

RESOLUTION NO. 1541

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BEVERLY HILLS CONDITIONALLY APPROVING VESTING TENTATIVE TRACT MAP NO. 67884 AND A DEVELOPMENT PLAN REVIEW TO SUBDIVIDE ONE PARCEL INTO SEVEN PARCELS AND TO SUBDIVIDE THE AIR RIGHTS TO PERMIT THE INDIVIDUAL SALES OF A MAXIMUM OF 235 RESIDENTIAL CONDOMINIUM UNITS AND FIVE COMMERCIAL CONDOMINIUM UNITS IN CONNECTION WITH THE DEVELOPMENT OF A MIXED-USE PROJECT LOCATED AT 9900 WILSHIRE BOULEVARD.

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

Section 1. Project Lotus, LLC, c/o Candy & Candy LLC (hereinafter referred to as the "Applicant") has submitted an application for approval of Vesting Tentative Tract Map No. 67884 and a Development Plan Review to allow subdivision of one existing parcel into seven parcels, and to subdivide the air rights to permit the individual sale of a maximum of 235 residential condominium units and five commercial condominium units in connection with the development of a mixed use project at 9900 Wilshire Boulevard (the "Project").

The Project will include the following lots, with all elevation references based on relationship to sea level, which is treated as zero feet:

**Lot 1:** Airspace Lot with an upper elevation of 46 feet and no lower elevation. This airspace lot encompasses the residential parking and common areas for both North and South Residential buildings. The parking structure shall have a maximum depth as allowed by the 9900 Wilshire Specific Plan.

**Lot 2:** Airspace Lot with a lower elevation of 290 feet and no upper elevation. This airspace lot would contain the North Residential Building and Residential Gardens. The North Residential Building would have a maximum height as approved by the 9900 Wilshire Specific Plan.

**Lot 3:** Airspace Lot with a lower elevation of 268 to 286 feet and no upper elevation. This airspace lot would contain the Public Gardens area located between Wilshire Boulevard and Santa Monica Boulevard, west of Merv Griffin Way.

**Lot 4:** Airspace Lot with a lower elevation of 282 and no upper elevation. This airspace lot would contain the South Residential Building and Residential Gardens. The South Residential Building would have a maximum height as approved by the 9900 Wilshire Specific Plan.

**Lot 5:** Airspace Lot with a lower elevation of 46 feet and a variable upper elevation up to 290 feet. This airspace lot would contain the Residential Parking and Common Areas for the North Residential Building. The parking structure shall have a maximum depth as allowed by the 9900 Wilshire Specific Plan.

**Lot 6:** Airspace Lot with a lower elevation of 46 feet and a variable upper elevation up to 282 feet. This airspace lot would contain Residential Parking and Common Areas for the South Residential Building. The parking structure shall have a maximum depth as allowed by the 9900 Wilshire Specific Plan.

**Lot 7:** Airspace Lot with a lower elevation of 268 and an upper elevation of 282 feet in certain areas and no upper elevation in other areas. This airspace lot would contain Retail Uses (including commercial parking). Lot 7 would contain up to five commercial condominiums that would be subdivided into individual commercial spaces, such as restaurant and retail as well as commercial parking.

Section 2. On April 9, 2008, The Beverly Hills City Council approved a residential condominium and retail mixed-use project on the 7.95-acre site of the vacant Robinsons-May building through approval of the 9900 Wilshire Specific Plan. The Project site is located on the south side of the 9900 block of Wilshire Boulevard and north of Santa Monica Boulevard. The site is bounded by the Los Angeles Country Club on the west side, Wilshire Boulevard to the north, Merv Griffin Way to the east, and Santa Monica Boulevard to the south.

The 9900 Wilshire Specific Plan contemplates the demolition of the existing 228,000 square foot former Robinsons-May department store building and associated parking structure at 9900 Wilshire Boulevard and construction of a mixed-use project containing a maximum of 235 residential condominium units in two buildings located near the western (Los Angeles Country Club) border, two commercial buildings with up to five commercial condominiums which would consist of approximately 16456 square feet of commercial development including a restaurant of not more than 4,800 square feet which includes not more than 600 square feet of outdoor dining, underground parking, private landscaped gardens with a pool and spa space.

The property owner now seeks approval of a vesting tentative map to subdivide one existing parcel into seven parcels. No changes are proposed to the Project as previously approved by the City Council. As conditioned, the Project will comply with all Applicable Rules (as defined in that certain Development Agreement for the Project recorded on July 15, 2008 as Instrument No. 2008-1257399 (The "Development Agreement")), including the 9900 Wilshire Specific Plan. In addition, the

conditions of approval granted in conjunction with the previously approved 9900 Wilshire Specific Plan shall remain in full force and effect.

Section 3. This Project was previously 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. In April 2008, the City Council certified an Environmental Impact Report (EIR) for the Project. The EIR considered the proposed vesting tentative tract map as part of the overall Project. There have been no changes to the Project or the circumstances surrounding the Project, nor is there any new information, which would require any revision to the EIR due to new or more severe environmental impacts than those identified in the EIR. Nor has staff identified any new mitigation measures or alternatives that are capable of further reducing the environmental impacts associated with the Project. The Planning Commission hereby incorporates by reference and readopts the environmental findings and determinations set forth in Resolution 08-R-12497, including, without limitation, the Statement of Overriding Considerations, attached as Exhibit B thereto.

Section 4. On November 7, 2008, notice of the application for Development Plan Review and approval of Vesting Tentative Tract Map No. 67884 (the "Applications") and public hearing was mailed to all property owners and residential tenants within a 300-foot radius of the property, and all single-family zoned properties within 500 feet (if any) from the exterior boundaries of the property. The hearing notice was published in the *Beverly Hills Courier* on Friday, November 7, 2008 and the *Beverly Hills Weekly* on Thursday, November 13, 2008. The hearing was scheduled for the

November 20, 2008, Planning Commission meeting, and was continued to the December 11, 2008 meeting. On December 11 and December 18, 2008, the Planning Commission held a duly noticed public hearing to consider the Applications. Evidence, both written and oral, was presented at said hearings.

~~Section 5.~~ Pursuant to the California Subdivision Map Act and the city's subdivision requirements, the Planning Commission considered the following issues in reviewing the application for Vesting Tentative Tract Map No. 67884:

- 1) Whether the proposed vesting tentative tract map and the design or improvement of the proposed subdivision are consistent with the General Plan of the City;
- 2) Whether the site is physically suitable for the type of development and the proposed density;
- 3) Whether the design of the subdivision and the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat; and
- 4) Whether the design of the subdivision or type of improvement is likely to cause serious public health problems and whether the design of the subdivision or the type of improvement will conflict with any public easements.

Section 6. Based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony, the Planning Commission hereby finds as follows with respect to Vesting Tentative Tract Map No. 67884:

- 6.1 The proposed subdivision and improvement are consistent with the 9900 Wilshire

Specific Plan adopted on April 9, 2008 by the City Council. The 9900 Wilshire Specific Plan is consistent with the objectives, policies, general land uses, and programs specified in the General Plan. In connection with the adoption of the 9900 Wilshire Specific Plan, the Land use Element of the General Plan was amended to designate the Specific Plan Area as “SP-9900 Wilshire Specific Plan”. The proposed subdivision represents one of the steps in implementation of the 9900 Wilshire Specific Plan.

6.2 The site is physically suitable for the type of development and the proposed density. The 7.95-acre project site currently is developed with the vacant former Robinson-May department store and associated two-story parking garage. The Project was previously reviewed by the Planning Commission and City Council and found to be consistent with the City’s General Plan and the adopted 9900 Wilshire Specific Plan. The infrastructure serving the site is generally adequate to support the development proposed on the site and the Applicant shall be required to upgrade sewer capacity, if necessary, prior to issuance of a Certificate of Occupancy. The site has no unusual seismic or other hazards. Therefore, the site is physically suitable for the type of development and the proposed density.

6.3 The Project will not cause substantial environmental damage or substantial and avoidable injury to fish or wildlife or their habitat. The Environmental Impact Report (EIR) prepared for the project found no significant impacts to fish, wildlife, or habitat. The EIR identified temporary air quality, noise and groundborne vibration impacts and significant cultural resource impacts. However a statement of overriding considerations has been adopted in connection with the Project.

6.4 The design of the subdivision and the type of improvements will not cause serious public

health problems, and will not conflict with easements acquired by the public at large for access through or use of property within the proposed subdivision. Vesting Tentative Tract Map No. 67884 has been preliminarily reviewed by the Public Works and Engineering Department. In addition, encroachment permits will be obtained for all temporary and permanent encroachments into the public right-of-way.

Section 7. Pursuant to the Beverly Hills Municipal Code Section 10-3-3100 G, all common interest developments require approval of a Development Plan Review. The Planning Commission may consider a request for a Development Plan Review if the Planning Commission can make the following findings:

- 1) Whether the proposed plan is consistent with the General Plan and any specific plans for the area;
- 2) Whether the proposed plan will adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area;
- 3) Whether the proposed plan will create any significantly adverse traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards; and
- 4) Whether the proposed plan will be detrimental to the public health, safety or general welfare.

Section 8. Based upon the evidence presented in the record on this matter, including the staff report and oral and written testimony, the Planning Commission hereby finds, as follows, with respect to the Development Plan Review:

8.1 The proposed subdivision and improvements are consistent with the 9900 Wilshire Specific Plan adopted on April 9, 2008 by the City Council. The 9900 Wilshire Specific Plan is

consistent with the objectives, policies, general land uses, and programs specified in the General Plan.

In connection with the adoption of the 9900 Wilshire Specific Plan, the Land use Element of the General Plan was amended to designate the 9900 Wilshire Specific Plan Area as “SP-9900 Wilshire Specific Plan”. The proposed subdivision represents one of the steps in implementation of the 9900 Wilshire Specific Plan.

8.2 The Project as proposed involves the redevelopment of the existing Robinsons-May department store building and associated parking structure. The existing building would be replaced with a maximum of 235 residential condominium residences in two separate buildings, approximately 16,456 square feet commercial space in up to 5 commercial condominiums fronting Santa Monica Boulevard, a two-level subterranean parking garage and landscape gardens including a public park. Under the 9900 Wilshire Specific Plan, the Project site could be developed as designated therein. Existing and anticipated developments in the vicinity contain a variety of commercial and residential uses. The Project is consistent with the 9900 Wilshire Specific Plan and will promote harmonious development in the area. Therefore, as conditioned, the Project will not adversely affect existing and anticipated development in the vicinity and will promote harmonious development of the area.

8.3 The EIR for the Project assessed the potential impacts of the proposed development. As part of the EIR, the Project related traffic impacts were analyzed and mitigation measures were identified to reduce traffic impacts upon the analyzed intersections and the residential streets associated with the construction of the proposed Project, to the maximum extent feasible. The Mitigation Monitoring and Reporting Plan identifies these mitigation measures. The Applicant must comply with all mitigation measures identified for the Project.

8.4 The Project will not be detrimental to the public health, safety, or general welfare. The

Project, as conditioned, will be constructed in accordance with the 9900 Wilshire Specific Plan and the City's Building Code standards. In addition, prior to the approval of the Final Map, the Project shall demonstrate compliance with all life safety requirements set forth in BHMC Section 10-2-709 A. Therefore, as conditioned, and for the reasons discussed in the foregoing paragraphs, the Project will not be detrimental to the public health, safety or general welfare.

Section 9. Pursuant to Article 7 of Chapter 2 of Title 10 of the Beverly Hills Municipal Code, in reviewing the application for a common interest development, the Planning Commission considered the following issues:

1) Whether the Project complies with applicable requirements of Article 7 of Chapter 2 of Title 10 of the City of Beverly Hills Municipal Code, including, but not limited to: compliance with the current zoning and building code and all other applicable current requirements of the Municipal Code.

9.1 The Project is subject to the 9900 Wilshire Specific Plan adopted on April 9, 2008. The Project satisfies the requirements of Article 7 of Chapter 2 of Title 10 of the Beverly Hills Municipal Code since it conforms with the development standards as prescribed by the 9900 Wilshire Specific Plan. During construction, the Project will be monitored for compliance as required and full compliance shall be verified prior to approval of the final map.

Section 10. Based upon the foregoing findings, the Planning Commission hereby approves Vesting Tentative Tract Map No. 67884 subdividing one parcel into seven parcels and subdividing the air rights to permit the individual sale of a maximum of 235 residential condominium units and five commercial units in connection with the development of the 9900 Wilshire project, subject to the

following conditions:

1. Approval of the Project is subject to all other discretionary approvals required by the City for the Project and the approval of the Vesting Tentative Tract Map, including all conditions of approval imposed on the 9900 Wilshire Specific Plan as contained in City Council Resolution No. 08-R-12499, Exhibit 1.

2. Prior to issuance of a Building Permit not including a demolition permit or excavation and shoring permit, the Applicant shall provide a sewer flow report prepared and stamped by a mechanical engineer licensed to practice in the State of California. The report shall calculate and present the sewer flow over the course of a maximum-flow 24-hour period from the proposed buildings into the City's sewer system. Average daily flow is not sufficient information—peak flow and flow variation over time shall be provided. The City Engineer will analyze the capacity of the City's sewer system to handle the flow from the buildings. Should the analysis indicate the need to upgrade the City's system, the Applicant shall upgrade the system to the satisfaction of the City Engineer at the Applicant's cost prior to issuance of a Certificate of Occupancy. Engineering plans and specifications for the upgrade shall be prepared by a licensed Civil Engineer in the State of California and shall be submitted to the City Engineer six months prior to the planned occupancy of the building.

3. Prior to issuance of a Certificate of Occupancy, the applicant shall upgrade the water distribution line on the south side of Wilshire Boulevard from the centerline projection of Trenton Drive to Merv Griffin Way to provide sufficient capacity for fire suppression for the Project.

4. Offsite improvement plans (streets, alleys, drainage, traffic striping and signage, etc.) prepared by appropriately registered (State of California) professional engineers (e.g. civil or traffic)

shall be prepared for all improvements in the public right-of-way. All facilities to be constructed or relocated within the public right-of-way must be clearly shown. The plans shall be subject to the requirements of the City Engineer, and shall remain the property of the City of Beverly Hills following their approval by the City.

5. The Applicant shall prepare a restriping plan substantially in the form attached hereto as Exhibit 1 (the "Restriping Plan") for the section of Santa Monica Boulevard adjacent to the Property and the 95 feet of Santa Monica Boulevard immediately to the west of the boundary between the City of Beverly Hills and the City of Los Angeles (the "Restriping Area") to demonstrate a smooth transition of a new lane configuration on Santa Monica Boulevard in the Restriping Area. The Restriping Plan shall show the restriping of traffic lanes within the Restriping Area. The Applicant shall complete the required improvements pursuant to the Restriping Plan, in coordination with the City of Beverly Hills and the City of Los Angeles, prior to issuance of a Certificate of Occupancy for the Project.

6. Prior to issuance of a Certificate of Occupancy, the Applicant shall rehabilitate the street paving to the satisfaction of the City Engineer. This rehabilitation shall, at the least, consist of cold-milling two inches of the existing asphalt paving from the street and replacing this with a new two-inch pavement cap. These improvements shall include all frontages of the Project to the center line of Wilshire Boulevard and Santa Monica Boulevard from property line to property line. In addition, spot reconstruction to the satisfaction of the City Engineer will take place prior to the pavement cap installation in those areas designated by the City Engineer.

All sidewalks, curbs and gutters in front of this Project shall be replaced to the satisfaction of the

City Engineer utilizing latest approved standards.

7. Encroachment permits shall be obtained for all temporary and permanent encroachments into the public right-of-way.

8. The Applicant shall obtain and submit a copy of an NPDES permit to the City Engineer for temporary dewatering during construction. All discharge shall be made directly into a storm drain or catch basin as directed by the City Engineer.

9. There are existing Metropolitan Water District (MWD) water and storm drain easements located in the westerly limit of the property. The water easement with MWD will be relocated as shown on the Vesting Tentative Tract Map, unless otherwise approved by the Director of Public Works. This must be reflected in the final map.

10. The Final Map shall be prepared in accordance with the approved Vesting Tentative Tract Map and shall be filed within twenty-four (24) months from the date of approval by the City, unless, prior to expiration of the twenty-four months, the Planning Division has received a request from the subdivider for an extension of time and thereafter receives approval of such extension by the City.

11. The Project shall consist of no more than 235 residential and five commercial condominium units. The construction plan and final condominium plans(s) shall be prepared in accordance with the number of residential and commercial units permitted by the 9900 Wilshire Specific Plan and this approval.

12. This Resolution approving Vesting Tentative Tract Map No. 67884 and the Development Plan Review (collectively the "Approvals"), shall not become effective until the owner of the Project site records a covenant, satisfactory in form and content to the City Attorney, accepting the

conditions of approval set forth in this Resolution. The covenant shall include a copy of this Resolution as an exhibit. The Applicant shall deliver the executed covenant to the Department of Planning and Community Development **within 60 days** after 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 Vesting Tentative Tract Map shall be **null and void and of no further effect**. Notwithstanding the foregoing, the Director of Community Development may, upon a request by the Applicant, grant a waiver from the 60-day time limit if, at the time of the request, the Director determines that there have been no substantial changes to any federal, state or local law that will affect the City's ability to approve a Vesting Tentative Tract Map and Development Plan Review.

13. Prior to approval of the Final Map and in accordance with the provisions of Section 10-2-704 of the Beverly Hills Municipal Code, the Applicant shall submit a copy of the proposed covenants, conditions and restrictions (CC&Rs) for the Project to the Director of Community Development and the City Attorney for review and approval, which CC&Rs shall be recorded before or at the same time as recordation of the final map.

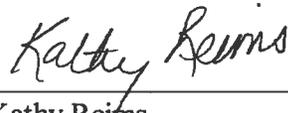
14. Each of the mitigation measures in the adopted Mitigation Monitoring and Reporting Program adopted for the 9900 Wilshire Specific Plan are hereby made conditions of approval to the extent that each is applicable to this subdivision.

Section 11. Based upon the foregoing findings and subject to the Conditions of Approval, the Planning Commission hereby approves Vesting Tentative Tract Map No. 67884 and the Development

Plan Review for property located at 9900 Wilshire Boulevard, in the City of Beverly Hills and County of Los Angeles.

Section 12. The Secretary of the Planning Commission shall certify to the passage, approval, and adoption of this Resolution, and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the Planning Commission of the City.

Adopted: December 18, 2008

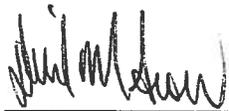


Kathy Reims  
Chair of the Planning Commission  
of the City of Beverly Hills

ATTEST:

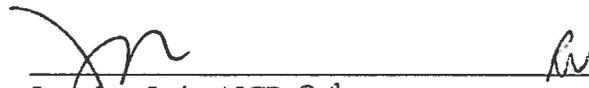
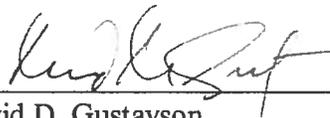
  
Secretary

Approved as to form:

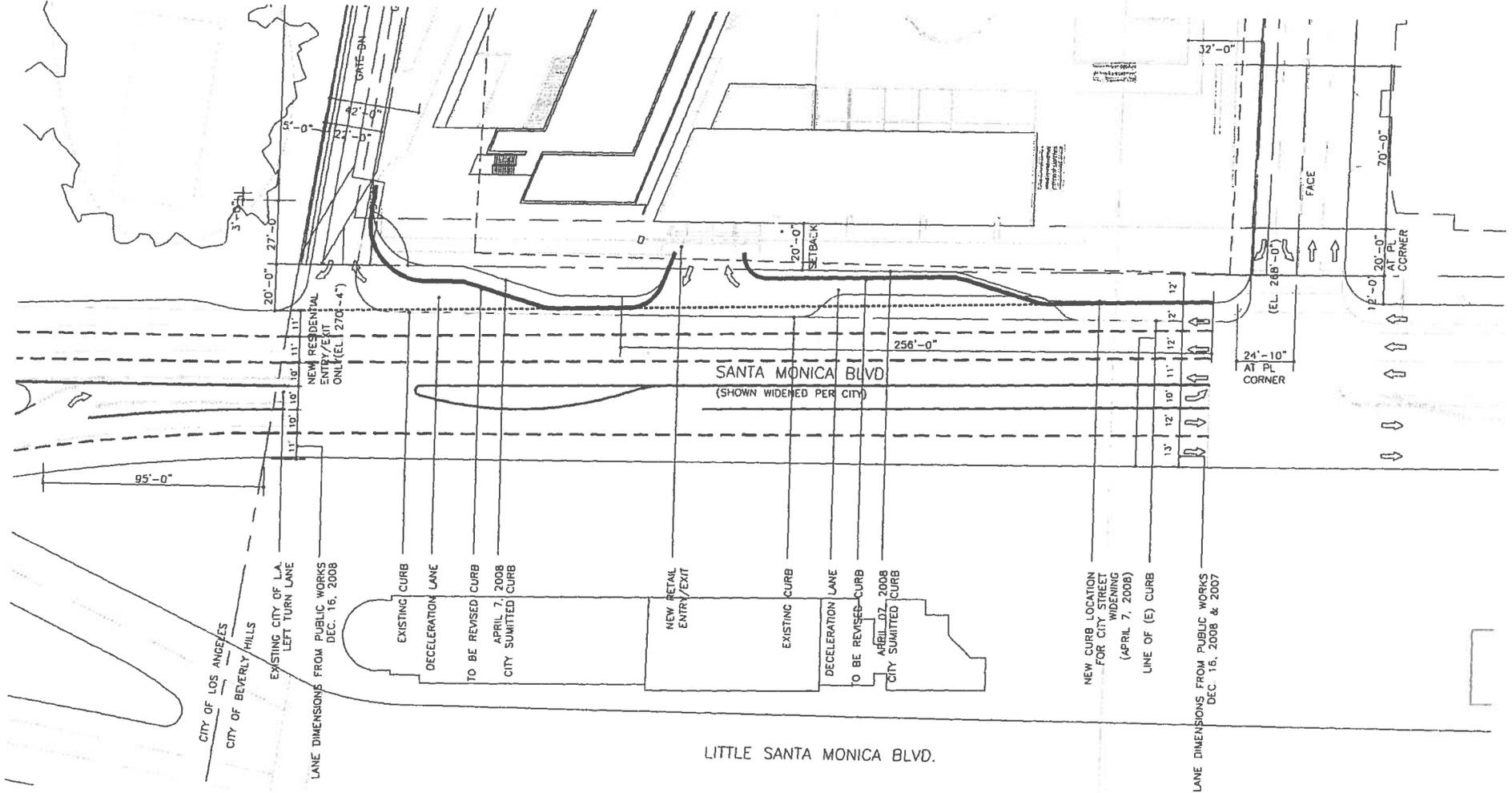


David M. Snow  
Assistant City Attorney

Approved as to content:

  
Jonathan Lait, AICP  
City Planner

David D. Gustavson  
Director of Public Works and Transportation



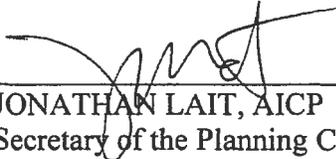
9900 WILSHIRE PROJECT

EXHIBIT 1  
 RE-STRIPING & CURB  
 DEC 17, 2008

STATE OF CALIFORNIA            )  
COUNTY OF LOS ANGELES       )     SS.  
CITY OF BEVERLY HILLS         )

I, JONATHAN LAIT, Secretary of the Planning Commission and City Planner of the City of Beverly Hills, California, do hereby certify that the foregoing is a true and correct copy of Resolution No. 1541 duly passed, approved and adopted by the Planning Commission of said City at a meeting of said Commission on December 18, 2008, and thereafter duly signed by the Secretary of the Planning Commission, as indicated; and that the Planning Commission of the City consists of five (5) members and said Resolution was passed by the following vote of said Commission, to wit:

AYES:           Commissioners Bosse, Furie, Vice Chair Cole and Chair Reims.  
NOES:           None.  
ABSTAIN:       None.  
ABSENT:        Commissioner Yukelson.

  
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JONATHAN LAIT, AICP  
Secretary of the Planning Commission/  
City Planner  
City of Beverly Hills, California

RESOLUTION NO. 08-R-12497

RESOLUTION OF THE COUNCIL OF THE CITY OF BEVERLY HILLS CERTIFYING THE FINAL ENVIRONMENTAL IMPACT REPORT FOR THE 9900 WILSHIRE PROJECT CONSISTING OF LUXURY RESIDENTIAL CONDOMINIUMS, PUBLIC GARDENS, AND ANCILLARY COMMERCIAL USES; MAKING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; ADOPTING A STATEMENT OF OVERRIDING CONSIDERATIONS; AND ADOPTING A MITIGATION MONITORING AND REPORTING PROGRAM; (THE FORMER ROBINSONS-MAY DEPARTMENT STORE SITE)

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

Section 1. Formal applications were submitted by Project Lotus, LLC, a Limited Liability Company (the "Applicant"), to allow construction of a mixed-use project with residential condominiums, commercial space, public and private gardens, and subterranean parking (the "Project"). A Draft Environmental Impact Report dated August 2007 (State Clearinghouse No. 2006071107) was prepared for the Project. Section 3.0 of the Draft Environmental Impact Report provides a full description of the Project, as originally proposed by the Applicant. 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; cultural resources; geology and soils; hazards and hazardous materials; hydrology and water quality; land use and planning; noise; population and housing; public services; transportation, traffic and parking; and utilities and service systems.

Section 3. Pursuant to Guidelines Sections 15064 and 15081, and based upon information contained in the Initial Study, the City ordered the preparation of an Environmental Impact Report ("EIR") for the Project. The City contracted with various independent consultants for the preparation of the technical studies for the EIR and on July 21, 2006, 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 City completed the Draft EIR, together with those certain technical appendices (the "Appendices"), on or about August 8, 2007. The City circulated the Draft EIR and the Appendices to the public and other interested parties between August 8, 2007 and September 28, 2007, for a 52-day comment period, exceeding the 45-day public comment period required by Guidelines Sections 15087(c) and 15105. The Planning Commission held duly noticed public hearings during the public review period on August 20, 2007, September 5, 2007, and September 24, 2007, at which times it received oral and documentary evidence from the public regarding the Project and the Draft EIR. During the public comment period on the

Draft EIR, the City received written comment letters and numerous oral statements regarding the adequacy of the Draft EIR.

Section 5. Concurrent with preparation of the Draft EIR, the City was processing another EIR for a separate office building project at 231-265 North Beverly Drive. The traffic studies for these two projects included collection of traffic data at some of the same intersections. Because of differences between the traffic data, the 231-265 North Beverly Drive EIR suggested that some intersections might have more existing traffic than acknowledged by the traffic data shown in the Draft EIR for the 9900 Wilshire Project. Therefore, the City opted to incorporate the traffic counts from the 231-265 Beverly Project EIR for those common intersections studied in both EIRs into the 9900 Wilshire EIR where the 231 265 North Beverly Project EIR counts were higher. Thereafter, portions of the Draft EIR dealing with traffic, parking, circulation, noise and air quality were revised and recirculated for a shortened 30-day review period between October 15, 2007 and November 13, 2007. During this period, the Planning Commission held a public hearing on October 29, 2007 for the purpose of taking testimony on the Project and the recirculated portions of the Draft EIR (the "Recirculated EIR").

Section 6. During the course of the Planning Commission's deliberations on the Draft EIR and the Project, the Commission requested additional information regarding the potential environmental impacts of five different variations of the Project or Project alternatives. Four of these five additional potential configurations of the Project constituted variations on one or more of the alternatives analyzed in the Draft EIR. The last of the potential project configurations evaluated only the provision of additional parking on the site and thus is

merely a variation on the proposed Project. For ease of reference, these proposed variations were referred to as Alternatives 5A, 7, 8, 9, and 10. An analysis of the additional variations was presented to the Planning Commission on October 29, 2007, and that analysis is hereby incorporated into this Resolution by reference. The analysis is also incorporated into the Final EIR as Appendix C. While some of these additional variations lessened or eliminated certain significant environmental impacts, none of these additional alternatives changed the conclusions in the Draft EIR regarding the environmentally superior alternative, as discussed in the findings attached hereto as Exhibit A, and incorporated herein by reference. Further, these additional variations are not considered new alternatives and are not considerably different from the other six alternatives fully analyzed in the Draft EIR. Parts of some of these project variations have been incorporated into a revised project, as discussed below, with the goal of reducing the level of severity of significant and unmitigable impacts. As such, consideration of these variations does not require recirculation prior to certification of the EIR. Further, consideration of these project variations is consistent with CEQA's policies, including changing the project as a method for protecting the environment (CEQA Guidelines Sec. 15002 (h)), and encouraging project proponents to incorporate environmental considerations into project conceptualization, design and planning at the earliest feasible time (CEQA Guidelines Sec. 15004 (b)(3)).

Section 7. Throughout the proceedings, representatives of the Los Angeles Country Club (LACC), whose property is located to the west of the Project site, expressed concerns regarding aesthetic impacts on certain portions of the golf course that is adjacent to the west of the proposed Project, as well as concerns regarding potential shade and shadow impacts on portions of the golf course. The LACC invited the Planning Commission to visit the LACC

to view areas of alleged impact so that the Commissioners could get a perspective viewing the Project site from the due west in areas generally open only to members and guests of the LACC. The Planning Commission, staff, Applicant team, LACC representatives, and interested members of the public visited the LACC during the Commission's January 31, 2008 meeting, at which time the Commissioners observed balloons flown by the LACC to approximate the Project and Revised Project's building heights, observed other development surrounding the LACC including the buildings of Century City to the south, and observed the plentiful existing foliage on the site.

Section 8. As a result of the comments received during the public comment periods for the Draft EIR and the Recirculated Draft EIR sections, and the comments received at the Planning Commission hearings held on August 20, September 5, September 24, October 29, November 8, and November 28, 2007 and January 10, January 24, and February 7, 2008, and the City Council hearings held on March 11, March 20, and March 27, 2008 (collectively the "Hearings"), as well as concerns raised by the Commission and the City Council, the Planning Commission and City Council recommended various modifications to the Project. At the conclusion of the Planning Commission's deliberations, the project consisted of 235 condominiums, approximately 16,000 square feet of commercial space, 0.81 acres of public gardens and water features, private open space areas, and subterranean parking. All loft buildings were removed from the Project, and the condominium units would all be located in the North and South Tower Buildings, which are set back farther from the western property line and the Los Angeles Country Club than was the original project. The North Tower Building's height would range from 108 feet to 161 feet, and the South Tower Building's height would vary from 161 feet to 185 feet. The North Building would be set back 72 feet from the Wilshire

Boulevard curblines, and would step in height from 9 floors at the north, to 11, 12, and 13 floors moving from north to south. The Southern Tower Building would be 14 to 15 floors. The Applicant has sometimes referred to this as Alternative 5H-1.

The City Council considered the project as recommended by the Planning Commission, and during the deliberations requested a modification to the Project. At the request of the City Council, the Applicant agreed to remove approximately 8,000 square feet from the eastern edge of the top level of the South Building. The City Council provided the Applicant the option of adding garden residences that would be located on top of the restaurant building. Should the Applicant choose to add these garden residences, the Applicant may remove up to 10,000 square feet from the eastern edge of the South Building and place it atop the restaurant. The removal of up to 10,000 feet would enable the Applicant to develop four more viable garden residence units. If the Applicant determines that it does not wish to develop the garden residences, then approximately 8,000 square feet would still be removed from the eastern edge of the South Building. The Project as revised by the City Council is referred to herein as the "Revised Project."

Between the analysis of the originally proposed Project, the analysis of the six alternatives, the analysis of the five additional variations on alternatives as discussed in Section 6 above, the analysis of the Revised Project in Appendix D of the Final EIR, and extensive testimony in the record, the City Council finds that the potential impacts of the Revised Project have been fully assessed and fully disclosed. The City Council also finds that impacts of the Revised Project have been mitigated or avoided to the extent feasible for the reasons set forth in the Findings and Facts in Support of Findings attached hereto as Exhibit A.

Section 9. The City Council held public hearings on the Project on March 11, 2008, March 20, 2008, and March 27, 2008. The City Council considered the administrative record before the Planning Commission, which is hereby incorporated by reference, the Final Environmental Impact Report (the "Final EIR"), the written and oral comments on the EIR, staff reports and responses to comments incorporated into the EIR and all testimony related to environmental issues.

Section 10. The City prepared written responses to all comments received on the Draft EIR and made revisions to the Draft EIR, as appropriate, in response to those comments. The City completed the written responses to comments on the Draft EIR in March 2008, and those responses to comments are incorporated herein by reference. The written responses to comments were made available for public review in the Department of Community Development, at the Beverly Hills Public Library and on the City's website. After reviewing the responses to comments, the revisions to the Draft EIR, and the Final EIR, the City Council concludes that the information and issues raised by the comments, the responses thereto and the additional analysis in response to Project revisions did not constitute new information requiring recirculation of the Draft EIR.

Section 11. Additional written comments on the EIR were submitted during the City Council proceedings, although the comment period for the EIR had lapsed. Nonetheless, the City prepared responses to certain written comments which are incorporated into the Final EIR.

Section 12. The Final EIR is comprised of the Draft EIR, including Appendices, dated August 2007; the Recirculated EIR dated October 2007; the Additional

Project Alternatives analysis presented to the Planning Commission on October 29, 2007, including slide and shadow studies; the Comments and Response to Comments on the Draft EIR, including errata pages; and the Mitigation Monitoring and Reporting Program, responses to additional comments presented to the City Council, and Appendix D which provides analysis of the project as revised by the Planning Commission and City Council.

