under this Agreement (subject to the cure periods set forth in Section 13(c) above), 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.

15. 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 and appurtenant to the land and the covenants made and benefits granted and established, and the rights and restrictions contained herein, are intended to, and shall, inure to the benefit of and be binding upon the Developer..

## 16. 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 15, 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.

# Draft Development Agreement

(b) In the event of any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals, or the CEQA determination for the Project, Developer may 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 CEQA determination for the Project, 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 prior written consent of the City. In the event Developer fails or refuses to reimburse the City for its cost to defend any challenge to this Agreement, any of the Project Approvals, or the CEQA determination for the Project, the City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 10 above. In all events, the City shall have the right to resolve any such challenge in any manner, in its sole discretion, provided, however, Developer's consent shall be required (and may be granted or withheld in Developer's discretion) if the City is reimbursed for its defense by Developer and 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 CEQA determination for the Project, ( each, 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 15(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 CEQA determination 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 15. 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) 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 15.

17. 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.

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

# Draft Development Agreement

19. 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.

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

21. 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.

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

## 23. Periodic Reviews.

(a) Special Reviews. 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.

(b) Procedure for Review. The City's Director of Community Development (the "Community Development Director") shall conduct the review contemplated by this Section 22 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.

# Draft Development Agreement

(c) 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 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 10 and the City may follow the default procedures as set forth in Section 10.

(d) Effect on Default Procedures. Nothing in this Section 22 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 22, or from terminating this Agreement pursuant to the provisions of Section 10 following any event of default by Developer.

## 24. 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, reasonable attorneys' fees and expert witness fees.

(b) Scope of Fees. Attorneys' fees under this Section 23 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.

25. 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."

26. 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:

# Draft Development Agreement

(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.

(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.

27. 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.

28. 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.

29. 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 9 is held invalid or unenforceable, then this entire Agreement shall be void and unenforceable and of no further force and effect.

30. 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, any of the Project Approvals or the CEQA determination for the Project.

31. Notices. All notices, disclosures, demands, acknowledgments, statements, requests, responses and other communications (each, a "Communication") to be given under this

# Draft Development Agreement

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

To Developer: Metropolitan Crescent Associates, LLC  
c/o Korman Communities  
220 West Germantown Pike, Suite 250  
Plymouth Meeting, Pennsylvania 19462  
Attn: Robert S. Grossman

With Copy to: Seyfarth Shaw, LLP]  
333 S. Hope St. Suite 3900]  
Los Angeles, CA 90071  
Attn: Richard C. Mendelson, Esq.

To City: City Manager  
City of Beverly Hills  
455 North Rexford Drive  
Fourth 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 30 change the addresses 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.

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

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

34. 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.

35. 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.

# Draft Development Agreement

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.

[Signatures on next page]

# Draft Development Agreement

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CITY OF BEVERLY HILLS,  
a Municipal Corporation

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

ATTEST:

\_\_\_\_\_(SEAL)  
BYRON POPE  
City Clerk

METROPOLITAN CRESCENT  
ASSOCIATES, LLC,  
a Delaware limited liability company

By: KCI BLACKROCK VENTURE V,  
LLC,  
a Delaware limited liability company,  
its Sole Member  
KCI Crescent Associates, LLC,  
a Delaware limited liability company,  
its Manager

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

\_\_\_\_\_  
LAURENCE S. WIENER  
City Attorney

\_\_\_\_\_  
JEFFREY KOLIN  
City Manager

# Draft Development Agreement

## EXHIBIT A

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

### PARCEL 1:

Lots 8, 9 and 10 in Block 13 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per Map recorded in Book 11 Page 94 of Maps in the Office of the County Recorder of said County.

### PARCEL 2:

Lots 11, 12, 13, 14, 15 and 16 in Block 13 of Beverly, in the City of Beverly Hills, County of Los Angeles, State of California, as per Map recorded in Book 11, Page 94 of Maps, in the Office of the County Recorder of said County.

Except therefrom all oil, gas and other hydrocarbon substances in and under the following described real property in the County of Los Angeles, excepting therefrom however, the right to enter upon the surface or subsurface thereof to a depth of 500 feet below the surface of the ground, as granted to Jacqueline Block Leisure and Sharlot Carpenter as tenants in common, by deed recorded August 20, 1964 as Instrument No. 4516, in Book D2598 Page 9, of Official Records.