Section 13. The findings made in this Resolution are based upon the information and evidence set forth in the Final EIR and upon other substantial evidence which has been presented at the hearings before the Planning Commission and City Council and in the record of the proceedings. The documents, staff reports, technical studies, appendices, plans, specifications, and other materials that constitute the record of proceedings on which this Resolution is based are on file for public examination during normal business hours in the Department of Community Development and with the Director of Community Development, who serves as the custodian of these records. Each of those documents is incorporated herein by reference.

Section 14. The City Council finds that agencies and interested members of the public have been afforded ample notice and opportunity to comment on the EIR and the Project.

Section 15. The City Council has independently reviewed and considered the contents of the Final EIR prior to rendering a decision on the Revised Project. The City Council hereby finds that the Final EIR reflects the independent judgment of the City. The City Council further finds that the additional information provided in the staff reports, in comments on the Draft EIR, the responses to comments on the Draft EIR, Recirculated portions of the

Draft EIR, and the evidence presented in written and oral testimony at the City Council and Planning Commission Hearings, does not constitute new information requiring recirculation of the EIR under CEQA. None of the information presented to the Planning Commission or City Council has deprived the public of a meaningful opportunity to comment upon a substantial environmental impact of the Revised Project or a feasible mitigation measure or alternative that the City has declined to implement.

Section 16. The City Council finds that the comments regarding the Draft EIR and the responses to those comments have been received by the City; that the Planning Commission and City Council received documents and public testimony regarding the adequacy of the EIR; and that the City Council has reviewed and considered all such documents and testimony and the Final EIR prior to making its determination on the Project. The City Council, pursuant to Guidelines Section 15090, hereby certifies that the Final EIR has been completed in compliance with CEQA.

Section 17. Based upon the Final EIR and the record before the Planning Commission and the City Council, the City Council finds that the Revised Project will not cause any significant environmental impacts after mitigation except in the areas of Aesthetics (Visual Character and Quality, Views, Cumulative Visual Character and Quality, and Cumulative Views); Air Quality (Short Term Construction, Localized Significant Thresholds – Construction, Cumulative Construction); Cultural Resources (Historical Resources; Cumulative Historical Resources); and Noise (Construction, Cumulative Construction, Vibration from Construction, Cumulative Vibration from Construction). Explanations for why the impacts other than the foregoing were found to be less than significant are contained in the

Environmental Findings set forth in Exhibit A to this Resolution and more fully described in the EIR and the Initial Study which is included as Appendix A to the EIR.

Section 18. Upon considering the information gathered during the visit to the LACC site, the various photo simulations presented during the course of the Planning Commission's hearings, the shade and shadow studies presented to the Planning Commission, the studies regarding shade and shadow impact on turf grass included in appendices to the EIR, the existence of trees and foliage already producing significant shade on the golf course, the existence of the tall buildings in Century City which are readily visible from and produce shade on the LACC golf course, and the responses to the LACC's comments on the EIR, the Planning Commission found that the full degree of potential impacts of the Project on the LACC had been fully disclosed, and that the neither the Project nor the project as revised by the Commission would have significant shade and shadow or aesthetic impacts on the LACC.

The LACC presented additional information regarding alleged potential impacts of shade and shadow on the LACC's golf course and turf at the City Council meeting of March 11, 2008. In rebuttal, the Project Applicant submitted evidence contrary to the expert testimony of the LACC's consultant regarding shade and shadow. Further, the City's environmental consultant reviewed the additional information and provided analysis of the additional evidence, which is incorporated into the Final EIR, and which concludes that the Revised Project will not result in a significant adverse impact as to shade and shadow or on the turf at the LACC. The City Council considered all of the evidence in the record, as more fully explained in Exhibit A, attached hereto, and having balanced the various evidence concludes that the EIR and the testimony of Mr. William Kent Alkire, II, is the more compelling, and on that basis concludes that alleged impacts on the LACC turf grass are less than significant.

Section 19. Based upon the Final EIR and record before the City Council, the City Council finds that the Revised Project will create significant unavoidable impacts to Aesthetics (Visual Character and Quality, Views, Cumulative Visual Character and Quality, and Cumulative Views); Air Quality (Short Term Construction, Localized Significant Thresholds – Construction, Cumulative Construction); Cultural Resources (Historical Resources; Cumulative Historical Resources); and Noise (Construction, Cumulative Construction, Vibration from Construction, Cumulative Vibration from Construction). 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 incorporated herein by this reference, and in the Final EIR. The findings in Exhibit A explain that all feasible mitigation, including project revisions, have been incorporated to reduce the level of impact, but that even after mitigation certain impacts remain significant.

Section 20. The EIR describes, and the City Council has fully considered a reasonable range of alternatives to the Project. These alternatives include Alternative 1 - No Project Alternative, Alternative 2 – Code Compliant Office/Retail Alternative, Alternative 3 – Reduced Density Alternative, Alternative 4 – Preservation/Reuse of Robinsons-May Building Alternative, Alternative 5 – Modified Height and Configuration of North/South Buildings, and Alternative 6 – Reconfiguration Alternative. As explained in Section 6 above, the Planning Commission also requested analysis of the four additional variations on the alternatives analyzed in the Draft EIR and one variation on the Project.

With respect to each of the alternatives analyzed in the EIR, and the five project variations considered by the Planning Commission and the City Council, the City Council must make the findings, set forth in Exhibit A, which is attached hereto and incorporated by

reference. On the whole, the Revised Project, which incorporates features of some of the alternatives and variations, is environmentally superior to other feasible alternatives. As such, the City Council has adopted the Revised Project, and finds all other alternatives and variations, including alternatives proposed by the LACC and the Los Angeles Conservancy, infeasible or not environmentally preferable for the reasons set forth in Exhibit A.

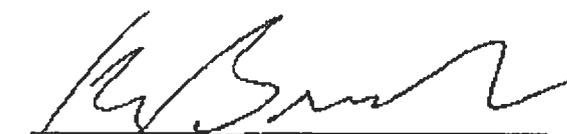
Section 21. For all significant and unavoidable impacts, including Aesthetics (Visual Character and Quality, Views, Cumulative Visual Character and Quality, and Cumulative Views); Air Quality (Short Term Construction, Localized Significant Thresholds – Construction, Cumulative Construction); Cultural Resources (Historical Resources; Cumulative Historical Resources); and Noise (Construction, Cumulative Construction, Vibration from Construction, Cumulative Vibration from Construction) impacts identified in the Final EIR as “significant and unavoidable,” the City Council hereby adopts the “Statement of Overriding Considerations” as set forth in Exhibit B, which is attached hereto and incorporated herein by reference. The City Council finds that each of the overriding benefits, by itself, would justify proceeding with the Revised Project despite any significant unavoidable impacts identified in the Final EIR or alleged to be significant in the record of proceedings.

Section 22. The City Council hereby adopts the mitigation measures set forth in the Mitigation Monitoring and Reporting Program, attached hereto as Exhibit C and incorporated herein by this reference, and imposes each mitigation measure as a condition of the Revised Project's approval. The City Council also hereby adopts the “Mitigation Monitoring and Reporting Program,” attached hereto and incorporated herein by reference.

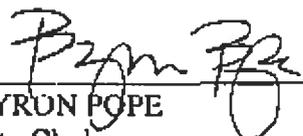
City staff shall be responsible for implementation and monitoring the mitigation measures as described in Exhibit C.

Section 23. The City Clerk 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 City Council of the City.

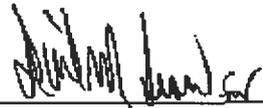
Adopted: April 3, 2008

  
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BARRY BRUCKER  
Mayor of the City of Beverly Hills,  
California

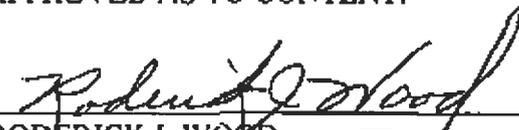
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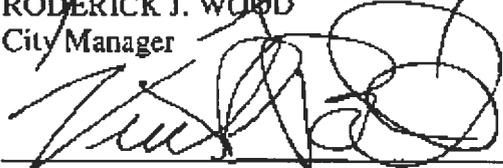
  
\_\_\_\_\_  
BYRON POPE  
City Clerk (SEAL)

APPROVED AS TO FORM:

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

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
RODERICK J. WOOD  
City Manager

  
\_\_\_\_\_  
VINCENT P. BERTONI, AICP  
Director of Community Development

**EXHIBIT A**

**Findings and Facts in Support of Findings**

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**EXHIBIT A**  
**Findings and Facts in Support of Findings**

**I. Introduction**

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

- A. Changes or alterations have been required in, or incorporated into, the project which avoid or substantially lessen the significant environmental effects identified in the EIR.**
- B. Such changes or alterations are within the responsibility of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency.**
- C. Specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the EIR.<sup>1</sup>**

Pursuant to the requirements of CEQA, the City Council hereby makes the following environmental findings in connection with the proposed construction of the residential and retail buildings with subterranean parking on 9900 Wilshire Boulevard (the "Project"), as more fully described in the EIR and as revised by the Planning Commission and City Council. These findings are based upon evidence presented in the record of these proceedings, both written and oral, the EIR and all of its contents including the recirculated portions of the EIR, the Comments and Responses to Comments on the Draft EIR and the recirculated portions of the EIR, and staff and consultants' reports presented to the Planning Commission and the City Council.

**II. Project Objectives**

As set forth in the EIR, objectives that the project applicant seeks to achieve with this Project (the "Project Objectives") are as follows:

- To create a world-class architectural landmark with a visual presence at the dual gateway to the City at Wilshire Boulevard and Santa Monica Boulevard, and which will enhance the beauty and image of the City of Beverly Hills.
- To develop an environmentally sensitive and sustainable project for which the applicant intends to seek Leadership in Energy and Environmental Design (LEED) certification from the U.S. Green Building Council and establish a benchmark for environmentally responsible design in the City of Beverly Hills.

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<sup>1</sup> Cal. Pub. Res. Code § 21081; 14 Cal. Code Regs. § 15091.

- To preserve approximately two thirds of the project site as landscaped gardens and other open space to enhance the visual character of the project.
- To provide a 0.42-acre entry garden along Wilshire Boulevard for the use and enjoyment of the public that complements and extends the existing Beverly Gardens Park on the north side of Wilshire Boulevard, enhances the garden qualities of the City, and replaces a high-density commercial use across the street from an existing school and residential neighborhood. (The final project includes a 0.81 acre public garden.)
- To redevelop the project site in a manner that does not substantially increase the traffic levels and related operational air quality and noise impacts associated with the prior Robinsons-May department store use on the site prior to closure.
- To improve the utilization and visual appearance of the project site by eliminating the existing above-ground parking structure and constructing subterranean parking for the project that will be spread across the entire project site to provide convenient parking for project residents, guests and retail patrons.
- To provide a substantial amount of housing for local and area residents to help meet market demand and alleviate the substantial housing shortage in the City of Beverly Hills and the Westside of Los Angeles.
- To provide new housing within the City without having to tear down existing rental units or otherwise displace existing housing.
- To provide full-service residential condominiums that are competitive with existing and proposed condominium projects in the Wilshire Corridor and Century City and have comparable views, so that residents who desire to "downsize" from their existing homes will not have to move out of Beverly Hills to find suitable housing.
- To provide restaurant and retail spaces along Santa Monica Boulevard to (a) serve project residents and others and (b) enhance pedestrian activity and street life by providing a connection between the current retail uses in Century City and Beverly Hills.
- To improve traffic circulation in and around the project site by providing additional vehicular access points on Wilshire Boulevard and Santa Monica Boulevard for project residents in order to reduce traffic on Merv Griffin Way.
- To reduce the intensity of uses currently permitted thereon by replacing the existing C-3 commercial zoning designation with a specific plan zoning designation that limits development to approximately two-thirds of the number of residential units that would be permitted under the R-4 residential zoning designation, along with a small amount of retail space. (The final project considered by the Planning Commission increases intensity with respect to height.)
- To provide an appropriate transition from the larger office and residential buildings in Century City and the Wilshire Corridor.

- To provide housing in close proximity to the office and retail uses in Century City and Beverly Hills.
- To promote housing, conservation, and green space policies consistent with the land use, housing element, and conservation elements of the General Plan.
- To provide annual net revenue to the City that substantially exceeds the revenue the City would receive from commercial operations on the Project site.

### III. Background

The applicant's original proposal for the Project consisted of two 12-story residential tower buildings, four-story loft buildings, retail and commercial space, 42 acres of public open space, garden areas and subterranean parking. The original proposal consisted of 252 condominium residences, 144-foot tall residence towers, 48 foot tall loft buildings along Merv Griffin Way, approximately 20,000 square feet of commercial space along Santa Monica Boulevard and public and private gardens. A total of 829,686 square feet of area would have been dedicated to residences. The original proposal is referred to herein as the "Project."

During Planning Commission deliberations and consideration of various project alternatives, the applicant revised the Project in order to address concerns of the Commission and to respond to certain adverse environmental impacts of the original proposal.

At the conclusion of the Planning Commission's deliberations, the Project consisted of 235 condominiums, approximately 16,000 square feet of retail space, 0.81 acres of public gardens and water features, private open space areas, and subterranean parking. All loft buildings were removed from the project, and the condominium units would all be located in the North and South Tower Buildings. The North Tower Building's height would range from 108 feet to 161 feet, and the South Tower Building's height would vary from 161 feet to 185 feet. The North Building would be set back 72 feet from the Wilshire Boulevard curbline, and set back 80 feet from the Los Angeles Country Club, and would step in height from 9 floors at the north, stepping to 11, 12, and 13 floors moving from north to south. The South Tower Building would be 14 to 15 floors and be set back 42 feet from the Los Angeles Country Club at its southwest corner and 44 feet from the Country Club at its northwest corner. The applicant has sometimes referred to this as Alternative 5B-1. The Planning Commission recommended approval of this project.

The City Council considered the Project as recommended by the Planning Commission, but during the deliberations requested further modification to the Project. At the request of the City Council, the Applicant agreed to remove approximately 8,000 square feet from the eastern edge of the top level of the South Building to reduce massing impacts of the proposed buildings. The City Council provided the Applicant the option of adding garden residences that would be located in one level on top of the restaurant building. Should the Applicant choose to add these garden residences, the Applicant may remove up to 10,000 square feet from the eastern edge of the South Building and place it atop the restaurant. The removal of up to 10,000 feet would enable the Applicant to potentially develop four more viable garden residence units. If the Applicant determines that they do not wish to develop the garden residences, the 8,000 square feet would still be removed from the eastern edge of the South Building. The Project as revised by the City Council is referred to herein as the "Revised Project."

The proceedings before the Planning Commission and City Council resulted in modifications to the project in furtherance of CEQA's policy of changing the project as a method for protecting the environment. CEQA Guidelines Sec. 15002 (h). Revisions to the Project including increased setbacks along Wilshire Boulevard, reduced height at the north end of the project with stepped increases in height to the south end of the site, increased amount of public open space from .42 acres to .81 acres by removing the loft buildings, and introduction of open space garden area at the northwest corner of Santa Monica Boulevard and Merv Griffin Way. These revisions eliminated potentially significant impacts associated with General Plan policies related to community scale and transitional conflicts. The modifications to the project are not substantial, did not result in new or more severe significant impacts, and were clearly articulated during the proceedings. As discussed in Appendix D of the Final EIR, none of these revisions trigger the requirement to recirculate an EIR.

Between the analysis of the originally proposed Project, the analysis of the six alternatives, the analysis of six additional variations on alternatives as discussed in Section VIII below, and the analysis of the Revised Project in Appendix D of the Final EIR the potential impacts of the Revised Project have been fully assessed, fully disclosed, and mitigated or avoided to the extent feasible.

#### **IV. Effects Determined to be Less Than Significant/No Impact in the Initial Study/Notice of Preparation**

The City of Beverly Hills conducted an Initial Study in July 2006 to determine significant effects of the Project. In the course of this evaluation, certain impacts of the Project were found to be less than significant due to the inability of a project of this scope to create such impacts or the absence of project characteristics producing effects of this type. The following effects were determined not to be significant for the reasons set forth in the Initial Study, and were not analyzed in the Draft EIR (refer to Appendix A, Initial Study/Notice of Preparation, in the Draft EIR). Revisions to the Project, as described in Section III, do not change the conclusions of the Initial Study.

##### **A. AESTHETICS**

1. The Project will not have a substantial adverse effect on a scenic vista.
2. The Project will not substantially damage scenic resources, including, but not limited to trees, rock outcroppings, and historic buildings within a state scenic highway.

##### **B. AGRICULTURAL RESOURCES**

1. The Project will not convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use.
2. The Project will not conflict with existing zoning for agricultural use, or a Williamson Act Contract.

3. The Project does not involve other changes in the existing environment which, due to their location or nature, could result in conversion of farmland to non-agricultural use.

**C. AIR QUALITY**

1. The Project will not create objectionable odors affecting a substantial number of people.

**D. BIOLOGICAL RESOURCES**

1. The Project will not have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.
2. The Project will not have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations by the California Department of Fish and Game or U.S. Fish and Wildlife Service.
3. The Project will not have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means.
4. The Project will not interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.
5. The Project will not conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance.
6. The Project will not conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

**E. GEOLOGY AND SOILS**

1. The Project will not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving landslides.
2. The Project will not have soils incapable of adequately supporting the use of septic tanks or alternatives wastewater disposal systems where sewers are not available for the disposal of wastewater.

## **F. HAZARDS AND HAZARDOUS MATERIALS**

1. The Project will not create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.
2. The Project is not located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, and therefore will not result in a safety hazard for people residing or working in the project area.
3. The Project is not within the vicinity of a private airstrip, and therefore will not result in a safety hazard for people residing or working in the project area.
4. The Project will not impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan.
5. The Project will not expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with vegetation.

## **G. HYDROLOGY AND WATER QUALITY**

1. The Project will not place housing within a 100-year flood hazard area as mapped on a Federal Flood Hazard Boundary or Flood Insurance Map or other flood hazard delineation map.
2. The Project will not place within a 100-year flood hazard area structures which would impede or redirect flood flows.
3. The Project will not be subject to inundation by seiche, tsunami, or mudflow.

## **H. LAND USE AND PLANNING**

1. The Project will not physically divide an established community.
2. The Project will not conflict with any applicable habitat conservation plan or natural community conservation plan.

## **I. MINERAL RESOURCES**

1. The Project will not result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state.
2. The Project will not result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan.

**J. NOISE**

1. The Project is not located within an airport land use plan or within two miles of a public airport or public use airport, and thus would not expose people residing or working in the Project area to excessive noise levels from airport activities.
2. The Project is not located within the vicinity of a private airstrip, and thus would not expose people residing or working in the Project area to excessive noise levels from airstrip activities.

**K. POPULATION AND HOUSING**

1. The Project will not displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere.
2. The Project will not displace substantial numbers of people, necessitating the construction of replacement housing elsewhere.

**L. TRANSPORTATION AND TRAFFIC**

1. The Project will not result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in a substantial safety risk.
2. The Project will not cause a four-way stop-controlled intersection operating at LOS A, B or C to operate at LOS D with an increase in the average delay by five seconds or more.
3. The Project will not cause a four-way stop-controlled intersection operating at LOS D to operate at LOS D with an increase in the average delay by four seconds or more.
4. The Project will not cause a four-way stop-controlled intersection operating at LOS E or F to operate at LOS F with an increase in the average delay by three seconds or more.
5. The Project will not cause a two-way stop-controlled intersection operating at LOS D or better to operate at LOS E or F.

**V. Effects Determined to be Less Than Significant Without Mitigation in the EIR**

The EIR found that the Project would have a less than significant impact without the imposition of mitigation on a number of environmental topic areas, listed below. A less than significant environmental impact determination was made for each of the following topic areas, based on the more expansive discussions contained in the EIR. Further, the project revisions described in Section III above do not change the following conclusions.

**A. AESTHETICS**

1. Development of the Project would not obstruct, interrupt, or diminish a valued focal or panoramic view.
2. Development of the Project would not create a new source of shade or shadow which would adversely affect existing shade/shadow sensitive structures or uses.

During testimony before the Planning Commission, representatives of the Los Angeles Country Club (LACC), whose property is located to the west of the Project site, expressed concerns regarding aesthetic impacts on certain portions of the golf course that is adjacent to the west of the proposed Project, as well as concerns regarding potential shade and shadow impacts on portions of the golf course. The LACC invited the Planning Commission to visit the LACC to view areas of alleged impact so that the Commissioners could get a perspective viewing the Project site from the west in areas generally open only to members and guests of the LACC. The Planning Commission, staff, Applicant team, LACC representatives, and interested members of the public visited the LACC during the Commission's January 31, 2008 meeting, at which time the Commissioners observed balloons flown by the LACC to approximate the Project's building heights, observed other development surrounding the LACC including the buildings of Century City to the south, and observed the plentiful existing foliage on the site. The Planning Commission considered the information gathered during the visit to the LACC site, the various photo simulations presented during the course of the Commission's hearings, the shade and shadow studies presented to the Commission, the studies regarding shade and shadow impact on turf grass included in appendices to the EIR, the existence of trees and foliage already producing significant shade on the golf course, the existence of the tall buildings in Century City that are readily visible from and produce shade on the LACC golf course, and the responses to the LACC's comments on the EIR.

Based on this information, the Planning Commission found that the full degree of potential impacts of the Project on the LACC has been fully disclosed, and that the neither the Project nor the Revised Project would have significant shade and shadow or aesthetic impacts on the LACC. Specifically, with respect to shade and shadow impacts at the LACC, the Planning Commission considered and took into account:

- a) The DEIR analysis of the shade and shadow impacts and the conclusion that impacts would be less than significant, using the City of Los Angeles 3-hour threshold.
- b) The Study Commissioned by the Los Angeles Country Club entitled "Report of Findings and Recommendations Regarding Morning Light Penetration On #16 Tee, Fairway And Green at Los Angeles Country Club" dated June 2006
- c) The study "Shade and Shadow Study - The Los Angeles Country Club" incorporated into the Technical Appendices of the Draft EIR as appendix 4.1

d) Updated Shade and Shadow analysis for variations on the Project that included increased height of the southern building, which shows that the Project would not cause shading in excess of the 3-hour City of Los Angeles standard

e) The Commission's visit to the LACC and tour of the potentially impacted areas.

In addition to the information gathered by the Planning Commission, the City Council also considered additional information submitted by the Project applicant and the LACC, including:

f) The letter dated March 20, 2008 from William Kent Alkire, II, Agronomist, concluding that the impact of shade/shadow from the project would not significantly impact the Los Angeles Country Club's ability to continue to maintain the turf along its golf course's 16th hole to current levels of quality.

g) The letter dated March 6, 2008 from Michael J. Hurdzan, Ph.D. submitted on behalf of LACC regarding alleged impacts of shade/shadow from the project on the LACC's golf course turf.

h) A slideshow presentation made by the applicant at the March 20, 2008 meeting and included in the applicant's letter dated March 20, 2008.

In considering the entirety of the evidence the City Council concludes that Appendix 4.1 of the Draft EIR and the March 20, 2008 letter from Mr. Alkire, II, including the shade and shadow exhibits therein, are more persuasive than contrary evidence offered on behalf of the LACC. The City Council bases its finding that the Revised Project will not have significant impacts on the LACC in large part on the conclusion of Appendix 4.1, which states that "the construction of the proposed 9900 Wilshire Project should have no significant, notable impact on the turf quality and density of the grasses and trees currently being grown on the 16th hole of the South Course at the Los Angeles Country Club," and the similar conclusions set forth in the Alkire letter dated March 20, 2008.

## **B. AIR QUALITY**

1. Development of the Project would not interfere with the attainment of the federal or state ambient air quality standards by either violating or contributing to an existing or projected air quality violation.
2. Development of the Project would not result in population increases within an area that would be in excess of that projected by SCAG in the AQMP, or increase the population in an area where SCAG has not projected that growth for the project's buildout year.
3. Development of the Project would not generate vehicle trips that cause a CO hotspot, and would not expose future occupants or sensitive receptors to a CO hotspot.

4. Development of the Project would not have the potential to create, or be subjected to, an objectionable odor that could impact sensitive receptors.
5. Development of the Project would not have hazardous materials on-site and could result in an accidental release of toxic air emissions or acutely hazardous materials posing a threat to public health and safety.
6. Development of the Project would not emit a toxic air contaminant regulated by SCAQMD rules or that is on a federal or state air toxic list.
7. Development of the Project would not be occupied by sensitive receptors within 1/4 mile of an existing facility that emits air toxics identified in SCAQMD Rule 1401.
8. Development of the Project would contribute a less than significant amount of greenhouse gas emissions on both a project and a cumulative basis.
9. Development of the Project would not emit carcinogenic or toxic air contaminants that individually or cumulatively exceed the maximum individual cancer risk of 10 in 1 million.

#### **C. GEOLOGY AND SOILS**

1. Development of the Project would not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault.
2. Development of the Project would not expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving seismic-related ground failure, including liquefaction.
3. Development associated with the Project, in conjunction with other related cumulative projects, would not result in cumulatively considerable geology, soils, and seismicity impacts.

#### **D. HAZARDS AND HAZARDOUS MATERIALS**

1. Development of the Project would not be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment.

#### **E. HYDROLOGY AND WATER QUALITY**

1. Development of the Project would not substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there

would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned land uses for which permits have been granted).

2. Development of the Project would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on- or off-site.
3. Development of the Project would not substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on or off-site.
4. Development of the Project would not create or contribute runoff water that would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff.
5. Development of the Project would not require or result in the construction of new stormwater drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects.

#### F. NOISE

1. Noise levels measured at off-site land uses would not exceed the 45 dB(A) interior noise threshold or 65 dB(A) exterior noise threshold contained in the State's guidelines. Based on this information, the Project would not result in significant noise impacts if:
  - An increase of 3 dB(A) or greater in traffic noise levels that occurs from Project-related activities would cause the noise compatibility thresholds for "normally acceptable" exterior or interior noise levels to be exceeded, or a 3 dB(A) increase in noise would occur to a land use experiencing levels above the noise compatibility threshold for "normally acceptable" (a noise level increase of less than 3 dB(A) under either of the previously described scenarios is not considered to be significant).
  - Increases in traffic noise greater than 5 dB(A) result even if the resulting noise levels are below the land use compatibility standards (an increase of 5 dB(A) or less in traffic noise levels that occurs from Project-related activities would not be considered significant if the resulting noise levels remain below the "acceptable" thresholds).
  - Stationary noise sources proposed as part of the Project that could result in increases in noise levels at adjacent land uses would exceed the land use compatibility standards.

**G. POPULATION AND HOUSING**

1. Development of the Project would not induce population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure).

**H. FIRE PROTECTION**

1. Development of the Project would not create a demand for additional fire stations, department personnel, and/or equipment.

**I. POLICE PROTECTION**

1. Development of the Project would not increase demand for the level of police protection that would reduce the level of protection services.
2. Development of the Project would not create a demand for additional police stations, department personnel, and/or equipment.

**J. SCHOOLS**

1. Development of the Project would not result in a significant impact to school services.

**K. RECREATION AND PARKS**

1. Development of the Project would not result in a significant impact on recreation and parks.

**L. LIBRARY SERVICES**

1. Development of the Project would not be considered to have a significant impact on library services.

**M. TRANSPORTATION AND TRAFFIC**

1. Development of the Project would not cause a significant impact for intersections within the City of Beverly Hills, since the proposed Project would not cause an increase in V/C ratio of equal to or greater than 0.010 at a signalized intersection operating at LOS D during a peak hour.
2. Development of the Project would not cause a significant impact for intersections within the City of Beverly Hills, since the proposed Project would not cause an increase in V/C ratio of equal to or greater than 0.020 at a signalized intersection operating at LOS E or F during a peak hour.
3. Development of the Project would not cause a significant impact on residential roadway segments, since the Project would not cause an increase in daily traffic.

volume by 25 percent or more on a residential street with a daily traffic volume of less than 3,750.

4. Development of the Project would not cause a significant impact on residential roadway segments, since the Project would not cause an increase in daily traffic volume by 12.5 percent or more on a residential street with a daily traffic volume of between 3,750 and 6,750.
5. Development of the Project would not cause a significant impact on residential roadway segments, since the proposed Project would not cause an increase in daily traffic volume by 6.25 percent or more on a residential street with a daily traffic volume of more than 6,750.
6. Development of the Project would not cause a significant impact on a Congestion Management Plan (CMP) intersection, since the Project would not cause the V/C ratio to increase by 2 percent or more, causing the V/C ratio to increase beyond 1.00 (LOS F).
7. Development of the Project would not cause a significant impact for alternative forms of transportation, since the Project would not conflict with adopted policies, plans, or programs supporting alternative transportation.
8. Development of the Project would not cause a significant impact for pedestrian facilities, since the Project would not disrupt existing pedestrian facilities.
9. Development of the Project would not cause a significant impact for pedestrian facilities, since the Project would not interfere with planned pedestrian facilities.
10. Development of the Project would not cause a significant impact for pedestrian facilities, since the Project would not conflict with or create inconsistencies with adopted pedestrian system plans, guidelines, policies, or standards.
11. Development of the Project would not cause a significant impact since the Project would not fail to provide adequate accessibility for service and delivery trucks on-site, including access to truck loading areas.
12. Development of the Project would not cause a significant impact for project parking, since the Project would not design parking areas that fail to meet City standard design guidelines.
13. Development of the Project would not cause a significant impact for project parking, since the Project would not fail to provide a sufficient quantity of on-site parking for vehicles.
14. Development of the Project would not cause a significant impact for project parking, since the Project would not increase off-site parking above that which is provided in the immediate project area.

15. Development of the Project would not cause a significant impact for risk of off-site intersection collision, since the Project would not change off-site intersection location, geometrics, or traffic control devices, resulting in obstructed sight distance, over-reduced lane width, removal of exclusive left-turn or right-turn lanes, unsafe timing and phasing designs, or other safety deficiencies.
16. Development of the Project would not cause a significant impact for risk of off-site intersection collision, since the Project would not increase the number of pedestrians or bicyclists crossing at intersections where pedestrian/bicyclist-related traffic collisions already exist.

#### **N. SOLID WASTE**

1. Development of the Project would not be served by a landfill without sufficient permitted capacity to accommodate the Project's solid waste disposal needs.
2. Development of the Project would comply with federal, state, and local statutes and regulations related to solid waste.

#### **O. ENERGY**

1. Development of the Project would not result in a substantial increase in energy demand relative to the availability of supply.

### **VI. Potentially Significant Environmental Impacts Determined to be Mitigated to a Less Than Significant Level.**

The EIR identified the potential for the Project to cause significant environmental impacts in the areas of light and glare; cultural resources; geology and soils; hazards and hazardous materials; hydrology and water quality; noise; fire and emergency services; transportation, traffic and circulation; water; wastewater; and energy. With the exception of the specific impacts as discussed in Article VII below, measures were identified that would mitigate all of these impacts to a less than significant level.

The City Council finds that the feasible mitigation measures for the Project identified in the Final EIR would reduce the Project's impacts to a less than significant level, with the exception of those unmitigable impacts discussed in Article VII below. The City Council adopts all of the feasible mitigation measures for the Project described in the Final EIR as conditions of approval of the Project and incorporates those into the Project. Further, the project revisions described in Section III above do not change the following conclusions, and those conclusions are equally applicable to the Project and the Revised Project.

#### **A. LIGHT AND GLARE**

The Project's potential impacts on aesthetics that can be mitigated or are otherwise less than significant are discussed in *Section 4.1.2, Light and Glare* of the Draft EIR. Identified impacts include operational and cumulative impacts on aesthetics, light, and glare.

## 1. Operational Impacts

The EIR analyzes in detail the potential of the Project's operational activities to impact the visual character of the Project site and the surrounding area and to introduce new sources of light and glare. Project implementation would introduce new light sources on the Project site. While the proposed redevelopment of the 9900 Wilshire Project site and associated lighting is consistent with existing development in the area, and the north-south building alignment on the Project site is intended to minimize views of the buildings from residential neighborhoods to the north, nighttime lighting associated with the two tower buildings along the western side of the property would result in significant lighting impacts.

### (a) Findings

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant operational related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

MM-LG-1 Project light sources shall be shielded, directed downward when intended to illuminate walking or working surfaces, and focused on the Project site, to prevent light spillover onto adjacent properties or roadways.

### (b) Facts in Support of Findings

The potential nighttime lighting impacts from operational activities have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measure identified in the Draft EIR. While a number of Project features are proposed to reduce the visibility of light sources from off-site, the potential still exists for unshielded or misdirected light sources to adversely affect nighttime views. With implementation of mitigation measure MM-LG-1, which would reduce the potential for off-site light spillover, Project lighting would not adversely affect nighttime views and impacts would be less than significant.

## 2. Cumulative Light and Glare Impacts

Development of the Project, in conjunction with related cumulative projects, could result in significant cumulative light and glare impacts.

### (a) Findings

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant operational related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

MM-LG-1 Project light sources shall be shielded, directed downward when intended to illuminate walking or working surfaces, and focused on the project site, to prevent light spillover onto adjacent properties or roadways.

*(b) Facts in Support of Findings*

The proposed Beverly Hilton Revitalization Plan, proposed for the adjacent Beverly Hilton Hotel property at 9876 Wilshire Boulevard, immediately east of the 9900 Wilshire Project site, would increase nighttime light levels on that adjacent project site over existing levels and those associated with operations of the former department store, and would contribute to higher ambient nighttime light levels in the Project vicinity. Both the Beverly Hilton Revitalization and 9900 Wilshire projects would be required to comply with Municipal Code requirements governing light spillover onto residential properties. As previously stated, a lighting program is proposed for the 9900 Wilshire Project that contains a number of features to reduce the potential for light spillover onto off-site properties. Implementation of mitigation measures MM-LG-1 would further reduce the potential for light spillover and adverse effects on nighttime views. For these reasons, as mitigated, light sources proposed as part of the 9900 Wilshire Project would constitute a less than considerable, and therefore not significant, incremental contribution to light levels and impacts on nighttime views when considered together with the Beverly Hilton Revitalization Plan. Further, it is expected that a similar mitigation measure would be imposed on the Beverly Hilton Revitalization Project if approved.

Building materials proposed for the 9900 Wilshire Project would be low-reflectivity and are intended to minimize glare, and new development would be set back from surrounding roadways. The Project's contribution to cumulative glare impacts is less than considerable and therefore not significant.

**B. CULTURAL RESOURCES**

The Project's potential impacts on cultural resources that can be mitigated or are otherwise less than significant are discussed in Section 4.3, Cultural Resources, of the Draft EIR. Identified impacts include historical, archeological, and paleontological resources.

1. Historical Resources

The EIR analyzes in detail the potential of the Project's construction and operational activities to impact cultural resources on the Project site and in the surrounding area. Four potentially historic street lights are located adjacent to the Project site; two are on Wilshire Boulevard and two are on Santa Monica Boulevard. These street lights appear eligible for local listing or designation. The permanent removal of or damage to these street lights would result in a significant impact.

*(a) Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

MM-CR-3 Potentially historic street lights adjacent to the Project site shall be preserved and reinstalled along this section of Wilshire Boulevard and Santa Monica Boulevard in appropriate locations in consultation with the Project proponents, the City of Beverly Hills, and an architectural historian qualified under the Secretary of the Interior's Standards.

(b) *Facts in Support of Findings*

The potential cultural resources impacts from construction and operational activities have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measure identified in the Draft EIR. Implementation of mitigation measure MM-CR-3 requiring removal and reinstallation of the lights adjacent to the Project site would reduce this potentially significant impact to a less than significant level.

2. Archaeological Resources

The EIR analyzes in detail the potential of the Project's construction and operational activities to impact the cultural resources of the Project site and the surrounding area. No archaeological resources are known to have been discovered on the Project site during previous disturbances. However, excavation of the Project site has the potential to disturb unknown resources, causing a potentially significant impact upon those resources. In the event of an unexpected disturbance, significant impacts to archaeological resources could occur.

(a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

MM-CR-4 If buried cultural resources are encountered during construction, all work shall be halted in the vicinity of the archaeological discovery until a qualified archaeologist can assess the nature and significance of the archaeological discovery, per CEQA Section 15064.5 (f). Recovery of significant archaeological deposits, if necessary, shall include but not be limited to, manual or mechanical excavations, monitoring, soils testing, photography, mapping, or drawing to adequately recover the scientifically consequential information from and about the archaeological resource. Further treatment may be required, including site recordation, excavation, site evaluation, and data recovery. Any artifacts uncovered shall be recorded and removed for storage at a location to be determined by the archaeologist.

MM-CR-5 If human remains are discovered during construction, the coroner and designated Native American representatives shall be notified in accordance with Public Resources Code Section 5097.98, Health and Safety Code Section 7050.5, and Section 15064.5 (d) of the State CEQA Guidelines. State Health and Safety Code Section 7050.5 states that if human remains are unearthed during construction, no further disturbance shall occur until the county coroner has made the necessary findings as to the origin and disposition of the remains pursuant to Public Resources Code Section 5097.98. In accordance with applicable regulations, construction activities shall halt in the event of discovery of human remains, and consultation and treatment shall occur as prescribed by law. If human remains discovered are of Native American origin, it shall be necessary to comply with state laws relating to the disposition of Native American burials that fall within the jurisdiction of the California Native American Heritage Commission (Public Resources Code Section 5097). According to California Health and Safety Code, six or

more human burials at one location constitute a cemetery (Section 8100), and disturbance of Native American cemeteries is a felony (Section 7052).

*(b) Facts in Support of Findings*

The potential cultural resources impacts from construction and operational activities have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measure identified in the Draft EIR. Implementation of mitigation measures MM-CR-4 and MM-CR-5 would reduce potentially significant impacts to a less than significant level in the unlikely event that archaeological resources are discovered during construction.

3. Paleontological Resources

The EIR analyzes in detail the potential of the Project's construction and operational activities to impact the cultural resources of the Project site and the surrounding area. No paleontological resources are known to have been discovered on the Project site during previous disturbances. However, excavation of the Project site has the potential to disturb unknown resources, causing a potentially significant impact upon those resources.

*(a) Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

MM-CR-6 In the event a previously unknown fossil is uncovered during Project construction, all work shall cease until a certified paleontologist can investigate the finds and make appropriate recommendations. Any artifacts uncovered shall be recorded and removed for storage at a location to be determined by the monitor.

*(b) Facts in Support of Findings*

The potential cultural resources impacts from construction and operational activities have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measure identified in the Draft EIR. Implementation of mitigation measure MM-CR-6 would reduce potentially significant impacts to a less than significant level in the unlikely event that paleontological resources are discovered during construction.

4. Cumulative Impacts

Development of the proposed Project, in conjunction with related cumulative projects, could result in significant cultural resources impacts.

*(a) Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant operational related environmental effect as identified in the Draft EIR. Specifically,

the following mitigation measures imposed upon the Project mitigate impacts to less than significant levels:

MM-CR-3 Potentially historic street lights adjacent to the Project site shall be preserved and reinstalled along this section of Wilshire Boulevard and Santa Monica Boulevard in appropriate locations in consultation with the Project proponents, the City of Beverly Hills, and an architectural historian qualified under the Secretary of the Interior's Standards.

MM-CR-4 If buried cultural resources are encountered during construction, all work shall be halted in the vicinity of the archaeological discovery until a qualified archaeologist can assess the nature and significance of the archaeological discovery, per CEQA Section 15064.5 (f). Recovery of significant archaeological deposits, if necessary, shall include but not be limited to, manual or mechanical excavations, monitoring, soils testing, photography, mapping, or drawing to adequately recover the scientifically consequential information from and about the archaeological resource. Further treatment may be required, including site recordation, excavation, site evaluation, and data recovery. Any artifacts uncovered shall be recorded and removed for storage at a location to be determined by the archaeologist.

MM-CR-5 If human remains are discovered during construction, the coroner and designated Native American representatives shall be notified in accordance with Public Resources Code Section 5097.98, Health and Safety Code Section 7050.5, and Section 15064.5 (d) of the State CEQA Guidelines. State Health and Safety Code Section 7050.5 states that if human remains are unearthed during construction, no further disturbance shall occur until the county coroner has made the necessary findings as to the origin and disposition of the remains pursuant to Public Resources Code Section 5097.98. In accordance with applicable regulations, construction activities shall halt in the event of discovery of human remains, and consultation and treatment shall occur as prescribed by law. If human remains discovered are of Native American origin, it shall be necessary to comply with state laws relating to the disposition of Native American burials that fall within the jurisdiction of the California Native American Heritage Commission (Public Resources Code Section 5097). According to California Health and Safety Code, six or more human burials at one location constitute a cemetery (Section 8100), and disturbance of Native American cemeteries is a felony (Section 7052).

MM-CR-6 In the event a previously unknown fossil is uncovered during Project construction, all work shall cease until a certified paleontologist can investigate the finds and make appropriate recommendations. Any artifacts uncovered shall be recorded and removed for storage at a location to be determined by the monitor.

*(b) Facts in Support of Findings*

The potential cultural resources impacts from construction and operational activities have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures identified in the Draft EIR with the exception of cumulative impacts to historical resources as discussed in Section VII below. With implementation of mitigation measure, MM-CR-3, project and cumulative

impacts related to street lights would be less than significant. With implementation of mitigation measures, MM-CR-4 and MM-CR-5, project and cumulative impacts related to archaeological impacts would be less than significant. With implementation of mitigation measure, MM-CR-6, project and cumulative impacts related to paleontological impacts would be less than significant. Further, to address similar concerns with the adjacent Beverly Hilton Revitalization Project, it is expected that similar mitigation measures would be applied to that project if it is approved.

### C. GEOLOGY AND SOILS

The Project's potential impacts on geology and soils that can be mitigated or are otherwise less than significant is discussed in Section 4.4, Geology and Soil, of the Draft EIR. Identified impacts include seismic groundshaking, ground failure, and expansive soils.

#### 1. Seismic Groundshaking

Several active faults are located within 10 miles of the Project site; as such, the Project site may be subject to strong ground shaking in the event of an earthquake. Therefore, people and structures may be exposed to potential adverse effects from seismic groundshaking.

##### (a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

MM-GEO-1 The proposed Project shall be designed and constructed in accordance with recommendations contained in the Report of Geotechnical Investigation prepared by Mactec Engineering and Consulting, Inc. and in accordance with all applicable local, state, and federal regulations, such as the Uniform Building Code (UBC) and Title 9 of the Beverly Hills Municipal Code.

##### (b) *Facts in Support of Findings*

The potential geological impacts from construction and operational activities of the Project have been eliminated or substantially lessened to a level of less than significant by virtue of the mitigation measures identified in the Draft EIR. Recommendations and specifications of the geotechnical investigation, as well as compliance with all City Building and Safety standards and requirements, would guide the design and construction of the Project, and are intended to mitigate seismic impacts. In addition, the Project would be required to conform to the latest edition of the UBC, which includes design measures to mitigate against seismic hazards. The UBC and City of Beverly Hills building standards would be enforced through review of plans and inspection of structures during construction. By incorporating recommendations of the Report of Geotechnical Investigation, included in the EIR as Appendix 4.4, as required through implementation of mitigation measure MM-GEO-1, and complying with the UBC and City of Beverly Hills standards, Project impacts related to ground shaking would be less than significant.

## 2. Ground Failure

While the Project site is not located within a designated Liquefaction Hazard Zone, due to the shallow depth of groundwater and required excavation activities, there is the potential for the Project to be constructed on a geologic unit or soil that is unstable or could become unstable as a result of construction-related activities. This impact is potentially significant.

### (a) *Findings*

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, mitigation measure MM-GEO-1, discussed above, imposed upon the Project mitigates impacts to less than significant levels.

### (b) *Facts in Support of Findings*

Due to the shallow depth of groundwater, encountered at depths of 30 to 45 feet below the existing surface, dewatering activities on the Project site would be required during construction of the subterranean parking garage. Drilled piles used to shore the garage walls would reach depths of approximately 35 feet. During construction, dewatering would be achieved with temporary dewatering wells, storage tanks, and filters. The applicant would comply with all aspects of the City's dewatering ordinance, Section 9-4-610 of Article 6 of Chapter 4 of Title 9 of the Beverly Hills Municipal Code. Consistent with mitigation measure MM-HYDRO-1 of Section 4.6 of the Draft EIR, dewatering activities would require an NPDES Permit for Groundwater Discharge from the Los Angeles Regional Water Quality Control Board ("LARWQCB").

The depth of the finished slab of the lower parking level (P2) would be 32 feet below ground surface at the northern portion of the site and approximately 10 feet below ground surface at the southern portion of the site. Given the above, operation of Project would also require permanent dewatering activities. The applicant would comply with all aspects of the City's dewatering ordinance, Section 9-4-610 of Article 6 of Chapter 4 of Title 9 of the Beverly Hills Municipal Code. Consistent with mitigation measure MM-HYDRO-1, dewatering activities would require an NPDES Permit for Groundwater Discharge from the LARWQCB.

As the proposed structures would be designed, constructed and operated in conformance with recommendations included within the Report of Geotechnical Investigation, included in the EIR as Appendix 4.4, and all applicable local, state, and federal regulations, such as the UBC, consistent with mitigation measure MM-GEO-1 and with mitigation measure MM-HYDRO-1, impacts to life and property from unstable soils would be less than significant.

## 3. Expansive Soils

Upper soils on the Project site have medium expansive potential. Additionally, the shallow depth of groundwater on the site has the potential to result in significant geologic and soils impacts.

(a) Findings

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, mitigation measure MM-GEO-1, discussed above, imposed upon the Project mitigates impacts to less than significant levels.

(b) Facts in Support of Findings

As mentioned above, upper soils on-site have a medium expansion potential. The below-grade parking structure planned would be constructed to a depth of approximately 35 feet below grade. Groundwater was measured at 30 to 45 feet below ground surface, but the historic water level has reached 28 to 30 feet. As the depth of groundwater has been known to fluctuate to up to 28 feet below grade, the likelihood of expansive soils impacting the proposed structures at some future date is probable, which represents a potentially significant impact prior to the implementation of mitigation. However, as the Project would be designed and constructed in conformance with recommendations included within the Report of Geotechnical Investigation (EIR Appendix 4.4) and all applicable local, state, and federal regulations, such as the UBC, consistent with mitigation measure MM-GEO-1 above, impacts to life and property from expansive soils would be less than significant.

**D. HAZARDS AND HAZARDOUS MATERIALS**

The Project's potential impacts on hazards and hazardous materials that can be mitigated or are otherwise less than significant is discussed in *Section 4.5, Hazards and Hazardous Materials*, of the Draft EIR. Identified impacts include asbestos, lead paint, mold, PCB's, and hazardous materials within a quarter mile from a school.

1. Asbestos - Lead Paint - Mold - PCBs

The Phase I Environmental Site Investigation (EIR Appendix 4.5) indicated a moderate potential for the existing building materials to contain asbestos. All asbestos containing materials would be removed and disposed of prior to demolition or renovation in accordance with the requirements of SCAQMD Rule 1403 - Asbestos Emissions from Demolition/Renovation Activities.

The Phase I Environmental Site Assessment also indicated that suspect lead-based paint, visible mold growth, and old unused fluorescent light ballasts potentially containing PCBs exist on the Project site. Construction activities therefore have the potential to temporarily result in upset and/or accident conditions involving the accidental release of hazardous materials into the environment.

Operation of the Project would not include uses with the potential to generate large quantities of hazards and/or toxic materials, and thus would not have a high potential to cause fires or result in accidents from hazardous materials or substances.

(a) Findings

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures imposed upon the Project mitigate impacts to less than significant levels:

MM-HAZ-1 Any suspect lead-based paint shall be sampled prior to any renovations or demolition activities. Any identified lead-based paint located within buildings scheduled for renovation or demolition, or noted to be damaged, shall be abated by a licensed lead-based paint abatement contractor, and disposed of according to all state and local regulations.

MM-HAZ-2 The property owner shall ensure that the source(s) of moisture intrusion resulting in the growth of mold within the building are repaired. As the building is scheduled for demolition, it is not necessary to abate the mold-impacted materials.

MM-HAZ-3 All old unused fluorescent light ballasts potentially containing PCBs shall be properly removed and disposed of prior to demolition activities.

*(b) Facts in Support of Findings*

The Phase I Environmental Site Assessment (EIR Appendix 4.5) indicated that suspect lead-based paint, visible mold growth, and old unused fluorescent light ballasts exist on the project site; all are recognized as potential environmental conditions. Therefore, the presence of the aforementioned recognized potential environmental conditions could result in potentially significant impacts associated with the release of hazardous materials into the environment. However, incorporation of mitigation measures identified above would reduce potentially significant impacts to less than significant levels by properly handling and disposing the materials.

**2. Hazardous Materials within a Quarter-Mile of a School**

El Rodco School, a Beverly Hills Unified School District elementary school, is located immediately north of the Project site, across Wilshire Boulevard, and therefore lies within a one-quarter mile of the Project site.

*(a) Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures imposed upon the Project mitigate impacts to less than significant levels:

MM-HAZ-1 Any suspect lead-based paint shall be sampled prior to any renovations or demolition activities. Any identified lead-based paint located within buildings scheduled for renovation or demolition, or noted to be damaged, shall be abated by a licensed lead-based paint abatement contractor, and disposed of according to all state and local regulations.

MM-HAZ-2 The property owner shall ensure that the source(s) of moisture intrusion resulting in the growth of mold within the building are repaired. As the building is scheduled for demolition, it is not necessary to abate the mold-impacted materials.

MM-HAZ-3 All old unused fluorescent light ballasts potentially containing PCBs shall be properly removed and disposed of prior to demolition activities.

(b) *Facts in Support of Findings*

The presence of the aforementioned hazardous materials could result in potentially significant impacts associated with hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school. However, incorporation of the mitigation measures identified above would reduce potentially significant impacts associated with the release of hazardous materials during demolition activities to less than significant levels. Following standard protocols for removal of these potentially hazardous materials will ensure that potential impacts to the nearby school are avoided. While parents of children attending El Rodeo School have expressed concern about demolition, no new impacts have been identified.

E. **HYDROLOGY AND WATER QUALITY**

The Project's potential impacts on hydrology and water quality that can be mitigated or are otherwise less than significant is discussed in Section 4.6, Hydrology and Water Quality, of the Draft EIR. Identified impacts include construction and operational impacts to surface water quality.

1. Surface Water Quality – Construction

During Project construction, demolition and grading activities would expose soils to erosion and temporarily increase suspended solids in surface water flows originating on the Project site during a storm event. Additionally, dewatering may be necessary during excavation because of shallow groundwater, and could degrade downstream water quality through discharge of treated water into the City storm drain system. This could violate water quality standards and waste discharge requirements and is a potentially significant impact.

(a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures imposed upon the Project mitigate impacts to less than significant levels:

MM-HYDRO-1 Prior to start of soil-disturbing activities at the site, a Notice of Intent (NOI) and SWPPP shall be prepared by the applicant in accordance with, and in order to partially fulfill, the California SWRCB Order No. 99-08-DWQ, NPDES General Permit No. CAS000002 (General Construction Permit). The SWPPP shall meet the applicable provisions of Sections 301 and 402 of the CWA and Title 9, Chapter 4, Article 5, Storm Water and Urban Runoff Pollution Control from the Beverly Hills Municipal Code by requiring controls of pollutant discharges that utilize best available technology (BAT) and best conventional pollutant control technology (BCT) to reduce pollutants. Examples of BAT/BCT that may be implemented during site grading and construction could include straw hay bales, straw bale inlet filters, filter barriers and silt fences.

MM-HYDRO-2 Prior to issuance of any grading or building permits, the Project applicant shall prepare and submit to the City of Beverly Hills a SWPPP to be administered throughout all phases of grading and Project construction. The SWPPP shall incorporate BMPs to ensure that potential water quality impacts during construction phases are minimized. Examples of practices that may be implemented

during grading and construction could include straw hay bales, straw bale inlet filters, filter barriers, and silt fences.

*(b) Facts in Support of Findings*

Consistent with mitigation measure MM-HYDRO-1, dewatering activities would require an NPDES Permit for Groundwater Discharge from the LARWQCB. This permit would ensure that water discharged to the City's storm drain system would meet all NPDES requirements for suspended solids, organic material, and other water quality parameters, thereby reducing water quality impacts associated with this activity to a less than significant level. Additionally, consistent with mitigation measure MM-HYDRO-2, prior to issuance of any grading or building permits, the applicant must receive City approval of the SWPPP. Potential water quality impacts of development of the Project would be less than significant through the preparation and implementation of the SWPPP and the best management practices (BMPs) as specified in the NPDES permit.

2. Surface Water Quality – Operations

Permanent dewatering of subterranean buildings and structures may be necessary and could degrade downstream water quality through discharge of treated water into the City storm drain system, in violation of water quality standards and waste discharge requirements. This is a potentially significant impact. Additionally, potential disposition of urban pollutants generated during operation of the proposed Project, including pollutants generated by motor vehicles and the maintenance of landscaped areas, could result in the potential for the Project to violate water quality standards and waste discharge requirements. This is a potentially significant impact.

*(a) Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant surface water quality effects as identified in the Draft EIR. Specifically, the following mitigation measures imposed upon the Project mitigate impacts to less than significant levels:

MM-HYDRO-1 Prior to start of soil-disturbing activities at the site, a Notice of Intent (NOI) and SWPPP shall be prepared by the applicant in accordance with, and in order to partially fulfill, the California SWRCB Order No. 99-08-DWQ, NPDES General Permit No. CAS000002 (General Construction Permit). The SWPPP shall meet the applicable provisions of Sections 301 and 402 of the CWA and Title 9, Chapter 4, Article 5, Storm Water and Urban Runoff Pollution Control from the Beverly Hills Municipal Code by requiring controls of pollutant discharges that utilize best available technology (BAT) and best conventional pollutant control technology (BCT) to reduce pollutants. Examples of BAT/BCT that may be implemented during site grading and construction could include straw hay bales, straw bale inlet filters, filter barriers and silt fences.

MM-HYDRO-2 Prior to issuance of any grading or building permits, the Project applicant shall prepare and submit to the City of Beverly Hills a SWPPP to be administered throughout all phases of grading and Project construction. The SWPPP shall incorporate BMPs to ensure that potential water quality impacts during construction phases are minimized. Examples of practices that may be implemented

during grading and construction could include straw hay bales, straw bale inlet filters, filter barriers, and silt fences.

(b) *Facts in Support of Findings*

Consistent with mitigation measure MM-HYDRO-1, dewatering activities occurring post-construction would have to adhere to an NPDES Permit for Groundwater Discharge from the LARWQCB. Under recent regulations adopted by the LARWQCB, projects are required to implement a Standard Urban Storm Water Mitigation Plan (SUSMP) during the operational life of the Project to ensure that stormwater pollution is addressed by incorporating Best Management Practice (BMP) features into the design of the Project. This permit would ensure that water discharged to the City's storm drain system would meet all NPDES requirements for suspended solids, organic material, and other water quality parameters thereby reducing stormwater quality impacts associated with this activity to a less than significant level. Additionally, consistent with mitigation measure MM-HYDRO-2, prior to issuance of any grading or building permits, the City must approve the Stormwater Pollution Prevention Program (SWPPP). Potential water quality impacts of development of the Project would be less than significant through the preparation and implementation of the SWPPP and the BMPs as specified in the NPDES permit.

F. NOISE

The Project's potential noise-related impacts that can be mitigated or are otherwise less than significant are discussed in Section 4.8, Noise, of the Draft EIR. Identified impacts include interior and exterior noise levels generated by roadway traffic.

1. Mobile-Source Noise

Traffic noise generated on Santa Monica Boulevard, Wilshire Boulevard, and Merv Griffin Way in the future "with project" condition would approach or exceed the multi-family residential noise standard of 65 dB(A). This is a significant impact. Additionally, traffic noise along Santa Monica and Wilshire Boulevards would exceed the interior noise threshold of 45 dB(A) CNEL for on-site residential spaces even with compliance with Title 24 requirements. This is also a significant impact.

(a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effect identified in the Draft EIR. Specifically, the following mitigation measures imposed upon the Project mitigates impacts to less than significant levels:

NOISE-2 The applicant shall implement sound attenuation features to reduce noise levels at all private outdoor livable spaces (i.e., balconies) on building floors 1 through 6 fronting Wilshire and Santa Monica Boulevards and Merv Griffin Way. Such features may include berms made of sloping mounds of earth, walls and fences constructed of a variety of materials, thick plantings of trees and shrubs, or combinations of these materials, or the use of solid material for balcony construction such as double-paned or laminated glass, Plexiglas, or wood. Acoustical analysis shall be performed prior to the issuance of an occupancy permit to demonstrate that noise levels at the exterior livable spaces do not exceed state land use standards for residences. This requirement shall be

incorporated into the plans to be submitted by the applicant to the City of Beverly Hills for review and approval prior to the issuance of building permits.

**NOISE-3** The applicant shall incorporate building materials and techniques that reduce sound transmission through walls, windows, doors, ceilings, and floors of on-site residences in order to achieve interior noise levels that are below the state land use guidelines standards for interior noise. Such building materials and techniques may include double-paned windows, staggered studs, or sound-absorbing blankets incorporated into building wall design, or outdoor noise barriers erected between noise sources and noise-sensitive areas, such as berms made of sloping mounds of earth, walls and fences constructed of a variety of materials, thick plantings of trees and shrubs, or combinations of these materials. Acoustical analysis shall be performed prior to the issuance of an occupancy permit to demonstrate that noise levels in the interior livable spaces do not exceed state standards for residences. This requirement shall be incorporated into the plans to be submitted by the applicant to the City of Beverly Hills for review and approval prior to the issuance of building permits.

**(b) Facts in Support of Findings**

Implementation of **MM-NOISE-2** would reduce exterior noise levels by 7 to 10 dB(A), depending on the material(s) used, and would require an acoustical analysis prior to issuance of an occupancy permit to demonstrate that exterior livable spaces do not exceed state residential noise standards. As such, exterior noise levels for any proposed residential units on floors 1 through 6 adjacent to Merv Griffin Way, Santa Monica Boulevard and Wilshire Boulevard would be less than significant with mitigation. Implementation of **MM-NOISE-3** would reduce interior noise levels by 7 to 10 dB(A), depending on the material(s) used and would require an acoustical analysis prior to issuance of an occupancy permit to demonstrate that interior livable spaces do not exceed state residential noise standards. As such, interior noise levels for the proposed residential units on floors 1 through 6 adjacent to Santa Monica and Wilshire Boulevards would be less than significant with mitigation. In addition to the foregoing, the Project applicant, in response to comments and concerns of the Planning Commission, removed the loft residential units along Merv Griffin Way, thus increasing the distance between that private street and the nearest residential units. Further, the Applicant increased the setback of the north building from Wilshire Boulevard to approximately 72 feet, thus further decreasing the potential for noise impacts from Wilshire Boulevard traffic. Finally, the City prepared a revised noise study to consider the potential impacts of higher traffic counts at certain intersections. The revised noise study concluded that, with mitigation, all potential impacts would be less than significant.

**C. FIRE PROTECTION AND EMERGENCY SERVICES**

The Project's potential fire protection impacts that can be mitigated or are otherwise less than significant are discussed in Section 4.10.1, Fire Protection and Emergency Services, of the Draft EIR. Identified impacts include access and fire flow.

## 1. Access

The Beverly Hills Fire Department (BHFD) indicates that the proposed traffic signal at the intersection of Merv Griffin Way and Santa Monica Boulevard has the potential to slow emergency response times and inhibit access to the site. This is a potentially significant impact.

### (a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

**MM-FIRE-1** The proposed signal at the intersection of Santa Monica Boulevard and Merv Griffin Way shall be outfitted with an Opticom device, a traffic signal pre-emption used to control signalized intersections to allow the BHFD to provide a safe response route and to decrease response times to emergencies.

### (b) *Facts in Support of Findings*

Emergency access and circulation will be improved by the addition of a traffic signal at Merv Griffin Way and Santa Monica Boulevard. In response to the potential delay associated with a traffic signal, the BHFD has requested the installation of an Opticom device at the signal, which controls the light to facilitate the flow of emergency vehicles. This has been incorporated into the Draft EIR as **MM-FIRE-1**. With the ability to preempt the signal during an emergency response, the Beverly Hills Fire Department's ability to effectively respond to emergencies will be enhanced such that no significant impacts will result.

## 2. Fire Flow

The City Engineer has indicated that the fire flow of 1,000 to 1,500 gallons per minute (gpm) measured at hydrants serving the Project site may not be adequate flow for the Project. This is a potentially significant impact.

### (a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

**MM-FIRE-2** The 8-inch and 10-inch sections of the main feeding Hydrants No. 339, No. 340, No. 341, No. 342, and No. 343 along Wilshire Boulevard shall be replaced with a 12-inch main in order to achieve adequate fire flow for the Project. The line shall be replaced from the intersection of Wilshire Boulevard and Santa Monica Boulevard to the western boundary of the Project site. The Project applicant shall pay its "Fair Share," as determined by the City, towards the upgrade of the 8-inch and 10-inch sections of the main feeding Hydrants No. 339, No. 340, No. 341, No. 342, and No. 343 along Wilshire Boulevard prior to the issuance of building permits. Upgrade of the main shall be completed concurrently with Project construction and prior to building occupancy. The

Project applicant shall coordinate with the City so that construction of the upgraded main shall not conflict with construction of the Project.

*(b) Facts in Support of Findings*

The City Engineer recommends that the 8-inch and 10-inch sections of the line beneath Wilshire Boulevard which feeds the hydrants be upgraded to a 12-inch line in order to achieve sufficient fire flow for the Project and thereby meet the requirements outlined in the California Fire Code (Part 9 of Title 24). This has been incorporated into the Draft EIR as MM-FIRE-2. Implementation of the mitigations will ensure that adequate fire flows are available in the event that the Beverly Hills Fire Department must respond to a fire incident at the Project site.

**H. TRANSPORTATION, TRAFFIC, AND CIRCULATION**

The Project's potential traffic related impacts that can be mitigated or are otherwise less than significant are discussed in Section 4.11, Transportation, Traffic, and Circulation, of the Draft EIR. The traffic impacts that are reduced to less than significant levels include construction impacts, internal traffic control devices, and roadway feature design.

**1. Construction Trucks**

During the anticipated 24-month construction period, the provisions within the required Construction Management Plan would be followed. However, potentially significant impacts could result.

Trucks would queue along Sepulveda Boulevard and would travel east to the site along Wilshire Boulevard or Santa Monica Boulevard. Trucks would exit the site and proceed west to I-405 along Santa Monica Boulevard. However, construction trucks could result in potentially significant impacts because trucks would be traveling along already congested roadways, trucks could deviate from designated travel routes, and the number of trucks required to access the Project site during excavation could be as many as 300 trucks per day. As such, construction trucks could result in potentially significant impacts.

*(a) Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures imposed upon the Project mitigate impacts to less than significant levels:

**MM-TRAF-1** An Environmental Monitor shall be retained that will be responsible for monitoring compliance with the mitigation measures in the adopted Mitigation Monitoring Program. The name, phone number, and other contact information for the Environmental Monitor shall be posted on the construction trailer or other location visible to public view as determined by the Community Development Director. The developer shall deposit funds sufficient to pay for the Environmental Monitor who will be hired by and work for the City.

**MM-TRAF-2** The Environmental Monitor shall inform the public of the ongoing Project progress and exceptions to the expected plans. This shall include sending a quarterly mailer to all property owners within 1,000 feet of the exterior boundaries of the property.

The developer shall be responsible for the full cost of the mailer including postage. The Environmental Monitor shall also respond to requests for information and assistance from members of the public when impacts raise special concerns.

MM-TRAF-3 A Construction Relations Officer shall be assigned and a hotline number shall be published on construction signage placed along the boundary of the Project site, along Wilshire Boulevard, Merv Griffin Way, and Santa Monica Boulevard, to address day-to-day issues.

MM-TRAF-4 The Developer, Construction Relations Officer, and Environmental Monitor shall each provide monthly Project updates to the Community Development Department (CDD) Director, unless the CCD Director determines that more frequent updates are otherwise warranted due to resident complaints.

MM-TRAF-5 The Developer shall revise and finalize the Draft Construction Traffic Management Plan to minimize traffic flow interference from construction activities. The Final Construction Traffic Management Plan shall be submitted to the City and shall include plans to accomplish the following:

- Maintain existing access for land uses in the proximity of the Project site during Project construction.
- Schedule deliveries and pick-ups of construction materials and equipment for non-peak travel periods.
- Coordinate haul trucks, deliveries and pick-ups to reduce the potential for trucks waiting to load or unload for protracted periods of time.
- Minimize obstruction of through-traffic lanes on Wilshire Boulevard and Santa Monica Boulevard, and prohibit obstruction of these same lanes during peak hours.
- Construction equipment traffic from the contractors shall be controlled by flagmen.
- Designated transport routes for heavy trucks and haul trucks to be used over the duration of the proposed Project.
- Schedule vehicle movements to ensure that there are no vehicles waiting off site and impeding public traffic flow on streets.
- Establish: (1) requirements for loading/unloading and storage of materials on the Project site, (2) where parking spaces would be encumbered, (3) length of time traffic travel lanes can be encumbered, (4) sidewalk closings or pedestrian diversions to ensure the safety of the pedestrian and access to local businesses.

- Prior to submittal to the City of Beverly Hills, the Developer shall provide the Construction Traffic Management Plan and Construction Working Parking Management Plan to the Beverly Hills Unified School District and the Los Angeles County Metropolitan Transit Authority for their review and comment. The Developer shall notify the City of Beverly Hills of all comments received from these agencies related to the Construction Traffic Management Plan.
- Coordinate with adjacent businesses and emergency service providers to ensure adequate access exists to the Project site and neighboring businesses.
- Prohibit parking for construction workers except on the Project site and any designated off-site parking locations. These off-site locations will require the approval of the City of Beverly Hills. These off-site parking locations cannot include any parking garage in the City of Beverly Hills or any residential streets including Whittier Drive and those streets which connect to Whittier Drive.
- The Final Construction Traffic Management Plan shall be submitted and approved by the City no later than 30 days prior to commencement of construction and shall include 1) a requirement for use of double belly trucks to the maximum extent feasible to reduce the number of truck trips, 2) provisions for the Environmental Monitor to oversee and coordinate concurrent construction activities at 9900 Wilshire and the Beverly Hilton Project, 3) an Action Plan to avoid construction-related traffic congestion and how to respond to unforeseen congestion that may occur, 4) requiring truck access and deliveries in non-peak traffic periods to the greatest extent feasible, and 5) prohibition on queuing of construction-related vehicles on public streets in City.
- The Final Construction Traffic Management Plan shall be submitted and approved by the City no later 30 days prior to commencement of construction.