**ATTACHMENT O**  
**RESIDENT SURVEY**



# Memo

To: AKA Beverly Hills  
From: Sue Burnside  
Date: 12/5/2013  
Re: Communication with residents surrounding AKA project

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Thank you for the opportunity to work on your door-to-door project to speak to neighbors surrounding the AKA Beverly Hills project. We have worked on a few projects in Beverly Hills, including the Beverly Hills Hilton and the Montage Hotel, and I can tell you that your project will be a welcome addition to Beverly Hills. Unlike most projects in recent years, there seems to be no controversy or concern about impacts on the neighborhood. For those uninformed about the project we will share with residents the location and the purpose of the executive housing concept.

Between November 5 – 15, we knocked on over 1,200 doors in the adjacent neighborhood where we gathered overwhelming support for the project. The neighbors were 7.5 to 1 in support of the project. (Please see the list of supporters included in this report.) An equal number of residents were either not concerned or uninformed about the project.

As always, if you have any questions or need clarification on anything, I can be reached on my cell at 805-570-6443.

## Residents in Support of AKA

Beth Arias	307	Alpine
Sidney Kraemer	307	Alpine
Joseph Loewy	308	Alpine
Bob Kazden	309	Alpine
female	314	Alpine
Bitia	315	Alpine
Rouben Khalatin	153 #2	Crescent Dr
Craig Hudson	121	Doheny
joy Hudson	121	Doheny
Franklin	207	Doheny
Frank Sarfati	213	Doheny
Rozita	244	Doheny
Sandra	302	Doheny
Carmen DeLaTorre	303	Doheny
Chatal Stratton	307	Doheny
Elva	118	Elm
Elisa Yasha	122	Elm
Devora Miller	124	Elm
Amir Ahoeim	126	Elm
Sean Bral	205	Elm
Natalie Bral	205	Elm
Josh Nierob	210	Elm
Barry Novak	213	Elm
Fariba	214	Elm
Abe Idecht	215	Elm
Md Hetch	215	Elm
Micheal Lavin	217	Elm
Elenor Moadeb	218	Elm
Parvoz Nemyamini	300	Elm
Aidua Shusterman	303	Elm
Cathy Soloman	306	Elm
Kirochit Mormad	309	Elm
Mina Normad	309	Elm
Shawna Milian	312	Elm
Hern Schwarts	313	Elm
David Javahery	308	Foothill
Renter	310	Foothill
Patricia Ahd	106	Maple
Shohreh Ashouri	107	Maple
Robert Welema	108	Maple
Ari Arom	122	Maple
Gideon Arom	122	Maple
Asher Arom	122	Maple
Mation Arom	122	Maple
Gariel Arom	122	Maple
Olga Gandarillas	123	Maple
Louis Gandarillas	123	Maple

Tina Shamsian	126	Maple
Albert Khodar	203	Maple
Andy Ziev	204	Maple
Max Schwartz	215	Maple
Steve Shrier	216	Maple
Aryan Roshidi	304	Maple
Anita	107	Oakhurst
Frank Khalil	108	Oakhurst
Faideh	112	Oakhurst
Justin	117	Oakhurst
Mitra Yaghaoubieth	204	Oakhurst
Steve Horowitz	214	Oakhurst
M Urusn	300	Oakhurst
Mojgan Azizi	301	Oakhurst
Oshri	306	Oakhurst
Aviel Dardashti	307	Oakhurst
Steve Sahar	309	Oakhurst
Jasna Puhacovich	111	Palm
Nathan Herskovitz	113	Palm
Luisa Herskovitz	113	Palm
J Etessami	117	Palm
Shula Nila	118	Palm
Cvrmen Olebas	120	Palm
Tony Maqsoudi	125	Palm
Mala	201	Palm
Marlene Crightenberg	206	Palm
Shirley	210	Palm
Harry Magid	304	Palm
Sonia Berman	315	Palm
vanessa	137	Rexford
Ashley	137	Rexford
Limor	137	Rexford
Rafi	143	Rexford
Roy	143	Rexford
Orly	149	Rexford
Tony Sikavi	185	Rexford
Jasime Banayan	215	Rexford
Nadia	221	Rexford
Mrs. Kahn	348	Rexford

**ATTACHMENT P**  
**ADDITIONAL PUBLIC COMMENTS**



**BEVERLY HILLS  
CHAMBER OF  
COMMERCE**

*Expertise • Presence • Relationships*

September 4, 2013

Beverly Hills City Council  
455 N. Rexford Drive  
Beverly Hills, CA 90210

Dear Members of the City Council,

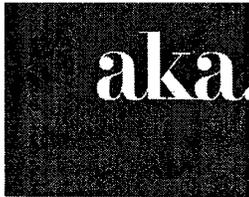
The Beverly Hills Chamber of Commerce discussed the AKA Beverly Hills request to City Council at the September 3, 2013 Executive Committee Meeting. At the conclusion of the meeting, the Committee expressed support for the development of this important commercial concept as a valuable addition to our hospitality landscape.

We have been informed that AKA Beverly Hills has invested millions of dollars into remodeling the old Snyder & Company project on Crescent Drive and created a beautiful, well-maintained space at a very public intersection in the City. Their high occupancy rates this summer are testament to the high demand in the area for extended stay residences. In addition, these 88 residences are driving traffic to the smaller businesses on Crescent Drive (i.e. the markets and other resident-oriented businesses) and contribute to our efforts to increase local shopping.

Overall, the Chamber regards the addition of AKA to this community as a win-win situation and asks Council to give their support and conclude the development agreement between the City and AKA.

Sincerely,

Alex Stettinski  
Executive Director



# ....hotel? Seriously?

We, the undersigned neighbors, are opposed to the conversion of the former Crescent Apartments located at 155 N. Crescent Drive, now called AKA, to hotel use. We live in a residential community and we want the Crescent Apartments, now called AKA, to remain as apartments. We do not want to be forced to live near a hotel.

When the City Council gave entitlements to the developer of the Crescent Apartments, which included a non-conforming, four story, Wilshire office building, it was because no new apartments had been developed in Beverly Hills in over twenty years. The Council at that time said to the community that Beverly Hills needs more apartments. If AKA is allowed to operate their apartments as a hotel, other apartment owners will want the same right.

Therefore, we urge the Planning Commission and City Council to reject any conversion of the AKA apartments to hotel use.

ROBERT GRAFFITH	<i>[Signature]</i>	170 N. CRESCENT DRIVE, BH 90210	
NAME	SIGNATURE	ADDRESS	EMAIL (optional)

Carley Gordon, Carley Gordon	<i>[Signature]</i>	170 N. Crescent Dr 90210	
NAME	SIGNATURE	ADDRESS	EMAIL (optional)

Tina Goss	<i>[Signature]</i>	170 N Crescent # 106 90210	
NAME	SIGNATURE	ADDRESS	EMAIL (optional)

Don FitzGerald	<i>[Signature]</i>	186 N. Crescent Dr.	dfitzgerald.com
NAME	SIGNATURE	ADDRESS	EMAIL (optional)

Jayme Kantub	<i>[Signature]</i>	202 N Crescent Dr #4	mk12357@gmail.com
NAME	SIGNATURE	ADDRESS	EMAIL (optional)

Aditya Prakash	<i>[Signature]</i>	147 N Rexford	
NAME	SIGNATURE	ADDRESS	EMAIL (optional)

NAME	SIGNATURE	ADDRESS	EMAIL (optional)
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NAME	SIGNATURE	ADDRESS	EMAIL (optional)
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Received  
City of Beverly Hills

NOV 21 REC'D

PLANNING DIVISION  
COMMUNITY DEVELOPMENT

November 19, 2013

Re: AKA Serviced  
Residences

Planning Commission  
City of Beverly Hills  
455 N. Rexford Drive  
Beverly Hills, CA 90210

Dear Commissioners,

As a resident who lives within 500 feet of this project, I am opposed to AKA's redevelopment of this site. I have a number of concerns:

1. Neighbors were never notified that the Crescent was being converted into a hotel. We learned about it from tenants who were being evicted.
2. The city told us that the conversion happened without their knowledge. Either someone was not being honest, or city inspectors were asleep -- and for that they should be working for Bell.
3. Traffic studies are not adequate.
4. Mitigation measures outlined in the Planning Commission report need more enforcement "teeth."