MM-TRAF-6 The Developer shall submit a Construction Workers Parking Plan identifying parking locations for construction workers. To the maximum extent feasible, all worker parking shall be accommodated on the Project site. During demolition and construction activities when construction worker parking cannot be accommodated on the Project site, the Plan shall identify alternate parking locations for construction workers and specify the method of transportation to and from the Project site for approval by the City 30 days prior to commencement of construction. The Construction Workers Parking Plan must include appropriate measures to ensure that the parking location requirements for construction workers will be strictly enforced. These include, but are not limited to, the following measures:

- All construction contractors shall be provided with written information on where their workers and their subcontractors are permitted to park and

provide clear consequences to violators for failure to follow these regulations. This information will clearly state that no parking is permitted on residential streets north of Wilshire or in public parking structures;

- No parking for construction workers shall be permitted except within designated areas. The contractor shall be responsible for informing subcontractors and construction workers of this requirement, and if necessary, as determined by the Community Development Director, for hiring a security guard to enforce these parking provisions. The contractor shall be responsible for all costs associated with parking and the enforcement of this mitigation measure; and
- In lieu of the above, the Project applicant/construction contractor has the option of phasing demolition and construction activities such that all construction worker parking can be accommodated on the Project site throughout the entire duration of demolition, excavation and construction activities.

*(b) Facts in Support of Findings*

Although the applicant's preliminary Construction Management Plan provides truck staging areas and designates appropriate travel routes to access the site, the trucks could still have a potentially significant impact to the adjacent roadway network due to the following:

- The roadways designated as the truck routes for the Project are already some of the most congested in the City of Beverly Hills and the City of Los Angeles;
- There is no guarantee that truck traffic will not deviate from the designated routes and impact other roadways when traveling to and from the site; and
- The number of trucks required to access the site during the excavation process could be as many as 300 trucks per day over a period of five to six weeks.

Based on the above, the truck traffic from construction of the proposed Project could lead to temporary but significant construction-related traffic impacts. Given the above factors, the Project-related impact is significant prior to the incorporation of mitigation. Incorporation of MM-TRAF-1 through MM-TRAF-6 would reduce impacts associated with truck and construction worker traffic to less than significant because these measures provide ongoing monitoring mechanisms, specific performance criteria (such as limitations on peak hour construction traffic) and parking plans that will reduce potentially significant truck traffic impacts to less than significant levels.

2. Delivery and Staging of Construction Equipment

The influx of construction equipment and materials could result in potentially significant impacts because there would be intermittent periods when large numbers of material deliveries would be required, the use of large trucks to deliver materials and equipment could contribute to and worsen roadway congestion, and delivery vehicles may need to temporarily queue on adjacent roadways such as Wilshire

Boulevard, Santa Monica Boulevard, and Merv Griffin Way as they enter onto the Project site. As such, potentially significant impacts could result.

*(a) Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, mitigation measures MM-TRAF-1 through MM-TRAF-6, discussed above, imposed upon the Project mitigate impacts to less than significant levels.

*(b) Facts in Support of Findings*

An additional source of construction traffic would occur from the transportation of materials and equipment to and from the site. One example would be concrete, of which substantial quantities would be required for the proposed parking garage and the buildings on-site. Other materials could include plumbing supplies, electrical fixtures, wood and steel framing, and even items used in furnishing the condominiums. These materials would have to be delivered to and stored on the site during certain parts of the construction period. It is anticipated that these deliveries would occur through vehicles of various sizes including small delivery trucks to cement mixer trucks, and possibly 18-wheel trucks.

Additionally, construction equipment would have to be delivered to the site. This equipment could include cranes, bulldozers, excavators, and other large items of machinery. It is anticipated that most of the heavy equipment would be transported to the site on large trucks such as 18-wheelers or other similar sized vehicles and would remain on-site until the piece of equipment is no longer needed.

The influx of this material and equipment could create impacts on the adjacent roadway network based on the following considerations:

- There may be intermittent periods when large numbers of material deliveries are required such as when concrete trucks will deliver the needed material for the parking garage and the buildings;
- Some of the materials and equipment could require the use of large trucks (18-wheelers) which can create additional congestion on the adjacent roadways; and
- Delivery vehicles may need to queue temporarily on Merv Griffin Way as they enter onto and deliver their items to the Project site. The Planning Commission imposed conditions on the Project that would prohibit such queuing on Wilshire Boulevard and Santa Monica Boulevard.

Once equipment and materials are delivered, they will be stored on-site. Given the construction plan for the site, discussed above, it is anticipated that the site will be able to accommodate staging and storage areas for the construction materials and equipment; thus minimizing impacts to adjacent streets. Further, the mitigation measures require staging of vehicles to avoid traffic obstruction and preclude the delivery of equipment during peak hours to minimize and traffic disruptions from such deliveries. Therefore, impacts associated with delivery and staging of material and equipment would be less than significant.

### 3. Construction Worker Parking

Construction worker parking would be available on the Project site during all phases of construction, except during construction of the subterranean parking structure. Off-site worker parking would be provided during this phase of construction at the Federal Building in West LA and at the adjacent VA facility. Shuttles would be provided to facilitate travel between these off-site parking locations and the Project site. The off-site construction worker parking could result in a potentially significant impact associated with workers parking closer to the Project site in adjacent residential neighborhoods. As such, mitigation is required to reduce this impact to a less than significant level.

#### *(a) Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, mitigation measures MM-TRAF-1 through MM-TRAF-6, discussed above, imposed upon the Project mitigate impacts to less than significant levels.

#### *(b) Facts in Support of Findings*

Construction activity on the Project site would result in potentially significant, but temporary, parking impacts. This impact would result from potential worker parking spill-over. The Project applicant has prepared a Draft Construction Traffic Management Plan, which addresses the issues above. Mitigation includes the preparation and submittal of a Construction Workers' Parking Plan (MM-TRAF-6), which requires off-site parking, shuttles, strict enforcement, prohibition of construction parking in adjacent neighborhood areas, retention of security personnel to enforce these restriction, or in the alternative, providing parking on-site.

Additionally, construction traffic and parking would be controlled in accordance with City standards contained in the Beverly Hills Municipal Code. With implementation of mitigation, as discussed above, submittal of and adherence to the Final Construction Management Plan, Construction Workers' Parking Plan, and adherence to the Municipal Code, potential traffic impacts from construction activities on the Project site would be less than significant.

### 4. Internal Traffic Control Devices

The site plans of the parking garage indicate that there will be some internal traffic control devices at the exits to the parking garage. In particular, there are several locations where stop lines are noted. However, there are no notations on the current site plan related to any internal traffic control devices within the Project site, either at the Project entrances or exits or along the internal roadway provided by the Project. Therefore, impacts to on-site circulation would be potentially significant in the absence of internal traffic control devices.

#### *(a) Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

MM-TRAF-7 The Project applicant shall revise the Project site plan to indicate on-site traffic control planned for the Project. At a minimum, all traffic control devices should be placed at all Project exits onto Wilshire Boulevard, Santa Monica Boulevard, and Merv Griffin Way prior to the occupancy of any of the new buildings proposed on the site. .

*(b) Facts in Support of Findings*

Mitigation, as described above, is included in order to reduce this potentially significant impact to a less than significant level. Incorporation of appropriate traffic controls before occupancy of the building ensures that, upon occupancy, driveways will function in a safe and controlled manner, thus rendering any potential impacts to less than significant.

5. Roadway Feature Design

As part of the proposed Project, a portion of Santa Monica Boulevard would be reconstructed. The proposed reconstruction would comply with all applicable roadway design standards related to lane widths and sidewalk widths.

The Project would also construct a private roadway along the western edge of the Project site. Based on the current site plan, this roadway would be 20 feet wide with one travel lane in each direction. This width is acceptable based on standardized criteria from American Association of State Highway and Transportation Officials (AASHTO). Therefore, all Project driveways are in accordance with industry and City standards.

All Project driveways exceed the City's minimum width standard and all Project driveways classified as residential or commercial do not exceed the City's maximum allowable width. Therefore, all Project driveways are designed in accordance with industry and City standards.

Curb radii at the entry way on Wilshire Boulevard, however, were measured to be 15 feet, which is indicative of a design speed of 10 miles per hour. On many roadways within the City of Beverly Hills, this radius may be desirable, however such a minimum radii could prove problematic on the driveway located on Wilshire Boulevard. There is no deceleration lane for turning vehicles from Wilshire Boulevard into the Project site, meaning that vehicles would have to decelerate in the travel lane to turn safely. In order to reduce the severity of the potential deceleration impact, the Project site plan must be revised to increase the curb radius at Wilshire Boulevard to allow vehicles traveling 25-35 mph to turn into the Project. Therefore, implementation of mitigation would reduce impacts associated with the curb radii at the Wilshire Boulevard driveway to less than significant.

*(a) Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

MM-TRAF-8 The Project applicant shall revise the Project site plan to increase the curb radius at the driveway on Wilshire Boulevard to allow vehicles traveling 25 to 35 mph to turn safely.

(b) *Facts in Support of Findings*

Vehicles traveling on Wilshire Boulevard are able to travel at high speeds outside of the peak traffic hours and may be unable to decelerate safely in the travel lane in order to make safe right turn movements into the Project from Wilshire Boulevard. The Wilshire driveway has a sharp bend for entering vehicles, which could have difficulty maneuvering after making the abrupt right turn. In order to reduce the severity of this impact, the Project site plan would need to be revised to increase the curb radius at Wilshire Boulevard to allow vehicles traveling 25-35 mph to turn into the Project. Therefore, implementation of mitigation, as discussed above, would increase the margin of safety for vehicles navigating this turn and reduce impacts associated with the curb radii at the Wilshire Boulevard driveway to less than significant. The applicant has revised the plans in accordance with Planning Commission comments and provides a more gentle curb return which allows negotiations of the turn at higher speeds, thus minimizing the need for vehicles to substantially decelerate in Wilshire Boulevard travel lanes in order to safely access the Project site. As section 3.1 of the Final EIR states, the alternative approach of allowing a right-turn deceleration lane is not feasible because of the adjacent gas station driveway.

Pursuant to mitigation measure MM-TRAF-8, the plans must be revised, and these revisions must be approved by the City's Community Development Department and City Traffic Engineer before issuance of a building permit.

6. Cumulative Construction Impacts

Construction activities, truck traffic, delivery of construction material and equipment, and construction worker parking from the proposed Project simultaneously with construction of the adjacent Beverly Hilton Revitalization Plan would result in potentially significant cumulative construction traffic impacts.

(a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the Project's contribution to cumulative impacts as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates the cumulative impacts to less than significant levels:

MM-TRAF-9 The applicant for the 9900 Wilshire Project shall coordinate with the applicant for The Beverly Hilton Revitalization Plan during all phases of construction regarding the following:

- All temporary roadway closures shall be coordinated to limit overlap of roadway closures;
- All major deliveries for both projects shall be coordinated to limit the occurrence of simultaneous deliveries. The applicants shall ensure that deliveries of items such as concrete and other high-volume items shall not be done simultaneously;

- The applicants shall coordinate regarding the loading and unloading of delivery vehicles. Any off-site staging areas for delivery vehicles shall be consolidated and shared; and
- The applicants or their representatives shall meet on a regular basis during construction to address any outstanding issues related to construction traffic, deliveries, and worker parking.

(b) *Facts in Support of Findings*

The closest related project to the proposed Project would be the Beverly Hilton Revitalization Plan, which is located directly adjacent to the project site to the east. Most of the remaining related projects are a sufficient distance from one another to reduce the potential for cumulative construction-related traffic at any one location from having an effect. Construction phases of the Beverly Hilton Revitalization Plan are anticipated to overlap with construction phases of the 9900 Wilshire Project.

Due to the proximity of the 9900 Wilshire Project and the adjacent Beverly Hilton Revitalization Plan, the potential construction overlap could result in an increase in truck traffic on surrounding roadways, which could potentially cause traffic disruptions. Although both project applicants have prepared draft construction management plans that identify truck staging areas and designate appropriate travel routes to access the respective sites, truck traffic from simultaneous construction at both project sites could still result in a potentially significant impact to the roadway network in the vicinity of the project sites. In addition, trucks entering and exiting the two sites could result in traffic disruptions on roadways adjacent to the sites, including Wilshire Boulevard and Santa Monica Boulevard. Therefore, based on the anticipated overlap of the construction schedules and the proximity of the two project sites, construction-related truck traffic impacts potentially would be cumulatively significant.

Since the construction phases of the Beverly Hilton Revitalization Plan are anticipated to overlap with construction phases of the 9900 Wilshire Project, and due to the fact that the two sites are located immediately adjacent to one another, the influx of this material and equipment for construction of both projects could create impacts on the adjacent roadway network that result in traffic disruptions on roadways adjacent to the sites. Based on the above and the proximity of the two projects, construction-related traffic impacts would be cumulatively significant.

The Project applicant would provide construction worker parking on the Project site during all phases of construction, except during excavation and construction of the parking structure where the Project applicant would provide off-site worker parking at federal office buildings and an adjacent VA facility and shuttles would be provided to facilitate travel between these off-site locations and the construction-site as required by MM-TRAF-6. Even if shuttles are provided, it is likely that there may be some construction workers who, for personal convenience, attempt to park in areas adjacent to the site instead of at the designated off-site locations. Since construction phases of the proposed Project and the Beverly Hilton Revitalization Plan would likely overlap, the parking for construction workers for both projects has the potential to result in parking impacts in areas surrounding the two project sites. Therefore, the lack of available on-site parking for construction workers would result in a cumulatively significant short-term parking impact.

However, with implementation of mitigation measures MM-TRAF-6 and cumulative mitigation measure MM-TRAF-9, the Project's contribution to cumulative impacts and the cumulation impact itself associated with truck traffic, delivery of construction material and equipment, and construction workers parking would be reduced to less than significant due to controls to limit traffic obstructions, prohibitions on peak hour activities, and limitations on worker parking, along with enforcement controls for these measures.

No cumulatively considerable impacts associated with operation of the Project in combination with identified related projects would occur to transportation, circulation, or parking.

## I. WATER

The Project's potential in regard to water service impacts that can be mitigated or are otherwise less than significant is discussed in Section 4.12.1. Water, of the Draft EIR. Identified impacts include fire flow.

### 1. Fire Flow

According to the BHFD, although sufficient water supply exists to serve the Project, the fire flow of 1,000 to 1,500 gallons per minute from adjacent fire hydrants may be inadequate for the Project upon buildout. Further, the City Engineer has indicated that the fire flow may not be adequate for the Project. Impacts on fire flow are potentially significant.

#### (a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

MM-WTR-1 The 8-inch and 10-inch sections of the main feeding Hydrants No. 339, No. 340, No. 341, No. 342, and No. 343 along Wilshire Boulevard shall be replaced with a 12-inch main in order to achieve adequate fire flow for the Project. The line shall be replaced from the intersection of Wilshire Boulevard and Santa Monica Boulevard to the western boundary of the Project site. The Project applicant shall pay its "Fair Share" towards the upgrade of the 8-inch and 10-inch sections of the main feeding Hydrants No. 339, No. 340, No. 341, No. 342, and No. 343 along Wilshire Boulevard prior to the issuance of building permits. Upgrade of the main shall be completed concurrently with Project construction and prior to building occupancy. The Project applicant shall coordinate with the City so that construction of the upgraded main shall not conflict with construction of the proposed Project.

#### (b) *Facts in Support of Findings*

The City Engineer recommends that the 8-inch and 10-inch sections of the line beneath Wilshire Boulevard which feeds the hydrants be upgraded to a 12-inch line in order to achieve sufficient fire flow for the Project and thereby meet the requirements outlined in the California Fire Code (Part 9 of Title 24). This has been incorporated into the Draft EIR as MM-WTR-2, which is the same as MM-FIRE-2. With the incorporation of MM-WTR-2, impacts to water services would be less than significant. Implementation

of the mitigation will ensure that adequate fire flows are available in the event that the Beverly Hills Fire Department must respond to a fire incident at the Project site.

## J. WASTEWATER

The Project's potential in regard to wastewater service impacts that can be mitigated or are otherwise less than significant is discussed in Section 4.12.2, Wastewater, of the Draft EIR. Potential impacts identified include wastewater flow.

### 1. Wastewater Flow

The proposed restaurant would have the potential to contribute a heavier discharge of fats, oils, and grease into the sewer system than uses associated with the previous use of the site, a Robinsons-May store. These substances could clog the system and potentially result in decreased wastewater flow.

#### (a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the potentially significant wastewater flow environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

MM-WW-1 The proposed restaurant shall install a Fat, Oil and Grease (FOG) Interceptor to remove these substances from its wastewater before entering the sanitary sewer system. This device helps prevent these substances from clogging the sanitary sewer system. The device shall be regularly inspected by the Los Angeles County Department of Public Works.

#### (b) *Facts in Support of Findings*

The Department of Public Works recommends the installation of a Fat, Oil and Grease (FOG) Interceptor to remove these substances from restaurant generated wastewater before the wastewater is discharged into the City's sewer system. With implementation of mitigation measure MM-WW-1, the impact to wastewater flow would be less than significant because compounds with the potential to cause adverse impacts to the system would be removed from the wastewater before it is discharged into the system.

## K. ENERGY

The Project's potential in regard to energy service impacts that can be mitigated or are otherwise less than significant is discussed in Section 4.12.4, Energy, of the Draft EIR. Identified impacts include electricity and natural gas.

### 1. Electricity

The Project could require alterations to existing distribution facilities or the installation of new facilities or equipment such as transformers. This is a potentially significant impact.

(a) Findings

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant electricity related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates potential impacts to less than significant levels:

MM-ENG-1 Prior to submittal of final plans, the applicant shall make necessary alterations to the generation or distribution system as required by SCE. The applicant shall then provide to the Beverly Hills Community Development Department a letter from SCE which states that electricity will be provided to the proposed Project and that all applicable energy conservation features have been incorporated into the Project design.

(b) Facts in Support of Findings

The Project is estimated to result in a net decrease of approximately 1,231,623 kWh in electricity demand compared to the Robinsons-May store. Given that the Project's anticipated electricity demand would be lower than that of the Robinsons-May store or a similar commercial operation, it is not expected that major changes to the existing electricity system would be necessary. Nevertheless, the Project could potentially require alterations to existing distribution facilities or the installation of new facilities or equipment such as transformers, the provision of which may result in a significant impact. However, with implementation of MM-ENG-1, which requires that the applicant consult with SCE upon submittal of final plans, and implement appropriate energy conservation features, the impact to facilities would be less than significant. Further, the Project proposes a number of energy efficient design features that will further reduce energy demand.

2. Natural Gas

Project implementation may require alterations to existing distribution facilities or the installation of new facilities or equipment. This is a potentially significant impact.

(a) Findings

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant natural gas related environmental effect as identified in the Draft EIR. Specifically, the following mitigation measure imposed upon the Project mitigates impacts to less than significant levels:

MM-ENG-2 Prior to submittal of final plans, the applicant shall complete a load survey in accordance with the Gas Company procedures and make any necessary alterations to the distribution system as required by the Gas Company. The applicant shall then provide to the Beverly Hills Community Development Department a letter from the Gas Company which states that natural gas will be provided to the Project and that all applicable energy conservation features have been incorporated into the Project design.

(b) *Facts in Support of Findings*

The Project is projected to have a higher gas demand than the former use on the Project site, minor alterations to local distribution facilities, including conveyance infrastructure, may be required. The Gas Company has indicated that a load survey would be needed to determine if Project demand would exceed the capacity of any of its facilities or require new or altered facilities. However, a load survey can only be completed once plans detailing the quantity, British thermal unit (Btu) ratings, and use of gas consuming equipment on the Project site are submitted. Therefore, the provision that the applicant shall consult with the Gas Company upon submittal of final plans and implementation of applicable energy conservation features to conduct a load survey and complete any necessary alterations to the conveyance and/or distribution system is included as mitigation. With incorporation of MM-ENG-2, impacts to natural gas facilities would be less than significant. Further, the Project proposes a number of energy efficient design features that will further reduce energy demand. (See Specific Plan Section 4.8.)

**VII. Environmental Effects that Remain Significant and Unavoidable After Mitigation**

In the environmental areas of aesthetics, air quality, cultural resources, land use and planning, and noise and groundborne vibration there are instances where environmental impacts would remain significant and unavoidable after mitigation. These areas are discussed below.

**A. AESTHETICS**

1. Visual Character and Quality

New residential land uses on the Project site where none currently exist, increased development intensity, and building heights would alter the visual character and quality of the site and its surroundings and is a potentially significant impact.

(a) *Findings*

Specific economic, social or other considerations make infeasible any mitigation measures or Project alternatives identified in the FIR, however, changes or alterations have been required in or incorporated into the Project which substantially lessen the significant impacts identified in the EIR.

(b) *Facts in Support of Findings*

Project implementation would introduce new buildings and land uses that substantially increase development density and building heights on the Project site as compared to existing conditions. Accordingly, the Project would alter the visual character and quality of the site and its surroundings, which is a potentially significant impact. Alternatives that would reduce this impact to a level of insignificance were examined in the EIR. However, the City Council determined that each of these alternatives were infeasible for the reasons set forth in Section VIII. However, the Project has been modified to reduce the level of impact, even though the impact remains significant. The modifications that reduce these effects include increasing the setback of the north building from Wilshire Boulevard, reducing heights closest to Wilshire and stepping the building up in height, as the building progresses to the south, removing the loft buildings, increasing the open space areas, integrating open space near the

intersection of Santa Monica Boulevard and Merv Griffin Way, and increasing setbacks from the western property line. These changes incorporate elements of several alternatives, including Alternative 5 and variation 5A. However, the Revised Project is less intensive than this alternative and variation. The Applicant, through the Revised Project, has addressed the issue to the extent feasible.

No feasible mitigation is available to reduce the impact to a less than significant level.

The overriding social, economic, and other considerations set forth in the Statement of Overriding Considerations and in the Findings regarding Alternatives provide additional facts in support of these findings.

## 2. Cumulative Visual Character and Quality

The Project, considered together with the Beverly Hilton Revitalization Plan, could result in cumulatively significant impacts on the visual character and quality of the Project area.

### (a) *Findings*

Specific economic, social or other considerations make infeasible any mitigation measures or Project alternatives identified in the EIR that would reduce cumulative impacts to insignificance. However, changes or alterations have been required in or incorporated into, the Project which substantially lessen the Project's contribution to significant impacts identified in the EIR.

### (b) *Facts in Support of Findings*

The proposed Project in combination with the adjacent Beverly Hilton Revitalization Plan would result in changes to existing land uses in the City of Beverly Hills, as well as along the Wilshire Boulevard and Santa Monica Boulevard corridors, through the conversion of lower-density uses to higher-density uses. As with the Project, the adjacent Beverly Hilton Revitalization Plan would introduce new tower buildings, approximately 150 feet in height. The Project, in combination with this neighboring project, would substantially alter the visual character of the surrounding area and would therefore result in cumulative aesthetic impacts. Therefore, the 9900 Wilshire Project would result in a cumulative considerable, and therefore significant, contribution to cumulative impacts on the visual character of the Project site and surroundings, when considered together with related projects. However, the Project has been modified, as discussed in the foregoing Section III of this Resolution and in Section VIII.A.1 to substantially lessen the impacts. The cumulative impact, however, remains significant. Alternatives that would reduce the Project's contribution to cumulative impacts to a level of insignificance that is not cumulatively considerable were examined in the EIR. However, the City Council determines that each of these alternatives are infeasible for the reasons set forth in Section VIII. However, as described above, the Project has been revised to incorporate elements of several alternatives, including Alternative 5 and variation 5A to reduce aesthetic impacts. The Revised Project, as revised, is less intrusive than Alternative 5 or variation 5A.

No feasible mitigation is available to reduce the cumulative impacts to insignificance.

### 3. Views

Evaluation of views from nine viewpoints showed that Project impacts would be less than significant at eight viewpoints. Project implementation would adversely affect panoramic west-facing views from guestrooms in the Beverly Hilton Hotel's Wilshire Tower (Viewshed Nine). This is a potentially significant impact.

#### (a) *Findings*

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

No feasible mitigation is available to reduce the impact to a less than significant level.

#### (b) *Facts in Support of Findings*

Construction of the 9900 Wilshire Project, specifically the North and South Tower Buildings, would obstruct the existing panoramic views of trees and distant high-rise towers from west-facing guestrooms in the hotel's Wilshire Tower. This view obstruction is considered a significant impact and no feasible mitigation is available to reduce the impact to a less than significant level. Alternatives that would reduce this impact to a level of insignificance were examined in the EIR. However, the City Council determined that each of the alternatives are infeasible for the reasons set forth in Section VIII.

### 4. Views - Cumulative

The proposed Project, considered together with the Beverly Hilton Revitalization Plan which proposes residential towers at the western end of the hotel property, could result in cumulatively significant impacts on valued panoramic views from the hotel's Wilshire Tower guestrooms.

#### (a) *Findings*

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

#### (b) *Facts in Support of Findings*

Considered together with the Residence A building on the Beverly Hilton property, the North and South Tower buildings proposed on the 9900 Wilshire Project site would contribute to a significant visual impact from west-facing guestrooms in the hotel's Wilshire Tower. The proposed Project would result in a considerable contribution to a cumulatively significant impact. No feasible mitigation measures are available to reduce the significant impacts associated with obstructing panoramic views from west-facing hotel rooms in the adjacent Wilshire Tower of the Beverly Hilton. Alternatives that would reduce this impact to a level of insignificance were examined in the EIR. However, the City Council determined that each of the alternatives are infeasible for the reasons set forth in Section VIII.

## B. AIR QUALITY

### 1. Short-Term Construction Impacts

During the demolition, grading and excavation, and building construction phases of Project construction, oxides of nitrogen emissions (NOX), PM10 and PM2.5 would exceed established thresholds of significance, even with compliance with South Coast Air Quality Management District (SCAQMD) Rule 403 – Fugitive Dust. This is a potentially significant impact.

#### (a) Findings

Changes or alterations have been required in, or incorporated into the Project that substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures lessen the significant impact:

MM-AQ-1 The Developer shall prepare a Construction Traffic Emission Management Plan to minimize emissions from vehicles including, but not limited to, scheduling truck deliveries to avoid peak hour traffic conditions, consolidating truck deliveries, and prohibiting truck idling in excess of 5 minutes.

MM-AQ-2 The Contractor shall ensure that the use of all construction equipment is suspended during first-stage smog alerts.

MM-AQ-3 The Contractor shall promote the use of electricity or alternate fuels for on-site mobile equipment instead of diesel equipment to the extent feasible.

MM-AQ-4 The Contractor shall maintain construction equipment by conducting regular tune-ups according to the manufacturers' recommendations.

MM-AQ-5 The Contractor shall promote the use of electric welders to avoid emissions from gas or diesel welders, to the extent feasible.

MM-AQ-6 The Contractor shall promote the use of on-site electricity or alternative fuels rather than diesel-powered or gasoline-powered generators to the extent feasible.

MM-AQ-7 Prior to use in construction, the Project applicant and contractor will evaluate the feasibility of retrofitting the large off-road construction equipment that will be operating for significant periods. Retrofit technologies such as particulate traps, selective catalytic reduction, oxidation catalysts, air enhancement technologies, etc., will be evaluated. These technologies will be required if they are verified by the California Air Resources Board (ARB) and/or the U.S. Environmental Protection Agency (EPA) and are commercially available and can feasibly be retrofitted onto construction equipment.

MM-AQ-8 The Contractor shall ensure that traffic speeds on all unpaved roads are reduced to 15 miles per hour or less.

MM-AQ-9 The Contractor shall ensure that the Project site is watered at least three times daily during dry weather.

MM-AQ-10 The Contractor shall install wind monitoring equipment on-site, to the extent feasible, and suspend grading activities when wind speeds exceed 25 miles per hour per SCAQMD guidelines.

MM-AQ-11 The Contractor shall water storage piles by hand or apply cover when wind events are declared (wind speeds in excess of 25 miles per hour).

MM-AQ-12 The Contractor shall apply nontoxic chemical soil stabilizers on inactive construction areas (disturbed lands within construction projects that are unused for at least four consecutive days).

MM-AQ-13 The Contractor shall replace ground cover in disturbed areas as quickly as possible.

MM-AQ-14 The Project applicant shall retain a third-party air quality consultant to conduct continuous monitoring of the PM10 (dust) concentrations during the Project demolition, excavation and grading phases of Project construction (approximately 92 work days) to determine compliance with applicable air quality standards and regulations. Monitoring shall be accomplished using DustTrak™ aerosol monitors or other similar monitoring networks and shall meet the following requirements:

- The third-party consultant shall be approved by the City of Beverly Hills Planning Department.
- Costs for the monitoring network and tests by the third-party consultant shall be borne by the Project applicant.
- Monitors shall be located in such a manner that appropriate upwind (background) and two downwind locations from the Project are selected. The locations shall be selected in order to monitor the Project's contribution to ambient PM10 concentrations and to minimize the influence of dust contributions from outside sources. One downwind monitoring station shall be located at or near the El Rodeo School's southern perimeter. The other downwind monitor shall be located in an area beyond the Project boundary where the general public could be present for a period of more than one hour. The upwind and downwind directions shall be based on the prevailing daytime wind direction in the vicinity of the Project site. All locations shall be approved by the third-party air quality consultant and the Community Development Director.
- The monitoring network shall include at least one anemometer to measure wind speeds and directions.
- Each monitoring station shall be secured in such a manner to prevent access and tampering by unauthorized persons and to prevent damage to the equipment.

- Each monitoring station shall be sited in a location with access to necessary infrastructure (e.g., electricity needs, foundation requirements, internet connectivity).
- Monitors shall be calibrated using collocated filter-based samplers (Mini-Vol or other similar equipment). The third-party consultant shall calibrate the DustTrak™ monitors as needed to ensure that data is within acceptable margins of error as determined by manufacturer's specifications.
- The 5-hour rolling average dust concentration threshold is equal to the threshold specified in SCAQMD Rule 403 (50 micrograms per cubic meter) as determined by the difference between the upwind and downwind stations. The 1-hour average dust concentration threshold shall be set at a level of 150 micrograms per cubic meter to provide sufficient warning for on-site construction managers or supervisors to implement corrective measures. An exceedance of the 1-hour threshold shall not be deemed as a violation of any air quality standard or regulation.
- Monitoring shall be continuous and provide data at 5-minute intervals. The data shall report rolling 5-hour and rolling 1-hour average PM10 concentrations. Monitoring shall be active on any day that construction activity occurs during the demolition, excavation, and grading phases of Project construction. Data shall be made available to the third-party consultant, the City of Beverly Hills, the Project applicant, and the on-site contractor on a secured internet website. The general public shall have access to 5-hour rolling average PM10 concentrations on a publicly accessible website.
- Monitors shall be equipped with a visual alarm (strobe light or similar) that shall notify appropriate on-site construction managers or supervisors if established thresholds are exceeded. Additionally, an email shall be sent to appropriate on-site construction managers or supervisors if specified PM10 thresholds are exceeded.
- All corrective measures, as necessary to reduce emissions to acceptable levels, shall be implemented immediately. If immediate implementation of a specific corrective measure will result in the creation of a hazardous situation, as determined by the Environmental Monitor, construction activity shall be allowed to continue for a reasonable period of time, as determined by the Environmental Monitor, until such time that it is safe to implement that corrective measure. Corrective measures shall be documented by the construction contractor in a log book accessible to the third-party air quality consultant and the City of Beverly Hills. Records shall be maintained of the specific action taken, the time and date the corrective action was taken, and written verification by the appropriate on-site construction manager or supervisor that the corrective action was taken.

- The Project applicant and contractor shall develop a corrective action plan. The plan shall be prepared and finalized prior to the commencement of Project demolition. The plan shall indicate steps to safely and adequately reduce on-site dust emissions. The plan shall contain a list of possible corrective measures. The measures shall include, but not limited to, application of water or other soil stabilizers, temporary reduction in on-site vehicle speed, temporary reduction in construction activity, suspension of construction activity and other appropriate measures. The plan shall also require notification of the Principal of El Rodeo School and the Beverly Hills Unified School District Superintendent in the event of an exceedance of any of the established thresholds. The Project applicant and contractor shall obtain approval of the plan from the City of Beverly Hills Community Development Director prior to commencing demolition.

MM-AQ-15 The Project applicant and/or contractor shall comply with SCAQMD Rule 403 by ensuring visible dust emissions from the Project site do not go beyond the property line.

- The Project applicant and/or contractor shall designate a person located on-site who is trained and certified by the California Air Resources Board to conduct visible emissions evaluations (VEE). The designated person shall ensure compliance with SCAQMD Rule 403 by observing for visible dust emissions beyond the property line during daytime working hours. Observations shall be conducted in accordance with U.S. Environmental Protection Agency Method 9 (Title 40, Code of Federal Regulation, Part 60, Appendix A).
- The Beverly Hills Unified School District (BHUSD) shall provide the City of Beverly Hills with its schedule of outdoor activities and athletic events at El Rodeo School and Beverly Hills High School during the construction period as soon as the information becomes available. The City shall immediately provide this information to the Project applicant and contractor. The Project applicant and contractor shall require coordination of all construction activities so as to minimize the occurrence of high-emitting fugitive dust construction activities during the scheduled outdoor events to the extent feasible.
- In the event visible dust emissions are observed beyond the property line, the designated person shall immediately inform a lead supervisor or other appropriate managing personnel. The supervisor shall immediately implement corrective measures. If visible dust emissions are anticipated to impact El Rodeo School, the supervisor shall notify the Principal of El Rodeo School and the Beverly Hills Unified School District Superintendent. If immediate implementation of a corrective measure shall result in the creation of a hazardous situation, construction activity shall be allowed to continue for a reasonable period of time until such time that it is safe to implement corrective measures. Corrective measures shall be documented.

by the construction contractor in a log book accessible to the third-party air quality consultant and the City of Beverly Hills. Records shall be maintained of the specific action taken, the time and date the corrective action was taken, and written verification by the appropriate on-site construction manager or supervisor that the corrective action was taken.

*(b) Facts in Support of Findings*

Project implementation would incorporate required mitigation measures, described above, and comply with other required City of Beverly Hills regulations that will reduce construction emissions. The intent of these mitigation measures is to reduce the potential for incremental health impacts from Project construction. However, even with implementation of all feasible mitigation, construction of the Project would result in significant NOX emissions. While construction could be drawn out to reduce the NOX emissions on a daily basis, this would result in increased emissions over time for NOX and other pollutants due to the longer construction period. Thus, the City Council finds that such measures would not be environmentally beneficial and that such measures are socially infeasible because each would extend the period that the community is exposed to the impacts of construction. However, taller construction enclosures have been required by the Planning Commission to help minimize off-site migration of particulate matter. Further, CARB recently adopted an In-Use Off-Road Diesel Vehicle Control Measure that is aimed at reducing PM10, PM2.5 and NOX emissions from construction equipment and other diesel-fueled off-road vehicles. Certain vehicles would have to comply with the new regulation as early as 2010. This could also lead to further emissions reductions, thereby reducing the potential for incremental health impacts.

2. Localized Significance Threshold (LST) – Construction

The Localized Significance Threshold (LST) analysis shows that maximum 24-hour PM10 and PM2.5 concentrations are anticipated to exceed the SCAQMD threshold of significance at the nearest residential and sensitive receptors during construction.

*(a) Findings*

Changes or alterations have been required in, or incorporated into, the Project that substantially lessen the significant related environmental effect as identified in the Draft EIR. Specifically, mitigation measures AQ-1 through AQ-15, discussed above, imposed upon the Project lessen the significant impact.

*(b) Facts in Support of Findings*

The LST analysis shows that maximum 24-hour PM10 concentrations are anticipated to exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site. The maximum 24-hour PM2.5 concentrations are also anticipated to exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site, but by a smaller margin than PM10. The impacts suggest that PM10 emissions could exceed the limitations in SCAQMD Rule 403.

The EIR identifies feasible mitigation measures that would reduce the impacts, although not to less than significant levels. Further mitigation, at the suggestion of certain commenters on the EIR, has been added to require monitoring of air quality (dust) upwind at the construction site and downwind of the construction site and requires the applicant to take corrective actions to address any exceedance of

SCAQMD Rule 403 thresholds. (See MM-AQ-14 and MM AQ 15.) The mitigation measures require monitoring of air quality off site in the vicinity of the El Rodeo School, and sets actions to be taken in the event that exceedences occur.

The School District suggested a number of additional measures to address air quality issues, however, none of those measures would have reduced the level of impact beyond that achieved through implementation of the already identified and required mitigation measures. The Council finds that no other feasible mitigation to further reduce impacts has been identified. Thus the short term construction impact remains significant. Although the proposed measures will not reduce environmental impacts, staff recommended that many of the measures be incorporated as conditions of approval for the Project.

The EIR identified an alternative (the No Project alternative) that would reduce construction related air emissions to a less than significant level. However, this alternative is rejected by the City Council as infeasible and not environmentally superior for the reasons discussed in Section VIII.

### 3. Cumulative Impacts

In addition to the cumulative significance methodologies contained in SCAQMD's CEQA Air Quality Handbook, the SCAQMD staff has suggested that the emissions-based thresholds be used to determine if a project's contribution to regional cumulative emissions is cumulatively considerable.<sup>2</sup> Individual projects that exceed the SCAQMD-recommended daily thresholds for project-specific impacts would be considered to cause a cumulatively considerable increase in emissions for those pollutants for which the Basin is in nonattainment. As shown in Table 4.2-11, the Project's construction emissions would exceed the project-level threshold of significance for NOX, PM10, and PM2.5. Because the Basin is nonattainment for ozone (NOX is a precursor to ozone), PM10, and PM2.5, construction of the Project would generate a cumulatively considerable contribution to air quality impacts in the Basin. This is considered a significant and unavoidable impact.

#### (a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that substantially lessen the Project's contribution to cumulative air quality impacts. Specifically, mitigation measures AQ-1 through AQ-15, discussed above, imposed upon the Project lessen the significant impact.

No other feasible mitigation is available to reduce the impact to a less than significant level.

#### (b) *Facts in Support of Findings*

The Project's construction emissions would exceed the project-level threshold of significance for NOX, PM10, and PM2.5. Because the South Coast Air Basin is nonattainment for ozone (NOX is a precursor to ozone), PM10, and PM2.5, construction of the Project would generate a cumulatively considerable contribution to air quality impacts in the Basin. As discussed above, in Section VII. B.2.(b), all feasible mitigation measures available to reduce the Project's contribution to the existing regional non-attainment

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<sup>2</sup> Personal communication with Steve Smith, Program Supervisor, South Coast Air Quality Management District, Diamond Bar, California, with David Deckman, Impact Sciences, April 19, 2006.

status have been required. Additionally, as discussed above and in Section VIII, no feasible alternative would reduce the Project's contributions to cumulative impacts to a level of insignificance.

## C. CULTURAL RESOURCES

### 1. Historical Resources

With demolition of the Robinsons-May building, implementation of the proposed Project would cause a substantial adverse change in the significance of an historical resource as defined in CEQA Guidelines Section 15064.3. This is a potentially significant impact.

#### (a) Findings

Changes or alterations have been required in, or incorporated into the Project that substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures lessen the significant impact:

MM-CR-1 The Robinsons-May department store shall be photographed with large-format black-and-white photography, and a written report which follows Historic American Buildings Survey ("HABS")/Historic American Engineering Record ("HAER") standards at a minimum Level 3 Recordation. The documentation shall be donated to a suitable repository, such as the City of Beverly Hills Public Library. The cost shall be borne by the Applicant.

MM-CR-2 The Applicant shall fund the production of a video of the Robinsons-May property showing the interiors and exteriors of the building and site to show its history. The video shall be placed in the City of Beverly Hills Library and posted on the City of Beverly Hills' website.

Further, specific economic, social, or other considerations make infeasible other mitigation and alternatives.

#### (b) Facts in Support of Findings

The EIR contains an evaluation of the historic character of the Robinsons-May building, which is not on the California register of historic places. The building does not qualify for listing on the California Register under several criteria set forth in the CEQA Guideline 15064.5; however, it has been determined to be a potential resource for CEQA purposes.

Implementation of mitigation measure MM-CR-1 and MM-CR-2, requiring documentation of the Robinsons-May department store in an archival manner and the donation of the documentation to a suitable repository, such as the City of Beverly Hills Public Library, would reduce potentially significant impacts. However, documentation of an historical resource does not mitigate the building's demolition to a less than significant level. Therefore the demolition of Robinsons-May would remain a significant and unavoidable impact on historical resources even after mitigation.

Alternatives that would reduce this impact to a level of insignificance were examined in the EIR and identified by the Los Angeles Conservancy. However, the City Council determines that each of the alternatives are infeasible for the reasons set forth in Section VIII.

## 2. Cumulative Historic Resources Impacts

The proposed Project would be constructed to the west of The Beverly Hilton, an historical resource that was found to meet California Register Criteria 1, 2 and 3. While the demolition of the Robinsons-May and construction of the proposed Project would alter the immediate surroundings of the Beverly Hilton, the demolition of the Robinsons-May building and the development of the proposed Project would not materially impair the significance of the Beverly Hilton because it stands on a separate parcel, and the architectural design characteristics that convey its historic significance under California Register Criteria 1 and 3 would not be adversely affected.

Because the Robinsons-May building and the Beverly Hilton Hotel are considered historic resources for purposes of CEQA and are in such close proximity to each other, demolition of the Robinsons-May building considered together with demolition of portions of the Beverly Hilton constitutes a considerable, and therefore significant cumulative impact on cultural resources.

### (a) *Findings*

Changes or alterations have been required in, or incorporated into the Project that substantially lessen the Project's contribution to the significant cumulative environmental effect as identified in the Draft EIR. Specifically, the following mitigation measures lessen the significant impact:

MM-CR-1 The Robinsons-May department store shall be photographed with large-format black-and-white photography, and a written report which follows Historic American Buildings Survey ("HABS")/Historic American Engineering Record ("HAER") standards at a minimum Level 3 Recordation. The documentation shall be donated to a suitable repository, such as the City of Beverly Hills Public Library. The cost shall be borne by the Applicant.

MM-CR-2 The Applicant shall fund the production of a video of the Robinsons-May property showing the interiors and exteriors of the building and site to show its history. The video shall be placed in the City of Beverly Hills Library and posted on the City of Beverly Hills' website.

Further, specific economic, social, or other considerations make infeasible other mitigation and alternatives.

### (b) *Facts in Support of Findings*

Because the Robinsons-May building and The Beverly Hilton Hotel are considered historic resources for purposes of CEQA, demolition of the Robinsons-May building considered together with demolition of portions of The Beverly Hilton, constitutes a considerable, and therefore significant impact on cultural resources.

Implementation of mitigation measure MM-CR-1 and MM CR-2, requiring documentation of the Robinsons-May department store in an archival manner and the donation of the documentation to a suitable repository, such as the City of Beverly Hills Public Library, would reduce the Project's contribution to potentially significant cumulative impacts. However, documentation of an historical resource does not mitigate the Project's contribution to a less than significant level. Therefore the demolition of Robinsons-May would remain a significant and unavoidable contribution to cumulatively significant impacts on historical resources even after mitigation.

Alternatives that would reduce to insignificance the Project's contribution to cumulative cultural resource impacts were identified in the EIR and by the Los Angeles Conservancy. However, the City Council determines that each of the alternatives are infeasible for the reasons set forth in Section VIII.

#### **D. LAND USE AND PLANNING**

##### **1. Land Use Element Policy**

With the adoption of the 9900 Wilshire Specific Plan, the Project site's zoning and land use designations would change to "9900 Wilshire Specific Plan." The Project would be consistent with the City of Beverly Hills General Plan and with the City of Beverly Hills Municipal Code.

However, the Project would introduce residential land uses where none currently exist, substantially increase development density, and substantially increase building heights on the Project site. For these reasons, the Project would not be consistent with certain non-mandatory policies or objectives of the General Plan, including General Plan Land Use Element Objective 3, Areas of Transitional Conflict, and 4, Scale of the City, or with Land Use Element development criteria for Commercial Areas recommending compatibility between commercial and residential areas. This is a potentially significant impact.

##### **(a) Findings**

Changes or alterations have been required in, or incorporated into, the Project that avoid or substantially lessen the significant environmental effects identified in the EIR. Although no mitigation measures would reduce impacts to a level of insignificance, the City Council adopted the Revised Project, which eliminates potential inconsistencies with the Land Use Element of the General Plan.

##### **(b) Facts in Support of Findings**

While consistent with the General Plan, as a whole, implementation of the original Project had the potential to conflict with two objectives within the Land Use Element of the General Plan, Land Use Element development criteria for Commercial Areas, and one program included in the Conservation Element. The Land Use Element includes objectives related to areas of transitional conflict and maintaining the existing scale of the City, Objectives 3 and 4. The 144-foot height of the North and South Tower Buildings as originally proposed would result in visual and height incompatibilities with the surrounding land uses and would be inconsistent with Land Use Element objectives related to areas of transitional conflict and scale of the city.

During the Planning Commission's and City Council's review of the Project at the various hearings, requests for project revisions were made. In response to those requests, the Revised Project addresses the potential conflict with the Land Use Element policies. The Planning Commission requested an increased

setback from Wilshire Boulevard for the northern building, and reductions in building height on the northern building with stepped increases in height from north to south, as discussed in Section III above.

The revisions that have been made to the Project address the issue of transitions between neighboring uses in that the increased setbacks and reduced height provide for a transition to the institutional use (El Rodeo Elementary School) and residential uses to the north, and are compatible with the existing Beverly Hilton Hotel. Moreover, revisions to the Project's set backs and step ups in building height match the northern wing of the Hilton Tower. The Hilton Tower establishes the existing scale and appropriate transition for this area. Although the Project is taller than the Hilton Tower, the Project's revised set backs and step ups in building height match this scale, making the Revised Project (and alternatives 5A and 7) compatible with the scale of the area and eliminate transitional conflicts, thus eliminating the conflicts with Land Use Element policies.

Second, the increased open space area achieved by removal of all, or a substantial number, of loft buildings provides for continuation of Beverly Gardens Park and enhances the pedestrian link from the project site to Beverly Gardens Park and the Business Triangle by providing an attractive travel route in a park-like setting. The revisions to the Project's southern end also address transition issues by keeping the area at the northwest corner of the intersection of Santa Monica Boulevard and Merv Griffin Way for an open space area which serves to eliminate the overwhelming presence of earlier designs for the corner and which is consistent with the garden quality of the City.

Third, the Project's parking, which is above that required by code, coupled with roadway improvements along Merv Griffin Way and Wilshire Boulevard, ensure that potential traffic and parking transitional conflict is minimized.

Thus, the Revised Project's extensive landscaping and open space, increased set backs complimentary to the Hilton Hotel, gradual height increases, and clear, open architecture combine to create a development that fits into the scale of what is appropriate for this unique area in the City. For these reasons, the City Councils find that the Revised Project is no longer in conflict with Objectives 3 and 4 of the General Plan Land Use Element.

## 2. Conservation Element Policy

Proposed demolition of the Robinsons-May building, which is potentially eligible for listing on the California Register and is therefore considered a historic resource for purposes of CEQA was identified in the EIR as a potential conflict with goals related to landmark preservation in the General Plan Land Use Conservation Element.

### (a) *Findings*

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the City Council has adopted the Revised Project to lessen land use impacts and the following mitigation measures lessen the significant impact related to consistency with the Conservation Element:

MM-CR-1 The Robinsons-May department store shall be photographed with large-format black-and-white photography, and a written report which follows Historic American Buildings Survey ("HABS")/Historic American Engineering Record ("HAER")

standards at a minimum Level 3 Recordation. The documentation shall be donated to a suitable repository, such as the City of Beverly Hills Public Library. The cost shall be borne by the Applicant.

MM-CR-2 The Applicant shall fund the production of a video of the Robinsons-May property showing the interiors and exteriors of the building and site to show its history. The video shall be placed in the City of Beverly Hills Library and posted on the City of Beverly Hills' website.

(b) *Facts in Support of Findings*

While the Project is consistent with the General Plan, as a whole, the potential does exist for the Project to conflict with the goals included in Conservation Element relative to Landmark Preservation, due to the fact that the Robinsons-May building has been determined to be potentially eligible for listing in the California Register, as discussed in Section 4.3, **Cultural Resources**, of the Draft EIR. However, the Revised Project with mitigation is consistent with the Conservation Element of the General Plan. The Conservation Element does not require the preservation of historic structures. Moreover, additional building height is appropriate at anchor locations such as 9900 Wilshire Boulevard and a variety of land uses such as those proposed by the Revised Project are appropriate for this site's development and consistent with the General Plan as revised. The mitigation in the Revised Project implements the Conservation Element's policies regarding documentation before demolition; implements the Conservation Element's policies regarding regeneration and redevelopment needed and desired at the Project site; and maintains continuity with the past through full documentation of the building for retention by the Beverly Hills Library to ensure the information is accessible for future generations.

Additionally, the Revised Project would implement and be consistent with Conservation Element Policies related to water conservation and solar energy because it incorporates such measures. If conservation of the Robinsons-May department store were to be required, as contemplated in EIR Alternative 4 (Preservation/Reuse of Robinsons-May Building Alternative), it would likely frustrate the Project's ability to meet the other goals and policies of the Conservation Element regarding energy efficiency through LEED standards, and energy conservation through capitalizing on natural heating and cooling aspects available at the Project site. Therefore, the City Council finds that the Revised Project is consistent with the Conservation Element of the General Plan.

3. Cumulative Impacts

As discussed above, the Draft EIR found that the original Project when considered together with the adjacent Beverly Hilton Revitalization Plan, would result in cumulatively significant land use impacts as the result of inconsistency with General Plan Land Use Element Objectives 3 and 4 and development criteria concerning Commercial Areas.

In addition, the original Project's proposed demolition of the Robinsons-May building, which is potentially eligible for listing on the California Register and is therefore considered a historic resource for purposes of CEQA was identified in the Draft EIR as a potential conflict with goals related to landmark preservation in the General Plan Land Use Conservation Element.

(a) *Findings*

Changes or alterations have been required in, or incorporated into the Project that avoid or substantially lessen the significant environmental effect as identified in the Draft EIR. Specifically, the City Council has adopted the Revised Project to lessen land use impacts and the following mitigation measures lessen the significant impact related to consistency with the Conservation Element:

MM-CR-1 The Robinsons-May department store shall be photographed with large-format black-and-white photography, and a written report which follows Historic American Buildings Survey ("HABS")/Historic American Engineering Record ("HAER") standards at a minimum Level 3 Recordation. The documentation shall be donated to a suitable repository, such as the City of Beverly Hills Public Library. The cost shall be borne by the Applicant.

MM-CR-2 The Applicant shall fund the production of a video of the Robinsons-May property showing the interiors and exteriors of the building and site to show its history. The video shall be placed in the City of Beverly Hills Library and posted on the City of Beverly Hills' website.

*(b) Facts in Support of Findings*

As noted above, Revised Project's extensive landscaping and open space, increased set backs complimentary to the Hilton Hotel, gradual height increases, and clear, open architecture combine to create a development that fits into the scale of what is appropriate for this unique area in the City. For these reasons, the City Council finds that the Revised Project is no longer in conflict with Objectives 3 and 4 or the commercial area development standards of the General Plan Land Use Element.

Also as noted above, the Revised Project with mitigation is consistent with the Conservation Element of the General Plan. The Conservation Element does not require the preservation of historic structures. The mitigation in the Revised Project implements the Conservation Element's policies regarding documentation before demolition; implements the Conservation Element's policies regarding regeneration and redevelopment needed and desired at the Project site; and maintains continuity with the past through full documentation of the building for retention by the Beverly Hills Library to ensure the information is accessible for future generations. Furthermore, the Council finds that the Revised Project would implement and be consistent with Conservation Element Policies related to water conservation and solar energy because it incorporates energy efficiency measures through LEED standards and promotes energy conservation through capitalizing on natural heating and cooling aspects available at the Project site.

Because the City Council finds that the Revised Project does not conflict with either the Land Use Element or the Conservation Element of the General Plan, the Revised Project does not contribute to significant cumulative land use impacts due to conflicts with the General Plan.

**E. NOISE**

**1. Project Construction Noise and Vibration**

Exterior construction activities performed outside of the hours specified in the City's noise ordinance, including before 8:00 AM, after 6:00 PM, and during weekends and holidays, would result in significant impacts at off-site sensitive receptors. Additionally, construction activity would generate vibration levels

of up to 75 VdB at 100 feet from the source. This exceeds 72 VdB, the Federal Railroad Administration (FRA) vibration threshold for residential uses. As such, construction activity would result in significant vibration impacts on on-site receptors including the hotel to the east and off-site receptors to the north (i.e., residences and El Rodeo School).

(a) Findings

Changes or alterations have been required in, or incorporated into, the Project that substantially lessen the significant environmental effect identified in the Draft EIR but not to a level of insignificance. Specifically, the following mitigation measure lessens the significant impact:

MM-NOISE-1 Prior to issuance of grading permits, the applicant shall submit a Construction Management Plan satisfactory to the City's Director of Community Development and the Building Official. The Building Official shall enforce noise attenuating construction requirements. The Construction Management Plan shall include, but not be limited to, the following:

- Excavation, grading, and other construction activities related to the Project shall be restricted to the hours of operation allowed under Section 5-1-206, Restrictions on Construction Activity in the City Municipal Code. Any deviations from these standards shall require the written approval of the Community Development Director.
- Stockpiling and vehicle staging areas shall be located as far away from occupied residences as possible, and screened from these uses by a solid noise attenuation barrier. Noise attenuation barriers constructed to the specifications identified in the bullet point below are capable of reducing noise levels by 7.7 dB(A).
- Solid noise attenuation barriers (temporary barriers or noise curtains) with a sound transmission coefficient (STC) of at least 20 shall be used along all Project boundaries during the construction phases associated with the development of the Project. Noise attenuation barriers constructed at the property lines to a height of 8 feet with an STC rating of at least 20 are capable of reducing noise levels by 7.7 dB(A).<sup>1</sup>
- All stationary construction equipment (e.g., air compressor, generators, etc.) shall be operated as far away from the multi-family residential uses to the north of the Project site as possible. If this is not possible the equipment shall be shielded with temporary sound barriers, sound aprons, or sound skins to the satisfaction of the Director of Community Development.
- Haul routes for removing excavated materials from the site shall be designed to avoid residential areas, and areas occupied by noise sensitive receptors (e.g., hospitals, schools, convalescent homes, etc.).

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<sup>1</sup> U.S. Department of Housing and Urban Development. *The Noise Guidebook*. 1985.

- Prior to the start of every school year, the applicant shall obtain a schedule of testing periods at El Rodeo School. The applicant shall submit a construction schedule for review and approval by the Community Development Director and the Environmental Monitor that ensures that no construction activity generating the highest noise levels (e.g. demolition and grading) is undertaken during any designated testing periods at the school. Such testing periods typically occur for one week per semester; however, the exact dates and times will be determined by the School District.

(h) *Facts in Support of Findings*

Construction activities undertaken before 8:00 AM, after 6:00 PM, or on weekends and holidays could generate noise levels in excess of 5.0 dB(A) above ambient noise levels outside the hours permitted by the City's noise ordinance, which is a significant impact. While implementation of MM-NOISE-1 would reduce daytime and nighttime noise impacts associated with all construction activity, no feasible mitigation exists to reduce impacts to less than significant levels. Therefore, impacts associated with noise generated by construction undertaken outside hours permitted by the City's noise ordinance would be significant and unavoidable. Further, potential impacts to the adjacent school will be lessened by limiting noise creation during certain testing periods, although the impact cannot be reduced to a less than significant level. The City Council finds that imposing mitigation to restrict construction activities to the hours between 8:00 a.m. and 6:00 p.m. is socially infeasible as such a restriction would limit the ability of the City to require demolition and construction activities at times that produce the least impacts to school activities at El Rodeo School.

The primary and most intense vibration source would be the use of bulldozers during construction, because the City of Beverly Hills does not permit pile driving. Although the results of vibrations can range from no perceptible effects at the lowest levels to rumbling sounds and perceptible vibrations at moderate levels, to slight structural damage at the highest levels, ground vibrations from construction activities rarely reach the levels that can damage structures. The vibration impacts of this Project have the potential for impacting structures on the adjacent Beverly Hilton site and may be perceptible in the open playground areas of the El Rodeo School. Structures on the school site, however, are set back sufficiently from the Project site such that no impact on the structures is expected.

The City has adopted all feasible mitigation measures to reduce the level of impact, however the noise and vibration impacts remain significant even with the Revised Project described in Section III above.

2. Cumulative Construction and Vibration

In the event that exterior construction activities are performed on the Project site and the Beverly Hilton Revitalization Plan Project site outside of the hours specified in the City's noise ordinance, the Project would result in a cumulatively considerable and therefore significant contribution to cumulatively significant noise impacts. Additionally, during construction, the Project, considered together with the adjacent Beverly Hilton Revitalization Plan, would result in cumulatively considerable and therefore significant contributions to cumulatively significant vibration impacts on sensitive receptors north of Wilshire Boulevard.

(a) *Findings*

Changes or alterations have been required in, or incorporated into, the Project that substantially lessen the significant environmental effect identified in the Draft EIR. Specifically, the following mitigation measure lessens the significant impact:

MM-NOISE-4 The 9900 Wilshire Project applicant shall coordinate with The Beverly Hilton Revitalization Plan applicant regarding the following:

- All temporary roadway closures shall be coordinated to limit overlap of roadway closures;
- All major deliveries for both projects shall be coordinated to limit the occurrence of simultaneous deliveries. The applicants shall ensure that deliveries of items such as concrete and other high-volume items shall not be done simultaneously;
- The applicants shall coordinate regarding the loading and unloading of delivery vehicles. Any off site staging areas for delivery vehicles shall be consolidated and shared; and
- Applicants or their representatives shall meet on a regular basis during construction to address any outstanding issues related to construction traffic, deliveries, and worker parking.

*(b) Facts in Support of Findings*

Exterior construction activities undertaken by the Project before 8:00 AM, after 6:00 PM, or on weekends could generate noise levels in excess of 5.0 dB(A) above ambient noise levels outside the hours permitted by the City's noise ordinance, and therefore has the potential to be significant and unavoidable. In the event that The Beverly Hilton Revitalization Plan also undertakes exterior construction activity outside of the hours specified in the City's noise ordinance, the cumulative construction noise impact would be significant. Although MM-NOISE-4, which requires coordination of construction activities between the two projects, would reduce impacts, cumulative construction noise impacts would remain significant and unavoidable. Furthermore, the Project by itself would generate vibration levels up to 75 VdB at 100 feet from the source, which exceeds the FRA groundborne vibration threshold for residences and hotels. Since sensitive receptors are located approximately 100 feet north of the two projects and since The Beverly Hilton Hotel also constitutes a sensitive land use, the Project's incremental contribution to cumulatively significant vibration impacts would be cumulatively considerable and therefore significant. MM-NOISE-4 is applicable to this impact, but no feasible mitigation is available to fully reduce construction vibration impacts to less than significant. Therefore, although short-term in duration, cumulative construction vibration impacts on off-site receptors to the north and east would be significant and unavoidable.

The City Council finds that imposing mitigation to restrict construction activities to the hours between 8:00 a.m. and 6:00 p.m. is socially infeasible as such a restriction would limit the ability of the City to require demolition and construction activities at times that minimize impacts to school activities at El Rodeo School.

## **VIII. Project Alternatives.**

In defining Project alternatives that would be analyzed in the EIR, several alternatives were considered; however, one of those considered was rejected. CEQA Guidelines Section 15126.6(c) states: "The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination." As stated previously, the CEQA Guidelines stipulate that alternatives addressed in an EIR should be feasible and should not be considered remote or speculative.

The agency initially considered, but ultimately rejected, the evaluation of an Alternative Site Alternative during its determination of alternatives for the proposed 9900 Wilshire Project. Under this Project Alternative, the Project as proposed would be constructed on an alternate site within the City of Beverly Hills.

While development of the Project on an alternative site was initially considered, this Alternative was ultimately rejected because neither the Project applicant nor the City owns or controls any other property in the vicinity of the Project site that could be developed for a residential use (the City owns park land near the site). Additionally, development of the Project on an alternate site within the City would result in the introduction of new residential tower buildings on a site not located along major corridors or in an identified City gateway location. The ability of the Project applicant to find and purchase a suitable alternate site to develop the Project is considered speculative. While development of the Project on an alternate site could potentially avoid the demolition of an historic resource, this Alternative has the potential to increase the severity of aesthetic, land use, air quality, noise, and traffic impacts because the proposed residential use of the site would generate fewer vehicle trips than the former Robinsons-May department store operations and would likely be closer to other uses thereby increasing issues of land use compatibility. As such, this Alternative has been rejected from further consideration and is not examined in detail in this EIR.

As discussed below, the Draft EIR fully analyzed six alternatives, Alternatives 1, 2, 3, 4, 5, and 6. During the course of the Planning Commission's deliberations on the EIR and the Project, the Commission requested additional information regarding the potential environmental impacts of five different configurations of the Project. Four of these five additional potential configurations of the Project constituted variations on one or more of the alternatives analyzed in the Draft EIR. One of the potential Project configurations evaluated only the provision of additional parking on the site and thus is merely a variation on the proposed Project. For ease of reference, these proposed configurations are referred to as Alternatives 5A, 7, 8, 9, 10 and the Revised Project. An analysis of the additional alternative variations was presented to the Planning Commission on October 29, 2007, and that analysis is hereby incorporated into this Resolution by reference. While some of these additional variations lessened or eliminated certain significant environmental impacts, none of these additional variations changed the conclusions in the Draft EIR regarding the environmentally superior alternative, as discussed below. Further, because these variations are not considerably different from the Project and alternatives analyzed, do not add significant new information to the EIR, do not deprive the public of an opportunity to comment on a substantial adverse environmental effect on the Project or a feasible way to mitigate or avoid such an effect, and parts of these variations have been accepted by the Applicant, incorporation of these variations into the Final EIR does not require recirculation of the EIR prior to certification.

### **A. ALTERNATIVE 1: NO PROJECT/NO DEVELOPMENT ALTERNATIVE**

1. Summary of Alternative

Under the No Project Alternative, the existing 228,000-square-foot building, which has been historically operated as a Robinsons-May department store (the "Existing Building"), and the associated two-level, 956-space parking structure (the "Existing Parking Structure") would remain in substantially their current condition and the building would be re-leased and occupied as a single-tenant department store.

2. Reasons for Rejecting Alternative

Implementation of the No Project Alternative would result in the reduction of some significant and unavoidable impacts associated with the Project. Specifically, the following significant impacts would be avoided:

- **Aesthetics and Views** –The visual character of the site and surrounding area would be substantially altered.
- **Aesthetics and Views** – The North and South Tower Buildings would obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton.
- **Air Quality** – During Project construction NO<sub>x</sub> emissions would exceed SCAQMD established significance thresholds such that significant unavoidable impacts would result, even after incorporation of mitigation.
- **Air Quality** – The LST analysis shows that maximum 24-hour PM<sub>10</sub> and PM<sub>2.5</sub> concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site during construction.
- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the CEQA Guidelines.
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Project would result in significant Project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from Project construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result.

However, under Alternative 1, the following significant impacts would occur:

- **Air Quality** - Due to the increased trip generation and associated net new daily trips this alternative would generate additional operational related air emissions, including NO<sub>x</sub> and CO emissions, above and beyond those generated by the proposed Project.
- **Operational Noise** - Due to the increased trip generation and associated roadway noise the alternative has the potential to result in new operational noise impacts.

- **Traffic** – A new store would result in a greater impact on future traffic and the level of service for intersections and roadways in the Project vicinity when compared to both the proposed Project and the former Robinsons-May store.
- **Solid Waste** - The quantity of solid waste generated during operation of the re-opened store would significantly exceed that of the proposed Project.
- **Electricity** – The electricity demand of a re-opened store would be 150% greater than that of the proposed Project.
- **Natural Gas** – The natural gas demand of a re-opened store would exceed that of the proposed Project when mitigation measures are adopted.

As discussed above, greater impacts to operational air quality, operational noise, traffic impacts on level of service and safety, solid waste, electricity and natural gas use would result from implementation of the No Project Alternative in comparison to the Project. The Project would generate significantly less traffic than would a successful commercial use at the site. The Project site is located in close proximity to the intersection of Santa Monica Boulevard and Wilshire Boulevard, which is one of the most congested intersections in the City and the Region. Introduction of a high traffic-generating commercial use would have significant traffic impacts that would not result from development of the Project.

(a) *Objectives Not Met by Alternative:*

- To create a world-class architectural landmark with a visual presence at the dual gateway to the City at Wilshire Boulevard and Santa Monica Boulevard that will enhance the beauty and image of the City of Beverly Hills.
- To develop an environmentally sensitive and sustainable project for which the applicant intends to seek LEED certification from the U.S. Green Building Council and establish a benchmark for environmentally responsible design in the City of Beverly Hills.
- To preserve approximately two-thirds of the Project site as landscaped gardens and other open space to enhance the visual character of the Project.
- To provide a 0.42-acre garden with public access along Wilshire Boulevard for the use and enjoyment of Beverly Hills residents and visitors that complements and extends the existing garden parkway on the north side of Wilshire Boulevard, enhances the garden qualities of the City and replaces a high-density commercial use across the street from an existing school and residential neighborhood.
- To redevelop the Project site in a manner that does not substantially increase the traffic impacts and related operational air quality and noise impacts associated with the Existing Building.
- To improve the utilization and visual appearance of the Project site by eliminating the existing above-ground parking structure and constructing subterranean parking for the Project that will be spread across the entire Project site to provide convenient parking for Project residents, guests and retail patrons.

- To provide a substantial amount of housing for local and area residents to help meet market demand and alleviate the substantial housing shortage in the City and the Westside of Los Angeles.
- To provide new housing within the City without having to tear down existing rental units or otherwise displace existing housing.
- To provide full-service luxury residential condominiums that are competitive with existing and proposed condominium projects in the Wilshire Corridor and Century City and have comparable views, so that Beverly Hills residents who desire to “downsize” from their existing homes will not have to move out of Beverly Hills to find suitable housing.
- To downzone the Project site and reduce the intensity of uses currently permitted thereon by replacing the existing C-3 commercial zoning designation with a specific plan zoning designation that limits development to approximately two-thirds of the number of residential units that would be permitted under the R-4 residential zoning designation and a small amount of retail space.
- To promote housing, conservation, and green space policies consistent with the land use, housing element, and conservation elements of the General Plan.

Implementation of Alternative 1 would not achieve many of the primary objectives of this Project.

Alternative 1 would not provide needed housing and would have greater long-term environmental impacts in the sensitive areas of traffic, noise, and air quality than the Project or the Revised Project.

### 3. Conclusion Regarding Alternative 1.

The City Council hereby finds that failure to meet each of the Project objectives set forth above would be an independent ground for rejecting Alternative 1 as socially infeasible and by itself, independent of any other reason, would justify rejection of Alternative 1. The City Council also finds, despite the reduction in certain impacts, that Alternative 1 is not environmentally beneficial due to its greater long-term impacts in the sensitive areas of air quality, noise and traffic.