In the General Plan...

Policy LU 5.8 Encroachment of Incompatible Land Uses. Protect residential neighborhoods from the encroachment of incompatible nonresidential uses and disruptive traffic, to the extent possible. Zoning and design review should assure that compatibility issues are fully addressed when nonresidential development is proposed near or within residential neighborhoods.

To conclude that the project will not result in a significant impact to the neighboring residential area suggests that a study has been made. Only traffic on North Crescent Drive was considered. What about traffic on Clifton Way and North Rexford Drive? These streets currently serve as access points to the eastern edge of the business triangle. Also, it is on these two streets that limos from the hotel and other Canon Drive businesses -- notably restaurants -- park, in violation of the permit parking zone.

The city seems unwilling or unable to aggressively enforce the permit parking restrictions when the violators are tour bus and limo operators. It usually takes citizen phone calls to get a parking enforcement officer to the scene.

Since the city seems reluctant to enforce its own parking ordinances, what guarantees are offered residents who can expect a restaurant to bring more traffic into their neighborhood?

The General Plan states that it's important to sustain a vigorous economy by supporting businesses that contribute revenue, quality services and high-paying jobs. This project might well meet the first of those three objectives, and perhaps even the second, but "high-paying jobs" -- maybe the hotel executives and head chef, but I doubt that maids, laundryworkers and wait staff can expect top pay.

Why is a business that allows a seven day stay not considered a commercial enterprise, AKA: HOTEL?

If it operates as a hotel, albeit with a tax penalty, it's a commercial operation and not a "residence." That would make this project an incompatible nonresidential use.

How is a restaurant that's open to the public a "residential use" and not a commercial enterprise? If it's a business, then it's an incompatible nonresidential use.

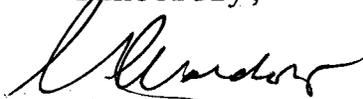
The modification of the Crescent into the AKA took place without a single notice to its residential neighbors, and apparently without any additional city permits or inspections. Now that many of these modifications have been completed, Applicant wants to continue the process by constructing a restaurant -- this time with the city's blessing. If a resident put up a backyard fence a half-foot taller than code, and city inspectors noticed the fence's construction, the resident would have been required to shorten the fence -- perhaps even take it down. Why is this applicant being given a pass?

Since the city seems unable to police wayward commercial construction projects, what guarantees do residents have that any of the conditions being suggested in this "hybrid" plan will be enforced? Will it be the residents' responsibility to call the city every time a limo from the AKA parks unlawfully in a permit zone.

Should this project be approved, please consider these mitigation measures:

1. I would suggest that if the AKA's motor court area is not large enough to accomodate all of the limousines on any given night, the operator of the hotel will provide additional on-site parking for liveries and do so at no charge.
2. If valets are used for the restaurant operation, they must follow a proscribed route that keeps them out of the residential areas to the east. It should be the Applicant's responsibility to see that valets -- be they employees of AKA or a service that the Applicant contracts -- follow the city's noise and speed laws in the dropping off and picking up of patrons' vehicles.
3. The city should install, at the Applicant's expense, a flashing in-pavement lights system at the Crescent and Clifton intersection, with the lighting to be pedestrian activated.
4. Applicant must provide free employee parking.

Sincerely,



Mitch Waldow  
209 N. Rexford Dr.

**Karen Myron**

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**From:** guoping fan <guoping.fan@gmail.com>  
**Sent:** Tuesday, November 19, 2013 11:08 PM  
**To:** Ryan Gohlich  
**Subject:** Regarding the permit of AKA 155 N. Crescent Drive

Dear Senior Planner (Ryan Gohlich):

I understand that BH Planning Commission is holding a public meeting on Thursday at 7pm in the Room 280A in the city hall. Since I cannot make to the meeting, I am writing to express my concern about the motion from AKA. Because Crescent Drive is already a busy street, the permit of AKA to have party and restaurant is literally to have another hotel on North Crescent Drive. Therefore, as one of the local residents on the North Crescent Drive (184-192), I am strongly against the plan by AKA. I hope that BH Planning Commission can take all the considerations and vote against the AKA motion.

Sincerely yours,

Guoping Fan  
Resident of 184 North Crescent Drive, BH