## **B. ALTERNATIVE 2 – CODE-COMPLIANT OFFICE/RETAIL ALTERNATIVE**

### 1. Summary of Alternative

This Alternative includes a mixed-use office/retail project that complies with the principal use and development standards for the C-3 Zone that currently govern the Project site, including permitted uses, maximum floor area ratio (FAR), maximum height and number of stories and applicable code parking requirements. This Alternative includes three buildings that are all three stories and 45 feet in height and have a total FAR of 2:1. This Alternative would require the elimination of the Entry Garden and significantly reduce the other landscaped gardens and open space associated with the proposed Project.

### 2. Reasons for Rejecting Alternative

Implementation of the Code-Compliant Office/Retail Alternative would avoid the following significant impacts associated with Project implementation:

- **Aesthetics and Views** – The visual character of the site and surrounding area would be substantially altered.
- **Aesthetics and Views** – The North and South Tower Buildings would obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton.
- **Land Use and Planning** – The proposed Project would conflict with two objectives within the Land Use Element of the General Plan such that significant land use impacts would result from inconsistency with the City's General Plan.

However, under Alternative 2, the following significant impacts associated with implementation of the Project would also occur:

- **Air Quality** – During Project construction NO<sub>x</sub> emissions would exceed SCAQMD established significance thresholds such that significant unavoidable impacts would result, even after incorporation of mitigation.
- **Air Quality** – The LST analysis shows that maximum 24-hour PM<sub>10</sub> and PM<sub>2.5</sub> concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site during construction.
- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the *CEQA Guidelines*.
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Project would result in significant project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from Project construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result.

Furthermore, Alternative 2 would have significantly greater long-term traffic and air quality impacts due to significantly more vehicle trips that will be generated by Alternative 2.

**(a) Objectives Not Met by Alternative:**

- To preserve approximately two-thirds of the Project site as landscaped gardens and other open space to enhance the visual character of the Project.
- To provide a 0.42-acre entry garden along Wilshire Boulevard for the use and enjoyment of the public that complements and extends the existing Beverly Gardens Park on the north side of Wilshire Boulevard, enhances the garden qualities of the City, and replaces a high-density commercial use across the street from an existing school and residential neighborhood.

- To redevelop the Project site in a manner that does not substantially increase the traffic levels and related operational air quality and noise impacts associated with the prior Robinsons-May department store use on the site prior to closure.
- To provide a substantial amount of housing for local and area residents to help meet market demand and alleviate the substantial housing shortage in the City of Beverly Hills and the Westside of Los Angeles.
- To provide new housing within the City without having to tear down existing rental units or otherwise displace existing housing.
- To provide full-service residential condominiums that are competitive with existing and proposed condominium projects in the Wilshire Corridor and Century City and have comparable views, so that residents who desire to "downsize" from their existing homes will not have to move out of Beverly Hills to find suitable housing.
- To reduce the intensity of uses currently permitted thereon by replacing the existing C-3 commercial zoning designation with a specific plan zoning designation that limits development to approximately two-thirds of the number of residential units that would be permitted under the R-4 residential zoning designation, along with a small amount of retail space.
- To promote housing, conservation, and green space policies consistent with the land use, housing element, and conservation elements of the General Plan.

Due to the increase in vehicle trips associated with the implementation of this Alternative, in comparison to the Project, Alternative 2 will result in significant and unavoidable impacts greater than those anticipated for the Project. In addition to potential increases in impacts related to traffic level of service, traffic at residential roadway segments, additional impacts would result in the following areas: operational air, operational noise, water demand, wastewater and solid waste generation, and electricity and natural gas consumption. Alternative 2 has a greater environmental impact than the Project or the Revised Project and fails to meet most project objectives.

### 3. Conclusion Regarding Alternative 2.

The City Council hereby finds that failure to meet each of the Project objectives set forth above would be an independent ground for rejecting Alternative 2 as socially infeasible and by itself, independent of any other reason, would justify rejection of Alternative 2. The City Council also finds that Alternative 2 is not environmentally beneficial because of its greater long-term impacts on traffic, air quality, wastewater and solid waste generation, and electricity and natural gas consumption.

## C. **ALTERNATIVE 3 – REDUCED DENSITY ALTERNATIVE**

### 1. Summary of Alternative

Under this Alternative, the principal components of the Project would be reduced by 35 percent, including the number of condominiums, the residential and retail floor areas, building height and number of parking spaces. The total FAR for this Alternative is 1.6:1. The intent of this Alternative

would be to reduce the severity of identified potentially significant impacts.

## 2. Reasons for Rejecting Alternative

Implementation of the Reduced Density Alternative would avoid the following identified significant impacts associated with implementation of the Project:

- **Aesthetics and Views** – Alternative 3 would not result in the construction of new structures out of scale with, or inconsistent with neighboring land uses and would not substantially alter the visual character of the site and surrounding area.
- **Land Use and Planning** – By modifying building height, and configuration to be more compatible with surrounding structures, Alternative 3 would eliminate conflicts with the General Plan's Land Use element

However, with implementation of Alternative 3, the following same significant and unavoidable impacts would remain:

- **Aesthetics and Views** – The North and South Tower Buildings would obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton.
- **Air Quality** – During Project construction NOX emissions would exceed SCAQMD established significance thresholds such that significant unavoidable impacts would result, even after incorporation of mitigation.
- **Air Quality** – The LST analysis shows that maximum 24- hour PM10 and PM2.5 concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site during construction.
- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the CEQA Guidelines.
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Project would result in significant project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from Project construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result.

No additional significant impacts above and beyond those identified for the Project would result from implementation of the Reduced Density Alternative. Additionally, Alternative 3 would reduce impacts, in comparison to the Project, relative to aesthetics and land use. Alternative 3, however, would not provide as much housing for the city or the region and would be less effective in meeting the housing production goals set for the city.

### (a) *Objectives Not Met by Alternative:*

This Alternative would further the primary Project objectives, however, as noted above, the reduced density would not meet the Project objectives to the same extent as the Project because of the reduction in density, project design changes, reduction in housing units and reduced economic benefits of the Project to the City. Additionally, a financial analysis of Alternative 3 shows that it would render the Project economically infeasible to build because its costs would exceed expected revenues, and would reduce the City's annual net revenue from the Project.

3. Conclusion Regarding Alternative 3.

Although Alternative 3, the Reduced Density Alternative, would have no additional significant impacts beyond those identified for the Project and would have the limited benefit of reducing some of the Project's impacts, the City Council hereby finds that failure to meet the Project objectives regarding housing to the same extent as the Project makes this Alternative socially infeasible and by itself, independent of any other reason, would justify rejection of Alternative 3. Additionally, based on a financial analysis of Alternative 3 contained within the March 2008 Financial Feasibility Analysis completed by CBRE Consulting, the City Council also finds that Alternative 3 would not be economically feasible to build.

**D. ALTERNATIVE 4 – PRESERVATION/REUSE OF ROBINSONS-MAY BUILDING ALTERNATIVE**

1. Summary of Alternative

Under this Alternative, the Existing Building would be rehabilitated and reused as a museum, the Existing Parking Structure would be demolished, the southern portion of the Project site would be redeveloped with three residential buildings ranging in height from four levels and 48 feet to 12 levels and 144 feet and a new subterranean parking structure would be constructed under the southern portion of the Project site with sufficient parking for all of the new and adaptive uses on the Project site. The total FAR for this Alternative is 2.4:1. The preservation and reuse of the Existing Building would require the elimination of the Entry Garden. The intent of this Alternative would be to continue to provide housing on the Project site while avoiding significant impacts associated with the demolition of an historic resource.

2. Reasons for Rejecting Alternative

Implementation of the Preservation/Reuse of the Robinsons-May Building Alternative would avoid the following significant impact associated with implementation of the Project:

- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the *CEQA Guidelines*.
- **Land Use and Planning** – Demolition of the Robinsons-May building without the mitigation measures in the Revised Project would conflict with objectives within the Conservation Element of the General Plan such that significant land use impacts would result from inconsistency with the City's General Plan.

Other significant impacts associated with implementation of the Project would also occur with implementation of this Alternative, including:

- **Aesthetics and Views** – The visual character of the Project site and surrounding area would be substantially altered.
- **Aesthetics and Views** – The buildings would obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton.
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the alternative would result in significant project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from Project construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result.

*(a) Objectives Not Met by Alternative:*

- To preserve approximately two-thirds of the Project site as landscaped gardens and other open space to enhance the visual character of the Project.
- To provide a 0.42-acre entry garden with public access along Wilshire Boulevard for the use and enjoyment of Beverly Hills residents and visitors that complements and extends the existing garden parkway on the north side of Wilshire Boulevard, enhances the garden qualities of the City and replaces a high-density commercial use across the street from an existing school and residential neighborhood.

3. Conclusion regarding Alternative 4.

The City Council hereby finds that failure to meet the Project objectives set forth above regarding open space would be an independent ground for rejecting Alternative 4 as socially infeasible and by itself, independent of any other reason, would justify rejection of Alternative 4. The City Council also finds based on the Applicant's Feasibility Report that Alternative 4 is not economically feasible to build because projected revenue from this Project would not exceed projected costs by a sufficient margin. The social costs to the public from losing garden and green space exceed the benefit to the public of preserving the Robinsons-May building.

**E. ALTERNATIVE FIVE - MODIFIED HEIGHT AND CONFIGURATION OF NORTH/SOUTH BUILDINGS**

1. Summary of Alternative

This Alternative is similar to the Project, including the same number of units, the same amount of residential and retail floor area and the same FAR, except that (1) the height of the North Building would be reduced from 144 feet to 108 feet and the number of stories would be reduced from 12 to 9, (2) the height of the South Building would be increased from 144 feet to 180 feet and the number of stories would be increased from 12 to 15, (3) the North Building would be moved from 35 feet to 45 feet from the southerly boundary of Wilshire Boulevard and (4) the separation between the North and South Buildings would be increased from 45 feet to 60 feet. The intent of this Project Alternative is to expand view corridors along Wilshire Boulevard and between the North and South Tower Buildings on the Project site and reduce significant impacts to views from west-facing guestrooms in the Wilshire Tower hotel

building of The Beverly Hilton.

## 2. Reasons for Rejecting Alternative

Implementation of the Modified Height and Configuration of the North/South Buildings Alternative would result in the same significant and unavoidable impacts associated with implementing the Project. These significant and unavoidable adverse impacts include:

- **Aesthetics and Views** – The visual character of the site and surrounding area would be substantially altered.
- **Aesthetics and Views** – The North and South Tower Buildings would obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton.
- **Air Quality** – During Project construction NO<sub>x</sub> emissions would exceed SCAQMD established significance thresholds such that significant unavoidable impacts would result, even after incorporation of mitigation.
- **Air Quality** – The LST analysis shows that maximum 24-hour PM<sub>10</sub> and PM<sub>2.5</sub> concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site during construction.
- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the CEQA Guidelines.
- **Land Use and Planning** – The proposed Alternative would conflict with two objectives within the Land Use Element of the General Plan such that significant land use impacts would result from inconsistency with the City's General Plan.
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Project would result in significant project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from Project construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result.

The Modified Height and Configuration of the North/South Building in Alternative 5 would not avoid the potentially significant impacts associated with Land Use and Planning, because Alternative 5 does not match the setback of the north wing of the Hilton tower and thus still creates transition conflicts with the uses to the north of the Project site. Additionally, all impacts associated with this project Alternative would be comparable to impacts associated with the Project.

## 3. Conclusion Regarding Alternative 5.

The Modified Height and Configuration of the North/South Building Alternative would not avoid or reduce the severity of any identified potentially significant impacts associated with the Project.

Additionally, as discussed above, all impacts associated with this Project Alternative would be comparable to impacts associated with the Project. Moreover, Alternative 5 would not avoid the potentially significant impacts associated with Land Use and Planning, because Alternative 5 does not match the setback of the north wing of the Hilton tower and thus still creates transition conflicts with the uses to the north of the Project site.

The City Council hereby finds that this alternative is not environmentally superior to the Revised Project because the Revised Project eliminates conflicts with General Plan policies and increases open space and public gardens. However, because aspects of this Alternative reduce certain impacts, though not to a level of insignificance, the City Council has incorporated concepts of this alternative into the Revised Project.

## **F. ALTERNATIVE 6 – RECONFIGURATION ALTERNATIVE**

### **1. Summary of Alternative**

This Alternative would include the same number of units, the same amount of residential and retail floor area and the same FAR as the Project, but would consist of five buildings that are each 60 feet in height and have five stories. The height reduction under this Alternative would require the elimination of the Entry Garden and significantly reduce the other landscaped gardens and open space associated with the Project. The intent of this Alternative is to evaluate impacts associated with build-out of a similar project on the site without the introduction of high-rise residential tower buildings and reduce significant impacts to views from west-facing guestrooms in the Wilshire Tower hotel building of The Beverly Hilton.

### **2. Reasons for Rejecting Alternative**

Implementation of the Building Reconfiguration Alternative would avoid the following identified significant impacts associated with implementation of the proposed Project:

- **Aesthetics and Views** – The visual character of the Project site and surrounding area would be substantially altered.
- **Aesthetics and Views** – The North and South Tower Buildings would obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton.
- **Land Use and Planning** – Alternative 6 would both eliminate conflicts with the Land Use Element of the General Plan such that significant land use impacts would no longer result from inconsistency with the City's General Plan.

However, implementation of the Building Reconfiguration Alternative would still result in most of the same significant and unavoidable impacts associated with implementing the Project. These significant and unavoidable impacts include:

- **Air Quality** – During Project construction NOX emissions would exceed SCAQMD established significance thresholds such that significant unavoidable impacts would result, even after incorporation of mitigation.

- **Air Quality** – The LST analysis shows that maximum 24-hour PM10 and PM2.5 concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site during construction.
- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the CEQA Guidelines.
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Project would result in significant project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from Project construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result.

(a) **Objectives Not Met by Alternative:**

- To preserve approximately two-thirds of the Project site as landscaped gardens and other open space to enhance the visual character of the Project.
- To provide a 0.42-acre entry garden with public access along Wilshire Boulevard for the use and enjoyment of Beverly Hills residents and visitors that complements and extends the existing garden parkway on the north side of Wilshire Boulevard, enhances the garden qualities of the City and replaces a high-density commercial use across the street from an existing school and residential neighborhood.

3. **Conclusion Regarding Alternative 6.**

Implementation of this Alternative would result in fewer aesthetic impacts than the Project or Revised Project and fewer land use impacts than the Project. All other impacts would be comparable to those associated with the Project. However, the important open space objectives described above would not be achieved through implementation of Alternative 6.

The City Council hereby finds that failure to meet each of the Project objectives set forth above would be an independent ground for rejecting Alternative 6 as infeasible and by itself, independent of any other reason, would justify rejection of Alternative 6. The City Council finds it socially infeasible to eliminate public gardens and other open space associated with the Revised Project in order to reduce aesthetic impacts due to height. Additionally, based on the Financial Feasibility Analysis dated March 2008 and prepared by CB Richard Ellis, the City Council finds this Alternative 6 financially infeasible.

**G. ADDITIONAL VARIATIONS ON ALTERNATIVES CONSIDERED BY THE PLANNING COMMISSION**

As noted above, the Planning Commission requested analysis of variations on the alternatives to understand how the impacts of various potential project designs would compare to the impacts of the Project and the foregoing six alternatives. Analysis of these variations, referred to for convenience as Alternatives 5A, 7, 8, 9, 10, and the Revised Project, follows.

1. Alternative 5A – Variation on Alternative 5 (Modified Height and Configuration of North/South Buildings).

Summary of Alternative 5A

Alternative 5A would include the same number of residential units, the same square footage of retail and restaurant uses, and the same density as the Project and Alternative 5. However, Alternative 5A would modify building height and configuration of the North, South and Loft Buildings. Under this alternative, the height of the North Building would be stepped down along its Wilshire Boulevard and Merv Griffin Way elevations. The height of the South Building would step down along its western elevation, facing the Los Angeles Country Club. The stepped building heights would introduce more articulation to the buildings, reducing their apparent height from off-site vantage points. The North Building setback from the southerly Wilshire Corridor curb line would increase to 63 feet, equivalent to The Beverly Hilton's Wilshire Tower setback (i.e., the northeast corner of the Tower's northern wing). This alternative also introduces a new single-story Spa Pavilion at the former location of the garden deck. The number of units (252) under Alternative 5A would be the same as under the Project. However, under Alternative 5A, the mix of units would change to include 58 Studio units. Under Alternative 5A, additional residential amenities would be provided including an expanded spa and below-grade amenities, including a back-of-house kitchen, back-of-house laundry, security offices, wine storage, and increased area for storage units. The FAR of Alternative 5A would be 2.74:1, which is slightly more than the Project due to the added amenities. The intent of this alternative is to reduce Aesthetic impacts related to visual character and shade impacts on El Rodeo School, Beverly Gardens Park and residences north of Wilshire Boulevard.

Implementation of Alternative 5A would eliminate significant and unavoidable impacts associated with implementing the Project as described below. The significant and unavoidable adverse impacts that remain include:

- **Aesthetics and Views** – The visual character of the site and surrounding area would be substantially altered. Nevertheless, this Alternative does reduce aesthetic impacts because the North Building would be set back farther from the Wilshire Boulevard curbline so as to approximately match the setback of the Wilshire Tower of the adjacent Beverly Hilton Hotel. The increased setback increases the separation between the Project and the El Rodeo School, thus making this alternative more compatible with the School and other land uses to the north. Further, the building height would incorporate setbacks from Wilshire Boulevard and Merv Griffin Way, which would further increase the physical compatibility with off-site uses by widening view corridors associated with the roadways and providing more building articulation. In light of these revisions, Alternative 5A is considered environmentally superior to Alternative 5 and the Project as to Aesthetics, even though the impacts would remain significant and unmitigable.
- **Aesthetics and Views** – The North and South Tower Buildings would continue to obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton.

- **Air Quality** – During Project construction NO<sub>x</sub> emissions would exceed SCAQMD established significance thresholds such that significant unavoidable impacts would result, even after incorporation of mitigation. Alternative 5A would have similar impacts as the Project.
- **Air Quality** – The LST analysis shows that maximum 24-hour PM<sub>10</sub> and PM<sub>2.5</sub> concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site during construction. Alternative 5A would have similar impacts as the Project.
- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the CEQA Guidelines. Alternative 5A would have similar impacts as the Project.
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Project and Alternative 5A would both result in significant project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from Project construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result. Alternative 5A would have similar impacts as the Project.

However, Alternative 5A would eliminate the conflicts with the General Plan's Land Use Element by increasing the setback from Wilshire Boulevard in conjunction with the reduced height and steps up in building height from north to south. Alternative 5A is setback to the same extent of the northern wing of the Hilton Tower (specifically Alternative 5A is setback to the same extent as the northeast corner of the Wilshire facade of the northern wing of the Hilton Tower). The Hilton Tower, which has been in existence for more than fifty years, establishes the existing scale and appropriate transition for this area. The setback and step ups in building height make Alternative 5A compatible with the scale of the area and eliminate transitional conflicts, thus eliminating the conflicts with the Land Use elements.

Otherwise, alternative 5A would have impacts that are comparable to impacts associated with the Project. Although the height of the South Building would be increased above that of the Project and five feet above that considered in Alternative 5, the building also would integrate step backs such that the western side of the building, facing the Los Angeles Country Club, would be lower than the eastern side of the building. The EIR consultant prepared Supplemental Shade and Shadow Diagrams for 9900 Wilshire Project, dated October 2007, which were presented to the Planning Commission at the October 29, 2007 meeting. The supplemental diagrams demonstrate, along with later testimony from the Applicant's consultant, and the Planning Commission found, that the shade and shadow from the increased height of the South Building would not result in a significant impact to the Los Angeles Country Club.

#### Conclusion Regarding Alternative 5A

The City Council finds that Alternative 5A meets all of the objectives of the Project, would eliminate conflicts with Land Use Element policies, and would reduce the severity of significant and unmitigable impacts on aesthetic character and view for the reasons set forth above, although that impact remains significant under this Alternative. Concepts from this alternative, therefore, are incorporated into the Revised Project. However, the Revised Project is environmentally superior to Alternative 5A due to increased public gardens, the elimination of the lofts on Merv Griffin Way,

thus reducing the number of residential units, and additional setback from Wilshire Boulevard.

2. Alternative 7 – Variation on Alternative 5 (Modified Height and Configuration of North/South Buildings)

Summary of Alternative 7

Alternative 7 would include the same number of units, the same square footage of retail and restaurant uses, and the same FAR as the proposed Project, but would modify the building heights and configuration in several ways. The North Building would be stepped back from Wilshire Boulevard, with heights ranging from 84 to 108 feet, and the height of the South Building would be increased from 144 to 196 feet. The North Building setback from the southerly curb line of Wilshire Boulevard would increase to approximately 80 feet, comparable to that of the Beverly Hilton's Wilshire Tower (i.e., the southwest corner of the Wilshire façade of the Tower's northern wing)(See Figure 6, 9900 Wilshire Project – Planning Commission Requests for Additional Study/Clarification at page 16, as included in the September 24, 2007 Planning Commission Staff Report). The intent of this alternative is to reduce Aesthetic and Land Use impacts by expanding the view corridor along Wilshire Boulevard.

Implementation of Alternative 7 would eliminate significant and unavoidable impacts associated with implementing the Project, as described below. The significant and unavoidable adverse impacts that remain include:

- **Aesthetics and Views** – The visual character of the site and surrounding area would be substantially altered. Nevertheless, this Alternative does reduce aesthetic impacts because the North Building would be set back approximately 80 feet from the Wilshire curb line, a setback comparable to that of the Wilshire Tower to the east, which would improve physical compatibility with El Rodeo School and other land uses to the north. Moreover, the substantial building height reduction along Wilshire Boulevard, compared to the Project, and the accompanying building height setbacks with distance from Wilshire would increase physical compatibility with off-site uses by widening view corridors associated with these roadways and providing more building articulation from roadway vantages. Alternative 7 is therefore considered environmentally superior to the Project relative to Aesthetic Character and Views.
- **Aesthetics and Views** – The North and South Buildings would continue obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of the Beverly Hilton, although this impact would be less than with the Project because increased separation between the North and South Buildings would allow for some views through the site.
- **Air Quality** – During Project construction NO<sub>x</sub> emissions would exceed SCAQMD established significance thresholds such that significant unavoidable impacts would result, even after incorporation of mitigation. Alternative 7 would have similar impacts as the Project.
- **Air Quality** – The LST analysis shows that maximum 24-hour PM<sub>10</sub> and PM<sub>2.5</sub> concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site during construction. Alternative 7 would have similar impacts as the Project.

- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the CEQA Guidelines. Alternative 7 would have similar impacts as the Project
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Project would result in significant project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from Project construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result. Alternative 7 would have similar impacts as the Project.

Alternative 7 would reduce the severity of the Aesthetic impacts associated with the Project. Alternative 7 would also eliminate the conflicts with the General Plan's Land Use Element by increasing the setback from Wilshire Boulevard in conjunction with the reduced height and steps up in building height from north to south. Alternative 7 is setback to the same extent as the northern wing of the Hilton Tower (specifically Alternative 7 is setback to the same extent as the southwest corner of the Wilshire façade of the northern wing of the Hilton Tower). The Hilton Tower, which has been in existence for more than fifty years, establishes the existing scale and appropriate transition for this area. The setback and step ups in building height make Alternative 7 compatible with the scale of the area and eliminate transitional conflicts, thus eliminating the conflicts with the Land Use elements.

Otherwise, Alternative 7 would have impacts that are comparable to impacts associated with the Project. Although the height of the South Building would be increased above that of the Project, the building also would integrate step backs such that the western side of the building, facing the Los Angeles Country Club, would be lower than the eastern side of the building. The EIR consultant prepared Supplemental Shade and Shadow Diagrams for 9900 Wilshire Project, dated October 2007, which were presented to the Planning Commission at the October 29, 2007 meeting. The supplemental diagrams demonstrate, along with later testimony from the Applicant's consultant, and the Planning Commission found, that the shade and shadow from the increased height of the South Building would not result in a significant impact to the Los Angeles Country Club.

*(a) Objectives Fully Met by Alternative:*

Alternative 7 would result in the implementation of a Project similar to the Project; however, the North Tower Building would be set back further from Wilshire Boulevard with lower height at the north stepping to more height to the south, the South Tower Building height would increase, and the separation between the North and South Tower Buildings would be increased. As such, all Project objectives would also be achieved under this Project Alternative.

Conclusion Regarding Alternative 7

The City Council hereby finds that Alternative 7 would reduce potentially significant impacts. Concepts from this alternative, therefore, are incorporated into the Revised Project to reduce the level of impact. However, the City Council finds that Alternative 7 as a whole provides no materially different environmental benefits than the Revised Project. Both Alternative 7 and the Revised Project are setback to the same extent as the northern wing of the Wilshire Tower. The Revised Project is setback to the midpoint of the Wilshire Tower. Therefore both Alternative 7 and

the Revised Project will eliminate the inconsistencies of the Project with the Land Use Element of the General Plan. But the South Building of Alternative 7 is taller with less modulation than the South Building of the Revised Project. Additionally, the Revised Project has fewer residential units, more public gardens, and more open space due to removal of the loft buildings. Therefore, the Revised Project is environmentally superior to Alternative 7.

3. Alternative 8 Combination of Alternative 3 (Reduced Density) and Alternative 5 (Modified Height and Configuration of North/South Buildings).

Summary of Alternative 8

Under this Alternative 8, several of the land uses and buildings associated with the Project would be reduced in size by approximately 35 percent, including the number of condominium units, the residential floor area, the height of, and number of stories in, the North and South Buildings, and the number of parking spaces. The retail and restaurant floor area would be equivalent to that of the Project. Setback distances from surrounding property lines and roadways would be similar to the Project, except that the North Building setback from the southerly curb line of Wilshire Boulevard would increase to 62.5 feet, comparable to that of the Beverly Hilton's Wilshire Tower (i.e., the northeast corner of the Tower's Wilshire facade), and the distance from between the North and South buildings would increase from 45 to 60 feet. The FAR under this alternative is 1.7:1. The intent of this alternative is to reduce the severity of identified potentially significant impacts and to expand view corridors along Wilshire Boulevard and between the North and South Tower Buildings on the Project site.

Implementation of Alternative 8 would eliminate significant and unavoidable impacts associated with implementing the Project, as described below. The significant and unavoidable adverse impacts that remain include:

- **Aesthetics and Views** – The visual character of the site and surrounding area would be substantially altered. Nevertheless, this Alternative does reduce aesthetic impacts because the North Building would be set back farther from the Wilshire Boulevard curblines so as to approximately match the setback of the Wilshire Tower of the adjacent Beverly Hilton Hotel. The increased setback increases the separation between the Project and the El Rodeo School, thus making this alternative more compatible with the School and other land uses to the north. Further, the building height would incorporate setbacks from Wilshire Boulevard and Merv Griffin Way, which would further increase the physical compatibility with off-site uses by widening view corridors associated with the roadways and providing more building articulation.
- **Aesthetics and Views** – The North and South Tower Buildings would still obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton.
- **Air Quality** – During Project construction NO<sub>x</sub> emissions would exceed SCAQMD established significance thresholds such that significant unavoidable impacts would result, even after incorporation of mitigation.

- **Air Quality** – The LSI analysis shows that maximum 24-hour PM10 and PM2.5 concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site during construction.
- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the CEQA Guidelines.
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Project or Alternative 8 would result in significant project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from construction of either the Project or Alternative 8 would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result.

However, Alternative 8 would eliminate the conflicts with the General Plan's Land Use Element by increasing the setback from Wilshire Boulevard in conjunction with the reduced height and steps up in building height from north to south. Alternative 8 is setback to the same extent of the northern wing of the Hilton Tower (specifically Alternative 8 is setback to the same extent as the northeast corner of the Wilshire façade of the northern wing of the Hilton Tower). The Hilton Tower, which has been in existence for more than fifty years, establishes the existing scale and appropriate transition for this area. The setback and step ups in building height make Alternative 8 compatible with the scale of the area and eliminate transitional conflicts, thus eliminating the conflicts with the Land Use elements.

#### Conclusion Regarding Alternative 8

Although Alternative 8 would have no additional significant impacts beyond those identified for the Revised Project and would reduce some of the Project's impacts, the City Council hereby finds that failure to meet the Project objectives regarding housing to the same extent as the Project makes this Alternative socially infeasible and by itself, independent of any other reason, would justify rejection of Alternative 8. Additionally, based on the March 2008 report from CB Richard Ellis, the City Council also finds that Alternative 8 would not be economically feasible to build for the same reasons that Alternative 3 with reduced density would not be feasible economically.

#### 4. Alternative 9 – Variation on Project (Additional Parking)

##### Summary of Alternative 9

Alternative 9 would develop the same number of condominium units, retail and restaurant space square footage, and building heights and configuration as the Project, but would add an additional level of subterranean parking for a total of three levels of subterranean parking. Under this alternative, 572 new parking spaces would be added for a total of 1,501 parking spaces. The intent of this alternative is to add to the general public parking supply, over and above Project-related parking demand.

Implementation of Alternative 9 would result in the same significant and unavoidable impacts associated with implementing the Project and would result in greater impacts in some areas. These significant and unavoidable adverse impacts include:

- **Aesthetics and Views** – The visual character of the site and surrounding area would be substantially altered.
- **Aesthetics and Views** – The North and South Tower Buildings would obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton.
- **Air Quality** – During Project construction NOx emissions would exceed SCAQMD established significance thresholds such that significant unavoidable impacts would result, even after incorporation of mitigation.
- **Air Quality** – The LST analysis shows that maximum 24-hour PM10 and PM2.5 concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site during construction.
- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the CEQA Guidelines.
- **Land Use and Planning** – The original Project would conflict with two objectives within the Land Use Element of the General Plan such that significant land use impacts would result from inconsistency with the City's General Plan.
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Project would result in significant project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from Project construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result.

Alternative 9 would also have greater levels of impacts associated with the additional grading and excavation necessary to construct the additional level of parking in such areas as air quality; geology and soils; and transportation, traffic, and circulation.

#### Conclusion Regarding Alternative 9

The City Council finds that Alternative 9 is not environmentally superior to the Project or the Revised Project and would result in greater impacts associated with the additional grading and excavation necessary to construct an extra level of parking than would the Project as originally proposed and adopted. These greater impacts would be in such areas as air quality, geology and soils, transportation, traffic, and circulation.

5. Alternative 10 – Combination of Alternative 2 (Code Compliant Office/Retail) and Project.

#### Summary of Alternative 10

Alternative 10 would include the same number of residential units and the same retail and restaurant

square footage as the Project. Additionally, the heights of the North, South, and Loft Buildings would remain the same, except that the North Building would be articulated in height such that the northeastern portion of the building closest to Wilshire Boulevard would be 24 feet tall. Additionally, under this alternative, a new Spa Pavilion building would be located at the southern edge of the site along Santa Monica Boulevard and would house one level of retail and six levels of Class A office space. Building setbacks would be similar except that the North Building setback would increase to 50 feet from the southerly Wilshire Boulevard curb line. The FAR would be 2.96:1. The intent of this alternative is to increase the supply of Class A office space in the City.

Implementation of the Alternative 10 would result in the same significant and unavoidable impacts associated with implementing the Project and would result in greater impacts in some areas. These significant and unavoidable adverse impacts include:

- **Aesthetics and Views** – The visual character of the site and surrounding area would be substantially altered.
- **Aesthetics and Views** – The North and South Tower Buildings would obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton.
- **Air Quality** – During Project construction NO<sub>x</sub> emissions would exceed SCAQMD established significance thresholds such that significant unavoidable impacts would result, even after incorporation of mitigation.
- **Air Quality** – The IST analysis shows that maximum 24 hour PM<sub>10</sub> and PM<sub>2.5</sub> concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site during construction.
- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the CEQA Guidelines.
- **Land Use and Planning** – The proposed project would conflict with two objectives within the Land Use Element of the General Plan such that significant land use impacts would result from inconsistency with the City's General Plan.
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Project would result in significant project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from Project construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result.

Additionally, due to the addition of 175,000 square feet of office space, Alternative 10 would increase impacts, in comparison to the Project, relative to construction-related and operational air emissions, operational noise, population and housing, public services, transportation and traffic, and utilities and service systems.

#### Conclusion Regarding Alternative 10

The City Council finds that Alternative 10 is not environmentally superior to the Project and Revised Project and would increase Project impacts in comparison to the Project, including impacts relative to construction-related and operational air emissions, operational noise, population and housing, public services, transportation and traffic, and utilities and service systems.

## 6. The Revised Project

### Summary of the Revised Project

This Revised Project is the product of Planning Commission and City Council deliberations and modifications made by the applicant in response to Planning Commission and City Council direction. The Revised Project would include 17 fewer residential units, 4,200 square feet less of retail and restaurant uses, and an increased density of 0.12 for the Project. The Revised Project would also modify building height and configuration of the North and South Buildings, remove the North and South Loft Buildings, and increase open space by 0.39 acre. The North Building would be stepped back from Wilshire Boulevard with heights ranging from 108 to 161 feet. The height of the South building would range from 161 to 185 feet.

Implementation of the Revised Project would eliminate some of the significant and unavoidable impacts associated with implementing the Project as described below. These significant and unavoidable adverse impacts that remain include:

- **Aesthetics and Views** – The visual character of the site and surrounding area would be substantially altered.
- **Aesthetics and Views** – The North and South Tower Buildings would obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton.
- **Air Quality** – During Project construction NO<sub>x</sub> emissions would exceed SCAQMD established significance thresholds such that significant unavoidable impacts would result, even after incorporation of mitigation.
- **Air Quality** – The LST analysis shows that maximum 24-hour PM<sub>10</sub> and PM<sub>2.5</sub> concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site during construction.
- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the *CEQA Guidelines*.
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Project would result in significant project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from Project construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result.

However, by modifying building height, and configuration to be more compatible with surrounding

structures and by removing the lofts and increasing open space, the Revised Project would eliminate conflicts with the General Plan's Land Use element. The Revised Project is setback to the same extent of the northern wing of the Hilton Tower (specifically the Revised Project is setback to the same extent as the midpoint of the Wilshire façade of the northern wing of the Hilton Tower). The Hilton Tower establishes the existing scale and appropriate transition for this area. The setback and step ups in building height make the Revised Project compatible with the scale of the area and eliminate transitional conflicts, thus eliminating the conflicts with the Land Use Element policies.

The Revised Project would also reduce the severity of the significant aesthetic impacts associated with the Project, construction-related and operational air emissions, operational noise, population and housing, public services, transportation and traffic, and utilities and service systems due to the reduction of units and increased open space. All other impacts associated with the Revised Project would be comparable to impacts associated with the Project.

*(a) Objectives Fully Met by the Revised Project:*

- To create a world-class architectural landmark with a visual presence at the dual gateway to the City at Wilshire Boulevard and Santa Monica Boulevard, and which will enhance the beauty and image of the City of Beverly Hills.
- To develop an environmentally sensitive and sustainable Project for which the applicant intends to seek Leadership in Energy and Environmental Design (LEED) certification from the U.S. Green Building Council and establish a benchmark for environmentally responsible design in the City of Beverly Hills.
- To preserve approximately two-thirds of the Project site as landscaped gardens and other open space to enhance the visual character of the Project.
- To provide a 0.42-acre entry garden along Wilshire Boulevard for the use and enjoyment of the public that complements and extends the existing Beverly Gardens Park on the north side of Wilshire Boulevard, enhances the garden qualities of the City, and replaces a high-density commercial use across the street from an existing school and residential neighborhood.
- To redevelop the Project site in a manner that does not substantially increase the traffic levels and related operational air quality and noise impacts associated with the prior Robinsons-May department store use on the site prior to closure.
- To improve the utilization and visual appearance of the Project site by eliminating the existing above-ground parking structure and constructing subterranean parking for the Project that will be spread across the entire Project site to provide convenient parking for Project residents, guests and retail patrons.
- To provide a substantial amount of housing for local and area residents to help meet market demand and alleviate the substantial housing shortage in the City of Beverly Hills and the Westside of Los Angeles.
- To provide new housing within the City without having to tear down existing rental units or otherwise displace existing housing.

- To provide full-service residential condominiums that are competitive with existing and proposed condominium projects in the Wilshire Corridor and Century City and have comparable views, so that residents who desire to "downsize" from their existing homes will not have to move out of Beverly Hills to find suitable housing.
- To improve traffic circulation in and around the Project site by providing additional vehicular access points on Wilshire Boulevard and Santa Monica Boulevard for Project residents in order to reduce traffic on Merv Griffin Way.
- To reduce the intensity of uses currently permitted thereon by replacing the existing C-3 commercial zoning designation with a specific plan zoning designation that limits development to approximately two-thirds of the number of residential units that would be permitted under the R-4 residential zoning designation, along with a small amount of retail space.
- To provide annual net revenue to the City that substantially exceeds the revenue the City would receive from commercial operations on the Project site.

#### Conclusion Regarding the Revised Project

The City Council finds that the Revised Project achieves the Project objectives without increasing any of the impacts associated with the Project as described in the Draft EIR. By amending the General Plan to establish that the Project site is appropriate for higher intensity development and by modifying the building heights, increasing the building setbacks from Wilshire Boulevard, incorporating the progressive steps in the building heights from north to south, increasing the amount of public open space and landscaping, introducing open space at the northwestern corner of Santa Monica Boulevard and Merv Griffin Way, and reducing the number of residential units to a small extent, the Revised Project configuration would be more compatible with surrounding structures, would eliminate any inconsistencies with the General Plan Land Use Element and reduce the severity of the impacts on aesthetics, construction-related and operational air emissions, operational noise, population and housing, public services, transportation and traffic, and utilities and service systems. All other impacts associated with the Revised Project would be comparable to impacts associated with the Project.

Although the height of the South Building would be increased above that of the Project, the building also would integrate step backs such that the western side of the building, facing the Los Angeles Country Club, would be lower than the eastern side of the building. The EIR consultant prepared Supplemental Shade and Shadow Diagrams for 9900 Wilshire Project, dated October 2007, which were presented to the Planning Commission at the October 29, 2007 meeting. The supplemental diagrams demonstrate, along with later testimony from the Applicant's consultant, and the Planning Commission found, that the shade and shadow from the increased height of the South Building would not result in a significant impact to the Los Angeles Country Club.

The City Council finds that the Revised Project is the environmentally superior alternative among the feasible alternatives.

#### **H. Alternatives Proposed by Los Angeles Country Club and the Los Angeles Conservancy**

During the proceedings for the Project, the Los Angeles Country Club proposed two alternative potential Project layouts designed to address the Club's concerns. Additionally, the Los

Angeles Conservancy suggested an alternative focused on preserving historic resources on the site. Analysis and discussion of these alternatives follows.

1. Los Angeles Country Club - Alternative 1

Summary of LACC Alternative 1

LACC's Alternative 1 proposes locating the South Tower farther to the East to increase the setback between the golf course and the tower.

*(a) Reasons for Rejecting Alternative*

Implementation of LACC Alternative 1 would result in the same significant and unavoidable impacts associated with implementing the Revised Project and would result in the loss of the proposed gardens and green space. These significant and unavoidable adverse impacts include:

- **Aesthetics and Views** – The North and South Tower Buildings would continue to obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton. Movement of the South Tower may increase the aesthetic impacts of the Project on the Beverly Hilton.
- **Air Quality** – During the Revised Project construction NO<sub>x</sub> emissions would exceed SCAQMD established significance thresholds such that significant unavoidable impacts would result, even after incorporation of mitigation. LACC Alternative 1 would have similar impacts as the Revised Project.
- **Air Quality** – The LST analysis shows that maximum 24-hour PM<sub>10</sub> and PM<sub>2.5</sub> concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site during construction. LACC Alternative 1 would have similar impacts as the Revised Project.
- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the CEQA Guidelines. LACC Alternative 1 would have similar impacts as the Revised Project.
- **Land Use and Planning** – The Revised Project and LACC Alternative 1 would both eliminate conflicts with the Land Use Element of the General Plan such that significant land use impacts would no longer result from inconsistency with the City's General Plan. LACC Alternative 1 would eliminate the garden and open space proposed in the Project because movement of the South Tower to the center of the property would split the site into marginal and insignificant landscaped areas. This would conflict with the goal of the General Plan Open Space Element to pursue additional open space in multi-family zones.
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Revised Project and LACC Alternative 1 would both result in significant project-level and cumulative noise impacts.

- **Groundborne Vibration** Due to the proximity of sensitive receptors, ground vibrations from construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result. LACC Alternative 1 would have similar impacts as the Revised Project.

LACC Alternative 1 would have impacts comparable to impacts associated with the Revised Project, but would not achieve the Project's objective of having additional public gardens and green space to the same extent as the Revised Project because of the interruption of the continuous green space created by the proposed relocation of the South Building and the disturbance to the public's use and enjoyment of this green space caused thereby. Since the City Council finds based on the conclusion of Appendix 4.J of the Draft EIR and the testimony presented by William Kent Alkire, II that the shade and shadow from the increased height of the South Building would not result in a significant impact to the Los Angeles Country Club, LACC Alternative 1 does not reduce any of the Revised Project's significant impacts.

*(b) Objectives Not Met by Alternative:*

- To preserve approximately two-thirds of the Project site as landscaped gardens and other open space to enhance the visual character of the Project.
- To provide a 0.42-acre entry garden along Wilshire Boulevard for the use and enjoyment of the public that complements and extends the existing Beverly Gardens Park on the north side of Wilshire Boulevard, enhances the garden qualities of the City, and replaces a high-density commercial use across the street from an existing school and residential neighborhood.

Conclusion Regarding LACC Alternative 1

The City Council finds that LACC Alternative 1 would have impacts comparable to the Revised Project in all areas and is therefore not environmentally superior. Moreover, LACC Alternative 1 is socially infeasible because it would adversely affect the publicly accessible gardens and open space of the Revised Project, undermining two of the important objectives of the Project that result in public benefit. Moreover, the City Council finds that LACC Alternative 1 will increase the aesthetic impact of the Project on the Beverly Hilton by moving the South Tower closer to the Hilton. The City Council also finds that the movement of the South Tower would produce no significant benefits because the Revised Project will not have significant impacts on the LACC golf course as found in Appendix 4.1 of the Draft EIR the testimony of William Kent Alkire, II.

2. Los Angeles Country Club – Alternative 2

Summary of LACC Alternative 2

LACC Alternative 2 would result in the implementation of a project similar to the Revised Project; however, the South Tower Building would have its orientation reversed so it will be set back further from the LACC golf course.

*(a) Reasons for Rejecting Alternative*

Implementation of LACC Alternative 2 would result in the same significant and unavoidable impacts associated with implementing the Revised Project, and would have additional adverse impacts on the

proposed gardens and green space and the single family residences to the north of the Project site. These significant and unavoidable adverse impacts include:

- **Aesthetics and Views** – The North and South Tower Buildings would continue to obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton. Movement of the South Tower will increase the aesthetic impacts on the single family residences north of Wilshire Blvd. by directing the views from the 9900 Wilshire Residences towards this area.
- **Aesthetics and Views** – Movement of the South Tower eliminates direct sunlight to many of the 9900 Wilshire residents during the winter months. It would also block midday south light from reaching the public and private landscape along Merv Griffin way.
- **Air Quality** – During Project construction NO<sub>x</sub> emissions would exceed SCAQMD established significance thresholds such that significant unavoidable impacts would result, even after incorporation of mitigation. LACC Alternative 2 would have similar impacts as the Project.
- **Air Quality** – The LST analysis shows that maximum 24-hour PM<sub>10</sub> and PM<sub>2.5</sub> concentrations would exceed the threshold of significance at the nearest residential and sensitive receptors to the Project site during construction. LACC Alternative 2 would have similar impacts as the Project.
- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the CEQA Guidelines. LACC Alternative 2 would have similar impacts as the Project.
- **Land Use and Planning** – The Revised Project and LACC Alternative 2 would both eliminate the conflict with the Land Use Element of the General Plan related to scale. However, by directing views from the 9900 Wilshire Boulevard Project to single family residences to the North, the Project creates a transitional conflict not created by the Revised Project.
- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Project and LACC Alternative 2 would both result in significant project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from Project construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result. LACC Alternative 2 would have similar impacts as the Project.

LACC Alternative 2 would have impacts that are comparable to impacts associated with the Project, and would have additional aesthetic and land use impacts on the single family residences north of Wilshire, the residents of 9900 Wilshire, and the landscaped gardens and open space on the Project site. Since the City Council finds based on the conclusion of Appendix 4.1 of the Draft EIR and the testimony of William Kent Alkire, II that the shade and shadow from the increased height of the South Building would not result in a significant impact to the Los Angeles Country Club, LACC Alternative 2 does not reduce the Project's impacts.

#### Conclusion Regarding LACC Alternative 2

The City Council finds that LACC Alternative 2 is not environmentally superior to the Revised Project, is socially infeasible because it would increase aesthetic and land use impacts on the single family residences north of Wilshire by orienting the views from 9900 Wilshire towards those residents, and would diminish the sunlight available to the residents of 9900 Wilshire and to the landscaped gardens and open space on the Project site. The City Council also finds that the movement of the South Tower would produce no significant benefits since the Revised Project will not have significant impacts on the LACC golf course as found in Appendix 4.1 of the Draft EIR and in the testimony of William Kent Alkire, II.

### 3. Los Angeles Conservancy Alternative

#### Summary of Los Angeles Conservancy Alternative

In a March 11, 2008 letter, the Los Angeles Conservancy suggested variations on Alternative 4 in order to preserve the Robinsons-May building. These suggestions incorporate many of the elements of Alternative 4, with minor variations. The Conservancy suggested that the upper floors of the Robinsons-May building could be used for a fitness center, a private events room, screening rooms, or residential storage. The lower floors could be used for retail or restaurant uses. The roof could be used for a rooftop deck or pool or outdoor dining. The south and west sides of the building could be used for residential uses. And, finally, the Conservancy suggested the landscaped plaza could be redesigned as an entry garden or publicly accessible open space.

#### *(a) Reasons for Rejecting Alternative*

Implementation of the Conservancy variations would avoid the following significant impacts associated with implementation of the Project:

- **Cultural Resources** – Demolition of the Robinsons-May building would result in significant and unavoidable impacts to an historic resource, as defined in Section 15064.5 of the CEQA Guidelines.
- **Land Use and Planning** – The original Project would conflict with two objectives within the Land Use Element of the General Plan such that significant land use impacts would result from inconsistency with the City's General Plan.

However, the Conservancy Alternative would only meet some of the Project objectives, as described below.

All other significant impacts associated with implementation of the Project would also occur with implementation of this Alternative, including:

- **Aesthetics and Views** – The visual character of the Project site and surrounding area would be substantially altered.
- **Aesthetics and Views** – The North and South Tower Buildings would obstruct panoramic views from west-facing guestrooms in the adjacent Wilshire Tower hotel building of The Beverly Hilton.

- **Noise** – For construction activities performed outside the hours specified within the City's noise ordinance, the Project would result in significant project-level and cumulative noise impacts.
- **Groundborne Vibration** – Due to the proximity of sensitive receptors, ground vibrations from Project construction would exceed the FRA groundborne vibration threshold such that significant unavoidable impacts would result.

*(b) Objectives Not Met by Alternative:*

- To preserve approximately two-thirds of the Project site as landscaped gardens and other open space to enhance the visual character of the Project.
- To provide a 0.42-acre entry garden with public access along Wilshire Boulevard for the use and enjoyment of Beverly Hills residents and visitors that complements and extends the existing garden parkway on the north side of Wilshire Boulevard, enhances the garden qualities of the City and replaces a high-density commercial use across the street from an existing school and residential neighborhood.

Conclusion Regarding Los Angeles Conservancy Alternative

The City Council hereby finds that failure to meet each of the Project objectives for increased open space and public gardens set forth above would be an independent ground for rejecting the Conservancy variations as socially infeasible and by itself, independent of any other reason, would justify rejection of the Conservancy Alternative. The City Council also finds based on the March 2008 Financial Feasibility Analysis prepared by CB Richard Ellis for Alternative 4 and the letter dated March 20, 2008 from Mr. Thomas Jirorsky of CB Richard Ellis that the Conservancy Alternative is not economically feasible to build because projected revenue from this Alternative would not exceed projected costs by a sufficient margin. The City Council further finds the Conservancy Alternative socially infeasible: the social costs to the public from having fewer housing units and no new gardens or green space would exceed the benefit to the public of preserving the Robinsons-May building.

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**EXHIBIT B**

Statement of Overriding Considerations

**EXHIBIT B**  
**Statement of Overriding Considerations**

The following Statement of Overriding Considerations is made in connection with the approval of the Revised Project.

The City Council finds that the economic, social and other benefits of the Revised Project outweigh the significant and unavoidable environmental impacts identified in the EIR and in the record, some of which have been eliminated or reduced in severity to the degree feasible through modifications to the originally proposed Project. In making this finding, the City Council has balanced the benefits of the Revised 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 Revised Project, independent of the other benefits, would warrant approval of the Revised Project notwithstanding the unavoidable environmental impacts of the Revised Project.

A. The Revised Project will provide a substantial amount of housing for local and area residents to help meet market demand and the City's Regional Housing Needs Allocation from the State of California.

B. The Project will provide full-service luxury residential condominiums that are competitive with existing and proposed condominium projects in Beverly Hills, the Wilshire Corridor, and Century City and have comparable amenities, so that residents who desire to "downsize" from their existing homes will not have to move out of Beverly Hills to find suitable housing.

C. The Revised Project will create a world-class architectural landmark with a visual presence at the dual Wilshire Boulevard and Santa Monica Boulevard gateways to the City, which will enhance the beauty and image of the City of Beverly Hills.

D. The Revised Project will improve traffic circulation in and around the Project site by providing additional vehicular access points on Wilshire Boulevard and Santa Monica Boulevard, widening and realigning Merv Griffin Way, and installing a new traffic signal at Merv Griffin Way and Santa Monica Boulevard, and developing the site with uses that will generate less traffic than would result from commercial redevelopment of the site.

E. The Revised Project will provide a 0.81-acre entry garden along Wilshire Boulevard and Merv Griffin Way for the use and enjoyment of the public that complements and extends the existing Beverly Gardens Park on the north side of Wilshire Boulevard and enhances the garden qualities of the City.

F. The Revised Project will augment the City's economic base by providing additional property tax revenues to the City of Beverly Hills and by providing tax-generating revenues from the sales within the proposed retail component. Further, the Revised Project will enhance the economic resources of the City through the Public Benefit Contribution and Environmental Mitigation and Sustainability fees established through the Development Agreement.

G. The Revised Project will enhance the City's ability to meet its affordable housing goals in two ways. First, the Project will contribute \$3 million to an affordable housing fund. Second, it will help meet the City's need for market rate housing units without removing older housing stock that would typically be more affordable than new housing stock.

**EXHIBIT C**

**Mitigation Monitoring and Reporting Program**

## MITIGATION MONITORING PLAN

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Section 2.0 and Section 4.0 of the Final EIR identify the mitigation measures that will be implemented to reduce the impacts associated with the 9900 Wilshire project. The California Environmental Quality Act (CEQA) was amended in 1989 to add Section 21081.6, which requires a public agency to adopt a monitoring and reporting program for assessing and ensuring compliance with any required mitigation measures applied to proposed development. As stated in Section 21081.6 of the Public Resources Code,

*... the public agency shall adopt a reporting or monitoring program for the changes made to the project or conditions of project approval, adopted in order to mitigate or avoid significant effects on the environment.*

Section 21081.6 provides general guidelines for implementing mitigation monitoring programs and indicates that specific reporting and/or monitoring requirements, to be enforced during project implementation, shall be defined prior to final certification of the EIR.

The mitigation monitoring table lists those mitigation measures that may be included as conditions of approval for the project. These measures correspond to those outlined in Section 2.0 and discussed in Section 4.0. To ensure that the mitigation measures are properly implemented, a monitoring program has been devised which identifies the timing and responsibility for monitoring each measure. The project applicant will have the responsibility for implementing the measures, and the various City of Beverly Hills departments will have the primary responsibility for monitoring and reporting the implementation of the mitigation measures.

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan						
Mitigation Measure		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
					Check Box	Date
<b>Aesthetics, Light, and Glare</b>						
LG-1	Project light sources shall be shielded, directed downward when intended to illuminate walking or working surfaces, and focused on the project site, to prevent light spillover onto adjacent properties or roadways.	Community Development Department	The project lighting plan filed with the Department of Community Development/Building & Safety Division shall comply with this requirement. The plan check engineers will review the plans to ensure that they comply with this requirement.	This measure shall be implemented prior to issuance of certificate of occupancy and shall remain effective throughout the life of the project.		

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan						
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion		
				Check Box	Date	
<b>Air Quality</b>						
AQ-1	The Developer shall prepare a Construction Traffic Emission Management Plan to minimize emissions from vehicles including, but not limited to, scheduling truck deliveries to avoid peak hour traffic conditions, consolidating truck deliveries, and prohibiting truck idling in excess of 5 minutes.	Community Development Department	The project applicant shall submit a Construction Traffic Emission Management Plan to the Director of Community Development prior to issuance of any grading or construction permits. The plan shall be reviewed by the Community Development Department and filed with the Building and Safety Division Prior to the issuance of grading permits. The plan check engineer will review the plan to insure that it 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 Traffic Emission Management Plan.	This measure shall be met during the construction period. This measure shall be in effect until the issuance of the certificate of occupancy.		
AQ-2	The Contractor shall ensure that the use of all construction equipment is suspended during first-stage smog alerts.	See above.	See above.	See above.		

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan						
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion		
				Check Box	Date	
AQ-3	The Contractor shall promote the use of electricity or alternate fuels for on site mobile equipment instead of diesel equipment to the extent feasible.	See above.	See above	See above.		
AQ-4	The Contractor shall maintain construction equipment by conducting regular tune-ups according to the manufacturers' recommendations.	See above.	See above.	See above.		
AQ-5	The Contractor shall promote the use of electric welders to avoid emissions from gas or diesel welders, to the extent feasible.	See above.	See above.	See above.		
AQ-6	The Contractor shall promote the use of on-site electricity or alternative fuels rather than diesel-powered or gasoline-powered generators to the extent feasible.	See above.	See above.	See above.		

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan						
Mitigation Measure		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
					Check Box	Date
AQ-7	Prior to use in construction, the project applicant and contractor will evaluate the feasibility of retrofitting the large off-road construction equipment that will be operating for significant periods. Retrofit technologies such as particulate traps, selective catalytic reduction, oxidation catalysts, air enhancement technologies, etc., will be evaluated. These technologies will be required if they are verified by the California Air Resources Board (CARB) and/or the U.S. Environmental Protection Agency (U.S. EPA) and are commercially available and can feasibly be retrofitted onto construction equipment.	See above.	See above.	See above.		
AQ-8	The Contractor shall ensure that traffic speeds on all unpaved roads are reduced to 15 mph or less.	See above.	See above.	See above.		
AQ-9	The Contractor shall ensure that the project site is watered at least three times daily during dry weather.	See above.	See above.	See above.		
AQ-10	The Contractor shall install wind monitoring equipment on site, to the extent feasible, and suspend grading activities when wind speeds exceed 25 mph per Southern California Air Quality Management District (SCAQMD) guidelines.	See above.	See above.	See above.		

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan						
Mitigation Measure		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
					Check Box	Date
AQ-11	The Contractor shall water storage piles by hand or apply cover when wind events are declared (wind speeds in excess of 25 miles per hour).	See above.	See above.	See above.		
AQ-12	The Contractor shall apply nontoxic chemical soil stabilizers on inactive construction areas (disturbed lands within construction projects that are unused for at least four consecutive days).	See above.	See above.	See above.		
AQ-13	The Contractor shall replace ground cover in disturbed areas as quickly as possible.	See above.	See above.	See above.		

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan						
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion		
				Check Box	Date	
AQ-14	The project applicant shall retain a third-party air quality consultant to conduct continuous monitoring of the PM10 (dust) concentrations during the project demolition, excavation and grading phases of project construction (approximately 92 work days) to determine compliance with applicable air quality standards and regulations. Monitoring shall be accomplished using DustTrak™ aerosol monitors or other similar monitoring networks and shall meet the following requirements: <ul style="list-style-type: none"> <li>• The third-party consultant shall be approved by the City of Beverly Hills Planning Department.</li> <li>• Costs for the monitoring network and tests by the third-party consultant shall be borne by the project applicant.</li> </ul>	Community Development Department	The Community Development Department shall hire a third-party air quality consultant. Weekly monitoring reports shall be submitted to the Community Development Department for review. The project proponent shall submit a corrective action plan and have such plan approved prior to commencement of demolition activities.	During demolition and grading.		

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan					
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
<ul style="list-style-type: none"> <li>Monitors shall be located in such a manner that appropriate upwind (background) and two downwind locations from the project are selected. The locations shall be selected in order to monitor the project's contribution to ambient PM<sub>10</sub> concentrations and to minimize the influence of dust contributions from outside sources. One downwind monitoring station shall be located at or near the El Rodeo School's southern perimeter. The other downwind monitor shall be located in an area beyond the project boundary where the general public could be present for a period of more than one hour. The upwind and downwind directions shall be based on the prevailing daytime wind direction in the vicinity of the project site. All locations shall be approved by the third-party air quality consultant and the Community Development Director.</li> </ul>					

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Mitigation Monitoring and Reporting Plan					
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
<ul style="list-style-type: none"> <li>• The monitoring network shall include at least one anemometer to measure wind speeds and directions.</li> <li>• Each monitoring station shall be secured in such a manner to prevent access and tampering by unauthorized persons and to prevent damage to the equipment.</li> <li>• Each monitoring station shall be sited in a location with access to necessary infrastructure (e.g., electricity needs, foundation requirements, internet connectivity).</li> <li>• Monitors shall be calibrated using collocated filter-based samplers (Mini-Vol or other similar equipment). The third-party consultant shall calibrate the DustTrak™ monitors as needed to ensure that data is within acceptable margins of error as determined by manufacturer's specifications.</li> </ul>					

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
<ul style="list-style-type: none"> <li>The 5-hour rolling average dust concentration threshold is equal to the threshold specified in SCAQMD Rule 403 (50 micrograms per cubic meter) as determined by the difference between the upwind and downwind stations. The 1-hour average dust concentration threshold shall be set at a level of 150 micrograms per cubic meter to provide sufficient warning for on-site construction managers or supervisors to implement corrective measures. An exceedance of the 1-hour threshold shall not be deemed as a violation of any air quality standard or regulation.</li> </ul>					
<ul style="list-style-type: none"> <li>Monitoring shall be continuous and provide data at 5-minute intervals. The data shall report rolling 5-hour and rolling 1-hour average PM10 concentrations. Monitoring shall be active on any day that construction activity occurs during the demolition, excavation, and grading phases of project construction. Data shall be made available to the third-party consultant, the City of Beverly Hills, the project applicant, and the on-site contractor on a secured internet website. The general public shall have access to 5-hour rolling average PM10 concentrations on a publicly accessible website.</li> </ul>					

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
<ul style="list-style-type: none"> <li>Monitors shall be equipped with a visual alarm (strobe light or similar) that shall notify appropriate on-site construction managers or supervisors if established thresholds are exceeded. Additionally, an email shall be sent to appropriate on-site construction managers or supervisors if specified PM<sub>10</sub> thresholds are exceeded.</li> <li>All corrective measures, as necessary to reduce emissions to acceptable levels, shall be implemented immediately. If immediate implementation of a specific corrective measure will result in the creation of a hazardous situation, as determined by the Environmental Monitor, construction activity shall be allowed to continue for a reasonable period of time, as determined by the Environmental Monitor, until such time that it is safe to implement that corrective measure. Corrective measures shall be documented by the construction contractor in a log book accessible to the third-party air quality consultant and the City of Beverly Hills. Records shall be maintained of the specific action taken, the time and date the corrective action was taken, and written verification by the appropriate on-site construction manager or supervisor that the</li> </ul>					
<p><i>Impact Sciences, Inc. corrective action was taken.</i></p>		1:			

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
<ul style="list-style-type: none"> <li>The project applicant and contractor shall develop a corrective action plan. The plan shall be prepared and finalized prior to the commencement of project demolition. The plan shall indicate steps to safely and adequately reduce on-site dust emissions. The plan shall contain a list of possible corrective measures. The measures shall include, but not limited to, application of water or other soil stabilizers, temporary reduction in on-site vehicle speed, temporary reduction in construction activity, suspension of construction activity and other appropriate measures. The plan shall also require notification of the Principal of El Rodeo School and the Beverly Hills Unified School District Superintendent in the event of an exceedance of any of the established thresholds. The project applicant and contractor shall obtain approval of the plan from the City of Beverly Hills Community Development Director prior to commencing demolition.</li> </ul>					

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Mitigation Measure		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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AQ-15	<p>The project applicant and/or contractor shall comply with SCAQMD Rule 403 by ensuring visible dust emissions from the project site do not go beyond the property line.</p> <ul style="list-style-type: none"> <li>The project applicant and/or contractor shall designate a person located on-site who is trained and certified by the California Air Resources Board to conduct visible emissions evaluations (VEE). The designated person shall ensure compliance with SCAQMD Rule 403 by observing for visible dust emissions beyond the property line during daytime working hours. Observations shall be conducted in accordance with U.S. Environmental Protection Agency Method 9 (Title 40, Code of Federal Regulation, Part 60, Appendix A).</li> </ul>	See above.	See above.	See above.		

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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	<ul style="list-style-type: none"> <li>The Beverly Hills Unified School District (BHUSD) shall provide the City of Beverly Hills with its schedule of outdoor activities and athletic events at El Rodeo School and Beverly Hills High School during the construction period as soon as the information becomes available. The City shall immediately provide this information to the project applicant and contractor. The project applicant and contractor shall require coordination of all construction activities so as minimize the occurrence of high-emitting fugitive dust construction activities during the scheduled outdoor events to the extent feasible.</li> </ul>				

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
<ul style="list-style-type: none"> <li>In the event visible dust emissions are observed beyond the property line, the designated person shall immediately inform a lead supervisor or other appropriate managing personnel. The supervisor shall immediately implement corrective measures. If visible dust emissions are anticipated to impact El Rodeo School, the supervisor shall notify the Principal of El Rodeo School and the Beverly Hills Unified School District Superintendent. If immediate implementation of a corrective measure shall result in the creation of a hazardous situation, construction activity shall be allowed to continue for a reasonable period of time until such time that is it safe to implement corrective measures. Corrective measures shall be documented by the construction contractor in a log book accessible to the third-party air quality consultant and the City of Beverly Hills. Records shall be maintained of the specific action taken, the time and date the corrective action was taken, and written verification by the appropriate on-site construction manager or supervisor that the corrective action was taken.</li> </ul>					

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Mitigation Measure		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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<b>Cultural Resources</b>						
CR-1	The Robinsons-May department store shall be photographed with large-format black-and-white photography, and a written report, which follows Historic American Buildings Survey (HABS)/Historic American Engineering Record (HAER) standards at a minimum Level 3 Recordation. The documentation shall be donated to a suitable repository, such as the City of Beverly Hills Public Library. The cost shall be borne by the Applicant.	Community Development Department	The project applicant shall hire an architectural historian qualified under the Secretary of the Interior's Standards. The project applicant shall provide applicable photographs and reports to the Community Development Department.	Prior to issuance of grading and building permits.		
CR-2	The Applicant shall fund the production of a video of the Robinsons-May property showing the interiors and exteriors of the building and site to show its history. The video shall be placed in the City of Beverly Hills Public Library and posted on the City of Beverly Hills' website.	Community Development Department	The project applicant shall hire an architectural historian qualified under the Secretary of the Interior's Standards to produce the video.	Prior to issuance of demolition permits.		
CR-3	Potentially historic street lights adjacent to the project site shall be preserved and reinstalled along this section of Wilshire Boulevard and Santa Monica Boulevard, as appropriate, in consultation with the project proponents, the City of Beverly Hills, and an architectural historian qualified under the Secretary of the Interior's Standards.	Community Development Department	The project applicant shall hire an architectural historian qualified under the Secretary of the Interior's Standards. Historic street lights will be relocated, as advised.	Prior to issuance of grading and building permits.		

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CR-4	If buried cultural resources are encountered during construction, all work shall be halted in the vicinity of the archaeological discovery until a qualified archaeologist can assess the nature and significance of the archaeological discovery, per CEQA Section 15064.5 (f). Recovery of significant archaeological deposits, if necessary, shall include but not be limited to, manual or mechanical excavations, monitoring, soils testing, photography, mapping, or drawing to adequately recover the scientifically consequential information from and about the archaeological resource. Further treatment may be required, including site recordation, excavation, site evaluation, and data recovery. Any artifacts uncovered shall be recorded and removed for storage at a location to be determined by the archaeologist.	Community Development Department	The project applicant shall provide proof that a certified archaeologist has investigated and has made appropriate recommendations.	During project construction.		

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CR-5	Community Development Department	The project applicant shall provide proof that a certified archaeologist has investigated and has made appropriate recommendations.	During project construction.		

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	If the remains are determined to be Native American, the coroner shall contact the California Native American Heritage Commission to determine the most likely living descendant(s). The most likely living descendant shall determine the most appropriate means of treating the human remains and any associated grave artifacts and oversee disposition of the human remains and associated artifacts by the project archaeologists.					
CR-6	In the event a previously unknown fossil is uncovered during project construction, all work shall cease until a certified paleontologist can investigate the finds and make appropriate recommendations. Any artifacts uncovered shall be recorded and removed for storage at a location to be determined by the monitor.	Community Development Department	The project applicant shall provide proof that a certified paleontologist has investigated and has made appropriate recommendations.	During project construction.		

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<b>Geology and Soils</b>						
GEO-1	The proposed project shall be designed and constructed in accordance with recommendations contained in the Report of Geotechnical Investigation prepared by Mactec Engineering and Consulting, Inc. and in accordance with all applicable local, state, and federal regulations, such as the Uniform Building Code (UBC) and Title 9 of the Beverly Hills Municipal Code.	Community Development Department/ Building & Safety Division	The construction plans filled with the Department of Community Development/Building & Safety Division shall comply with this requirement. The plan check engineers will review the plans to ensure that they comply with this requirement.	This requirement shall be met prior to the issuance of relevant building permits.		
<b>Hazards and Hazardous Materials</b>						
HAZ-1	Any suspect lead based paint shall be sampled prior to any renovations or demolition activities. Any identified lead based paint located within buildings scheduled for renovation or demolition, or noted to be damaged, shall be abated by a licensed lead-based paint abatement contractor, and disposed of according to all state and local regulations.	Community Development Department/ Building & Safety Division  Department of Public Works	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.		
HAZ-2	In the event that the building is maintained on the site, the property owner shall ensure that the source(s) of moisture intrusion resulting in the growth of mold within the building are repaired.	Community Development Department	The site shall be inspected for moisture intrusion and a written report submitted to the Community Development Department.	Prior to the issuance of the certificate of occupancy.		

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HAZ-3	All old unused fluorescent light ballasts potentially containing PCBs shall be properly removed and disposed of prior to demolition activities.	Community Development Department/ Building & Safety Division  Department of Public Works	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.		

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<b>Hydrology and Water Quality</b>					
HYDRO-1	Prior to start of soil-disturbing activities at the site, a Notice of Intent (NOI) and Stormwater Pollution and Prevention (SWPPP) shall be prepared by the applicant in accordance with, and in order to partially fulfill, the California State Water Resources Control Board (SWRCB) Order No. 99-08-DWQ, National Pollutant Discharge Elimination System (NPDES) General Permit No. CAS000002 (General Construction Permit). The SWPPP shall meet the applicable provisions of Sections 301 and 402 of the CWA and Title 9, Chapter 4, Article 5, Storm Water and Urban Runoff Pollution Control from the Beverly Hills Municipal Code by requiring controls of pollutant discharges that utilize best available technology (BAT) and best conventional pollutant control technology (BCT) to reduce pollutants. Examples of BAT/BCT that may be implemented during site grading and construction could include straw hay bales, straw bale inlet filters, filter barriers, and silt fences.	Community Development Department	The project applicant will prepare a NOI and SWPPP.	Prior to the issuance of grading and building permits.	

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HYDRO -2	Prior to issuance of any grading or building permits, the project applicant shall prepare and submit to the City of Beverly Hills a SWPPP to be administered throughout all phases of grading and project construction. The SWPPP shall incorporate BMPs to ensure that potential water quality impacts during construction phases are minimized. Examples of practices that may be implemented during grading and construction could include straw hay bales, straw bale inlet filters, filter barriers, and silt fences.	Community Development Department	The project applicant will prepare a Storm Water Pollution Prevention Plan.	Prior to the issuance of grading and building permits.		

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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<b>Noise</b>					
NOISE-1	Community Development Department  School District	The project applicant shall submit a Construction Management Plan to the Director of Community Development prior to issuance of any grading or construction permits. The plan shall be reviewed by the Community Development Department and filed with the Building and Safety Division Prior to the issuance of grading permits. The plan check engineer will review the plan to insure that it 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 during the construction period. This measure shall be in effect until the issuance of the certificate of occupancy.		

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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<ul style="list-style-type: none"> <li>• Solid noise attenuation barriers (temporary barriers or noise curtains) with a sound transmission coefficient (STC) of at least 20 shall be used along all project boundaries during the construction phases associated with the development of the project. Noise attenuation barriers constructed at the property lines to a height of 8 feet with an STC rating of at least 20 are capable of reducing noise levels by 7.7 dB(A).</li> <li>• All stationary construction equipment (e.g., air compressor, generators, etc.) shall be operated as far away from the residential and institutional uses to the north of the project site as possible. If this is not possible, the equipment shall be shielded with temporary sound barriers, sound aprons, or sound skins to the satisfaction of the Director of Community Development.</li> <li>• Haul routes for removing excavated materials from the site shall be designed to avoid residential areas, and areas occupied by noise sensitive receptors (e.g., hospitals, schools, convalescent homes, etc.).</li> </ul>		<p>The applicant shall work with the School District to ensure that no construction activity generating the highest noise levels is undertaken during any designated testing periods occurring at El Rodeo School. The exact dates and times shall be determined by the School District.</p>			

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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<ul style="list-style-type: none"> <li>• Prior to the start of every school year, the applicant shall obtain a schedule of testing periods at El Rodeo School. The applicant shall submit a construction schedule for review and approval by the Community Development Director and the Environmental Monitor that ensures that no construction activity generating the highest noise levels (e.g. demolition and grading) is undertaken during any designated testing periods at the school. Such testing periods typically occur for one week per semester; however, the exact dates and times will be determined by the School District.</li> </ul>					

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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NOISE-2	The applicant shall implement sound attenuation features to reduce noise levels at all private outdoor livable spaces (i.e., balconies) on residence and hotel building floors 1 through 6 fronting Wilshire and Santa Monica Boulevards and Merv Griffin Way. Such features may include berms made of sloping mounds of earth, walls and fences constructed of a variety of materials, thick plantings of trees and shrubs, or combinations of these materials, or the use of solid material for balcony construction such as double-paned or laminated glass, Plexiglas, or wood. Acoustical analysis shall be performed prior to the issuance of an occupancy permit to demonstrate that noise levels at the exterior livable spaces do not exceed state land use standards for residences. This requirement shall be incorporated into the plans to be submitted by the applicant to the City of Beverly Hills for review and approval prior to the issuance of building permits.	Community Development Department/ Building & Safety Division	The project plans filed with the Department of Community Development/Building & Safety Division shall comply with this requirement. The plan check engineers will review the plans to ensure that they comply with this requirement.	This requirement shall be met prior to the issuance of relevant building permits.	

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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NOISE-3	The applicant shall incorporate building materials and techniques that reduce sound transmission through walls, windows, doors, ceilings, and floors of on-site residences in order to achieve interior noise levels that are below the state land use guidelines standards for interior noise. Such building materials and techniques may include double-paned windows, staggered studs, or sound-absorbing blankets incorporated into building wall design, or outdoor noise barriers erected between noise sources and noise-sensitive areas, such as berms made of sloping mounds of earth, walls and fences constructed of a variety of materials, thick plantings of trees and shrubs, or combinations of these materials. Acoustical analysis shall be performed prior to the issuance of an occupancy permit to demonstrate that noise levels in the interior livable spaces do not exceed state standards for residences. This requirement shall be incorporated into the plans to be submitted by the applicant to the City of Beverly Hills for review and approval prior to the issuance of building permits.	See above.	See above.	See above.	

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NOISE-4	The 9900 Wilshire project applicant shall coordinate with The Beverly Hilton Revitalization Plan project applicant regarding the following: <ul style="list-style-type: none"> <li>All temporary roadway closures shall be coordinated to limit overlap of roadway closures;</li> <li>All major deliveries for both projects shall be coordinated to limit the occurrence of simultaneous deliveries. The applicants shall ensure that deliveries of items such as concrete and other high-volume items shall not be done simultaneously;</li> <li>The applicants shall coordinate regarding the loading and unloading of delivery vehicles. Any off-site staging areas for delivery vehicles shall be consolidated and shared; and</li> <li>Applicants or their representatives shall meet on a regular basis during construction to address any outstanding issues related to construction traffic, deliveries, and worker parking.</li> </ul>	Community Development Department	The collective team of the two projects shall submit a signed document explaining their collaborative plans to the Community Development Department for review to enforcement.	This measure shall be met during the construction period. This measure shall be in effect until the issuance of the certificate of occupancy.		

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion		
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<b>Fire Protection and Emergency Services</b>						
FIRE-1	The proposed signal at the intersection of Santa Monica Boulevard and Merv Griffin Way shall be outfitted with an Opticom device, a traffic signal pre-emption used to control signalized intersections to allow the Beverly Hills Fire Department (BHFD) to provide a safe response route and to decrease response times to emergencies.	Department of Public Works/Civil Engineering Division and Community Development Department  Fire Department	The Department of Public Works/Civil Engineering Division will prepare a plan to accommodate the proposed measure for the BHFD to review. The applicant will pay a fair share contribution to this measure.	This measure shall be implemented prior to issuance of certificate of occupancy and shall remain effective throughout the life of the project.		

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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FIRE-2	The 8-inch and 10-inch sections of the main feeding Hydrants No. 339, No. 340, No. 341, No. 342, and No. 343 along Wilshire Boulevard shall be replaced with a 12-inch main in order to achieve adequate fire flow for the project. The line shall be replaced from the intersection of Wilshire Boulevard and Santa Monica Boulevard to the western boundary of the project site. The project applicant shall pay its "Fair Share" towards the upgrade of the 8 inch and 10-inch sections of the main feeding Hydrants No. 339, No. 340, No. 341, No. 342, and No. 343 along Wilshire Boulevard prior to the issuance of building permits. Upgrade of the main shall be completed concurrently with project construction and prior to building occupancy. The project applicant shall coordinate with the City so that construction of the upgraded main shall not conflict with construction of the proposed project.	Department of Public Works/Civil Engineering Division and Community Development Department	The Department of Public Works/Civil Engineering Division will prepare a plan to accommodate the proposed measure. The applicant will pay a fair share contribution to this measure.	This measure shall be implemented prior to issuance of certificate of occupancy and shall remain effective throughout the life of the project.	

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion		
				Check Box	Date	
<b>Transportation, Traffic, Parking, and Circulation</b>						
TRAF-1	An Environmental Monitor shall be retained that will be responsible for monitoring compliance with the mitigation measures in the adopted Mitigation Monitoring Program. The name, phone number, and other contact information for the Environmental Monitor shall be posted on the construction trailer or other location visible to public view as determined by the Community Development Director. The developer shall deposit funds sufficient to pay for the Environmental Monitor who will be hired by and work for the City.	Community Development Department	An independent Environmental Monitor shall be retained. The project applicant shall submit photographs of the posted contact information to the Community Development Department.	This measure shall be met during the construction period. This measure shall be in effect until the issuance of the certificate of occupancy.		
TRAF-2	The Environmental Monitor shall proactively inform the public of the ongoing project progress and exceptions to the expected plans. This shall include sending a quarterly mailer to all property owners within 1,000 feet of the exterior boundaries of the property. The developer shall be responsible for the full cost of the mailer including postage. The Environmental Monitor shall also respond to requests for information and assistance from members of the public when impacts raise special concerns by members of the public.	See above.	See above.	See above.		

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Mitigation Measure		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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TRAF-3	The Construction Relations Officer shall be assigned and a hotline number shall be published on construction signage placed along the boundary of the project site, along Wilshire Boulevard, Merv Griffin Way, and Santa Monica Boulevard to address day-to-day issues.	Community Development Department	An independent Construction Relations Officer shall be retained. The project applicant shall submit photographs of the posted contact information to the Community Development Department.	This measure shall be met during the construction period. This measure shall be in effect until the issuance of the certificate of occupancy.		
TRAF-4	The Developer, Construction Relations Officer, and Environmental Monitor shall each provide monthly project updates to the Community Development Department (CDD) Director, unless otherwise warranted due to resident complaints.	Community Development Department	The Developer, Construction Relations Officer, and Environmental Monitor shall each provide monthly project updates to the CDD Director.	This measure shall be met during the construction period. This measure shall be in effect until the issuance of the certificate of occupancy.		

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TRAF-5	The Developer shall revise and finalize the Draft Construction Traffic Management Plan to minimize traffic flow interference from construction activities. The Final Construction Traffic Management Plan shall be submitted to the City and shall include plans to accomplish the following: <ul style="list-style-type: none"> <li>• Maintain existing access for land uses in the proximity of the project site during project construction.</li> <li>• Schedule deliveries and pick-ups of construction materials for non-peak travel periods.</li> <li>• Coordinate haul trucks, deliveries and pick-ups to reduce the potential for trucks waiting to load or unload for protracted periods of time.</li> <li>• Minimize obstruction of through-traffic lanes on Wilshire Boulevard and Santa Monica Boulevard, and prohibit obstruction of these same lanes that accommodate construction during peak hours.</li> <li>• Construction equipment traffic from the contractors shall be controlled by flagman.</li> </ul>	Community Development Department	The project applicant shall submit a Construction Traffic Management Plan and a Construction Working Parking Management Plan to the Director of Community Development prior to issuance of any grading or construction permits. The plan shall be reviewed by the Community Development Department and filed with the Building and Safety Division Prior to the issuance of grading permits. The plan check engineer will review the plan to insure that it 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 Traffic Management Plan	This measure shall be met during the construction period. This measure shall be in effect until the issuance of the certificate of occupancy.		

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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<ul style="list-style-type: none"> <li>• Designated transport routes for heavy trucks and haul trucks to be used over the duration of the proposed project.</li> <li>• Schedule vehicle movements to ensure that there are no vehicles waiting off site and impeding public traffic flow on the surrounding streets.</li> <li>• Establish requirements for loading/unloading and storage of materials on the project site, where parking spaces would be encumbered, length of time traffic travel lanes can be encumbered, sidewalk closings or pedestrian diversions to ensure the safety of the pedestrian and access to local businesses.</li> </ul>		and the Construction Working Parking Management Plan.			

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan					
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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<ul style="list-style-type: none"> <li>• Prior to submittal to the City of Beverly Hills, the Developer shall provide their Construction Traffic Management Plan and Construction Working Parking Management Plan to the Beverly Hills Unified School District and the Los Angeles County Metropolitan Transit Authority for their review and comment. The Developer shall notify the City of Beverly Hills of all comments received from these agencies related to the Construction Traffic Management Plan.</li> <li>• Coordinate with adjacent businesses and emergency service providers to ensure adequate access exists to the project site and neighboring businesses.</li> </ul>					

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan					
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
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<ul style="list-style-type: none"> <li>Prohibit parking for construction workers except on the project site and any designated off-site parking locations. These off-site locations will require the approval of the City of Beverly Hills. These off-site parking locations cannot include any parking garage in the City of Beverly Hills or any residential streets including Whittier Drive and those streets which connect to Whittier Drive.</li> </ul> <p>The Final Construction Traffic Management Plan shall be submitted and approved by the City no later 30 days prior to commencement of construction and shall include 1) a requirement for use of double belly trucks to the maximum extent feasible to reduce the number of truck trips, 2) provisions for the Environmental Monitor to oversee and coordinate concurrent construction activities at 9900 Wilshire and the Beverly Hilton project, 3) an Action Plan to avoid construction-related traffic congestion and how to respond to unforeseen congestion that may occur, and 4) requiring truck access and deliveries in non-peak traffic periods to the greatest extent feasible.</p>					

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan						
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion		
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TRAF-6	The Developer shall submit a Construction Workers Parking Plan identifying parking locations for construction workers. To the maximum extent feasible, all worker parking shall be accommodated on the project site. During demolition and construction activities when construction worker parking cannot be accommodated on the project site, the Plan shall identify alternate parking locations for construction workers and specify the method of transportation to and from the project site for approval by the City 30 days prior to commencement of construction. The Construction Workers Parking Plan must include appropriate measures to ensure that the parking location requirements for construction workers will be strictly enforced. These include but are not limited to the following measures:	Community Development Department	The primary contractor shall submit to the department a program and affidavit attesting to the compliance with this measure as part of the Construction Workers Parking Plan, which will be reviewed by the Community Development Department/Building & Safety Department.	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.		

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Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
<ul style="list-style-type: none"> <li>• All construction contractors shall be provided with written information on where their workers and their subcontractors are permitted to park and provide clear consequences to violators for failure to follow these regulations. This information will clearly state that no parking is permitted on residential streets north of Wilshire or in public parking structures;</li> <li>• No parking for construction workers shall be permitted except only within designated areas. The contractor shall be responsible for informing subcontractors and construction workers of this requirement, and if necessary as determined by the Community Development Director, for hiring a security guard to enforce these parking provisions. The contractor shall be responsible for all costs associated with parking and the enforcement of this mitigation measure; and</li> </ul>					

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan					
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
	<ul style="list-style-type: none"> <li>In lieu of the above, the project applicant/construction contractor has the option of phasing demolition and construction activities such that all construction worker parking can be accommodated on the project site throughout the entire duration of demolition, excavation and construction activities.</li> </ul>				
TRAF-7	The project applicant shall revise the project site plan to indicate on-site traffic control planned for the project. At a minimum, all traffic control devices should be placed at all project exits onto Wilshire Boulevard, Santa Monica Boulevard, and Merv Griffin Way prior to the occupancy of any of the new buildings proposed on the site.	Department of Public Works/Civil Engineering Division and Community Development Department	The Department of Public Works/Civil Engineering Division will prepare a plan to accommodate the proposed measure. The applicant will pay a fair share contribution to this measure.	This measure shall be implemented prior to issuance of certificate of occupancy and shall remain effective throughout the life of the project.	
TRAF-8	The project applicant shall revise the project site plan to increase the curb radius at the driveway on Wilshire Boulevard to allow vehicles traveling 25 to 35 mph to turn safely.	Community Development/ Building & Safety Department; City Traffic Engineer	The project design plans filed with the Department of Community Development/Building & Safety Division shall comply with this requirement. The plan check engineers and City Traffic Engineer will review the plans to ensure that they comply with this requirement.	This requirement shall be met prior the issuance of relevant building permits.	

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan						
Mitigation Measure		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
					Check Box	Date
TRAF-9	<p>The applicant for the 9900 Wilshire project shall coordinate with the applicant for The Beverly Hills Revitalization Plan project during all phases of construction regarding the following:</p> <ul style="list-style-type: none"> <li>• All temporary roadway closures shall be coordinated to limit overlap of roadway closures;</li> <li>• All major deliveries for both projects shall be coordinated to limit the occurrence of simultaneous deliveries. The applicants shall ensure that deliveries of items such as concrete and other high-volume items shall not be done simultaneously;</li> <li>• The applicants shall coordinate regarding the loading and unloading of delivery vehicles. Any off-site staging areas for delivery vehicles shall be consolidated and shared; and</li> <li>• Applicants or their representatives shall meet on a regular basis during construction to address any outstanding issues related to construction traffic, deliveries, and worker parking.</li> </ul>	Community Development Department	The collective team of the two projects shall submit a signed document explaining their collaborative plans to the Community Development Department for review to enforcement.	This measure shall be met during the construction period. This measure shall be in effect until the issuance of the certificate of occupancy.		

9900 Wilshire Project Environmental Impact Report					
Mitigation Monitoring and Reporting Plan					
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
				Check Box	Date
<b>Water</b>					
WTR-1	The 8-inch and 10-inch sections of the main feeding Hydrants No. 339, No. 340, No. 341, No. 342, and No. 343 along Wilshire Boulevard shall be replaced with a 12-inch main in order to achieve adequate fire flow for the project. The line shall be replaced from the intersection of Wilshire Boulevard and Santa Monica Boulevard to the western boundary of the project site. The project applicant shall pay its "Fair Share" towards the upgrade of the 8-inch and 10-inch sections of the main feeding Hydrants No. 339, No. 340, No. 341, No. 342, and No. 343 along Wilshire Boulevard prior to the issuance of building permits. Upgrade of the main shall be completed concurrently with project construction and prior to building occupancy. The project applicant shall coordinate with the City so that construction of the upgraded main shall not conflict with construction of the proposed project.	Department of Public Works/Civil Engineering Division and Community Development Department	The Department of Public Works/Civil Engineering Division will prepare a plan to accommodate the proposed measure. The applicant will pay a fair share contribution to this measure.	This measure shall be implemented prior to issuance of certificate of occupancy and shall remain effective throughout the life of the project.	

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan						
Mitigation Measure	Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion		
				Check Box	Date	
<b>Wastewater</b>						
WW-1	The proposed restaurant shall install a Fat, Oil and Grease (FOG) Interceptor to remove these substances from its wastewater before entering the sanitary sewer system. This device helps prevent these substances from clogging the sanitary sewer system. The device shall be regularly inspected by the Los Angeles County Department of Public Works.	Los Angeles County Department of Public Works	Los Angeles County of Department of Public Works shall regularly inspect the FOG inceptor.	This measure shall be implemented prior to issuance of the proposed restaurant's business license and shall remain effective throughout the life of the project.		
<b>Energy</b>						
ENG-1	Prior to submittal of final plans, the applicant shall make necessary alterations to the generation or distribution system as required by Southern California Edison (SCE). The applicant shall then provide to the Beverly Hills Community Development Department a letter from SCE, which states that electricity will be provided to the proposed project and that all applicable energy conservation features have been incorporated into the project design.	Community Development Department	The applicant shall provide to the Community Development Department a letter from SCE.	This measure shall be implemented prior to submittal of final plans.		

9900 Wilshire Project Environmental Impact Report Mitigation Monitoring and Reporting Plan						
Mitigation Measure		Responsible Department	Monitoring Action	Implementation Schedule	Verification of Completion	
					Check Box	Date
ENG-2	Prior to submittal of final plans, the applicant shall complete a load survey in accordance with the Gas Company procedures and make any necessary alterations to the distribution system as required by the Gas Company. The applicant shall then provide to the Beverly Hills Community Development Department a letter from the Gas Company, which states that natural gas will be provided to the proposed project and that all applicable energy conservation features have been incorporated into the project design.	Community Development Department	The applicant shall provide to the Community Development Department a letter from the Gas Company.	This measure shall be met prior to submittal of final plans.		

RESOLUTION NO. 08-R-12498

A RESOLUTION OF THE CITY COUNCIL AMENDING THE GENERAL PLAN TO ENCOURAGE A GATEWAY DEVELOPMENT FOR THE CITY OF BEVERLY HILLS INCLUDING LUXURY RESIDENTIAL CONDOMINIUMS, PUBLIC GARDENS, AND ANCILLARY COMMERCIAL USES FOR THE PROPERTY LOCATED AT 9900 WILSHIRE BOULEVARD (THE FORMER ROBINSONS-MAY DEPARTMENT STORE SITE)

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

Section 1. The City of Beverly Hills Planning Commission has held numerous hearings to consider potential amendments to the Beverly Hills General Plan for the purpose of encouraging and implementing a proposed gateway development at 9900 Wilshire Boulevard. The Planning Commission has provided the City Council with a written recommendation to adopt amendments to the General Plan for this purpose.

Section 2. The City Council hereby amends the Land Use Plan of the Land Use Element of the General Plan, specifically Map 1 (Land Use Plan), by designating as "SP - 9900 Wilshire Specific Plan" the area described in Exhibit A, attached hereto and incorporated herein by this reference, also known by the street address of 9900 Wilshire Boulevard. The Amended Land Use Plan is attached hereto as Exhibit B and incorporated herein by this reference.

Section 3. The City Council hereby amends the text of the Land Use Element of the General Plan as follows:

The fourth paragraph of Subsection 2.2 (Commercial Areas) of Section 2 (Recommendations of Land Use Element of the City of Beverly Hills General Plan and Development Criteria for Land Use) shall be amended to read as follows:

“It is also recommended that certain anchor locations be set aside to permit development of a higher intensity type of development that is not otherwise provided in the community. These areas should be located so as to be accessible from the City’s major shopping areas and close to the City’s major streets. These anchor locations should include those large parcels that are located at the gateways to the City, such as the site at 9900 Wilshire Boulevard where additional building height is appropriate. A variety of land uses such as commercial, residential, and mixed use should be considered for the gateway locations. A change of use from commercial to residential or mixed use should be allowed only if such change provides an adequate transition to adjacent single family neighborhoods.”

Section 4. The text of the Housing Element of the General Plan is hereby amended by revising Program 4.3 of Objective 4.3, as that Program is set forth in Section 1.3 (Summary of Housing Program) and Section 3 (Statement of Goals, Objectives and Policies Relative to Maintenance, Preservation, Improvement and Development of Housing for the Next Five Years) to read as follows:

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

- South side of Wilshire Boulevard, east of Beverly Drive.  
(between Stanley Drive and Le Doux Road, extend to north side of Charleville Boulevard.)
- Eastern area of Business Triangle.
- South side of Burton Way (commercially zoned parcels).
- Olympic Boulevard (commercially zoned parcels).
- La Cienega Boulevard north of Wilshire Boulevard.
- City owned property where some or all of the residential units would be for lower income households.
- East side of South Beverly Drive.
- 9900 Wilshire Boulevard (the former Robinsons-May department store site)."

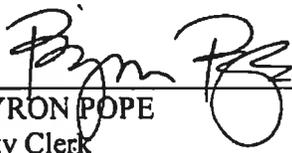
Section 4. The Project proposed for 9900 Wilshire Boulevard, including this General Plan Amendment, has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* ("CEQA")), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the City's Local CEQA Guidelines. A Final Environmental Impact Report (the "Final EIR") was prepared for the Project and is attached hereto as Exhibit C and incorporated herein by reference. The City Council certified the Final EIR, made environmental findings, adopted a statement of overriding considerations and adopted a mitigation monitoring program concerning the Project by separate Resolution No. 08-R-12497. That resolution is attached hereto as Exhibit D and incorporated herein by reference as if set forth in full.

Section 5. The City Clerk shall certify to the adoption of this Resolution and shall cause this Resolution and his certification to be entered in the Book of Resolutions of the City Council of the City.

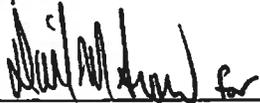
Adopted: April 9, 2008

  
\_\_\_\_\_  
BARRY BRUCKER  
Mayor

ATTEST:

  
\_\_\_\_\_  
BYRON POPE  
City Clerk

Approved as to form:

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

Approved as to content:

  
\_\_\_\_\_  
VINCENT P. BERTONI, AICP  
Director of Community Development

**Exhibit A**

**9900 Wilshire Boulevard Legal Description**

**9900 WILSHIRE LEGAL DESCRIPTION**

That certain real property located in the State of California, County of Los Angeles described as follows:

**PARCEL 1:**

THAT PORTION OF BLOCK 33 OF BEVERLY, SHEET 2, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 13, PAGES 62 AND 63 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 4 OF SAID BLOCK 33; THENCE ALONG THE NORTHERLY LINE OF LOT 4 AND A PORTION OF LOT 3 OF SAID BLOCK 33, NORTH 89° 55' 00" EAST 300.00 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 3 OF SAID BLOCK 33; THENCE SOUTH 0° 05' 00" EAST 177.00 FEET; THENCE SOUTHEASTERLY SOUTH 38° 46' 45" EAST 583.79 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF LOT 7 OF SAID BLOCK 33, DISTANT 431.22 FEET FROM THE MOST SOUTHERLY CORNER OF LOT 6 OF SAID BLOCK 33; THENCE SOUTH 50° 19' 15" WEST 431.22 FEET TO THE MOST SOUTHERLY CORNER OF LOT 6 OF SAID BLOCK 33; THENCE ALONG THE SOUTHWESTERLY LINE OF LOTS 6 AND 4 OF SAID BLOCK 33, NORTH 30° 58' 05" WEST 798.43 FEET TO THE MOST SOUTHERLY CORNER OF LOT 5 OF SAID BLOCK 33; THENCE ALONG THE SOUTHEASTERLY LINE OF LOT 5 NORTH 19° 03' 30" EAST 235.27 FEET TO THE POINT OF BEGINNING.

**PARCEL 2:**

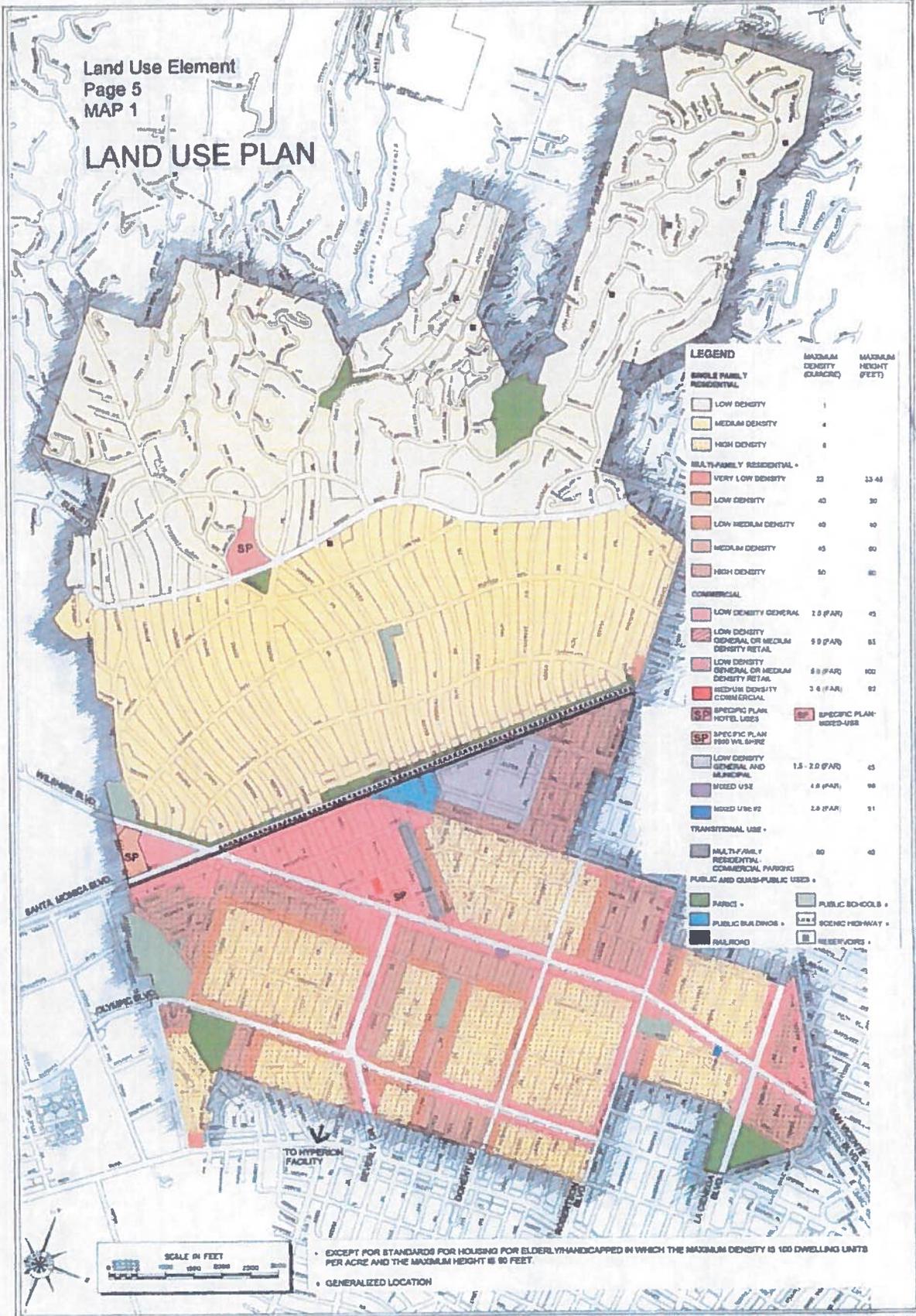
AN EASEMENT FOR PRIVATE ROAD PURPOSES OVER THE EASTERLY 20 FEET OF THOSE PORTIONS OF LOTS 3 AND 7 IN BLOCK 33 OF BEVERLY, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 13 PAGES 62 AND 63 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, INCLUDED WITHIN A STRIP OF LAND, 40 FEET WIDE, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID LOT 3, DISTANT NORTH 89° 55' 00" EAST 300 FEET MEASURED ALONG THE NORTHERLY LINE OF SAID BLOCK 33 FROM THE NORTHWEST CORNER OF LOT 4 OF SAID BLOCK 33; THENCE SOUTH 0° 05' 00" EAST 177.00 FEET; THENCE SOUTHEASTERLY SOUTH 38° 46' 45" EAST 583.79 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF LOT 7 OF SAID BLOCK 33, DISTANT 431.22 FEET FROM THE MOST SOUTHERLY CORNER OF LOT 6 OF SAID BLOCK 33, AS GRANTED BY DEED AND AGREEMENT DATED DECEMBER 20, 1950, AND RECORDED DECEMBER 22, 1950, IN BOOK 35141, PAGE 331, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

**Exhibit B**

**Amended General Plan Land Use Plan**

# LAND USE PLAN



	MAXIMUM DENSITY (DWARCS)	MAXIMUM HEIGHT (FEET)
<b>SINGLE FAMILY RESIDENTIAL</b>		
LOW DENSITY	1	
MEDIUM DENSITY	4	
HIGH DENSITY	8	
<b>MULTI-FAMILY RESIDENTIAL</b>		
VERY LOW DENSITY	22	33-48
LOW DENSITY	40	30
LOW-MEDIUM DENSITY	40	40
MEDIUM DENSITY	45	60
HIGH DENSITY	50	60
<b>COMMERCIAL</b>		
LOW DENSITY GENERAL	2.0 (FAR)	45
LOW DENSITY GENERAL OR MEDIUM DENSITY RETAIL	5.0 (FAR)	65
LOW DENSITY GENERAL OR MEDIUM DENSITY RETAIL	8.0 (FAR)	102
MEDIUM DENSITY COMMERCIAL	3.0 (FAR)	82
SPECIFIC PLAN HOTEL USES		
SPECIFIC PLAN 7000 W/L SHORE		
LOW DENSITY GENERAL AND MUNICIPAL	1.5-2.0 (FAR)	45
MIXED USE	1.0 (FAR)	60
MIXED USE #2	2.0 (FAR)	81
<b>TRANSITIONAL USE</b>		
MULTI-FAMILY RESIDENTIAL COMMERCIAL PARKING	80	45
<b>PUBLIC AND QUAS-PUBLIC USES</b>		
PARKS		
PUBLIC BUILDINGS		
RAILROAD		
PUBLIC SCHOOLS		
SCENIC HIGHWAY		
RESERVES		



EXCEPT FOR STANDARDS FOR HOUSING FOR ELDERLY/HANDICAPPED IN WHICH THE MAXIMUM DENSITY IS 100 DWELLING UNITS PER ACRE AND THE MAXIMUM HEIGHT IS 90 FEET.  
GENERALIZED LOCATION

**Exhibit C**

**Final EIR**

# 9900 WILSHIRE PROJECT

## Final Environmental Impact Report

SCH No. 2006071107

Prepared by:



**IMPACT SCIENCES, INC.**

234 East Colorado Boulevard, Suite 205  
Pasadena, California 91101

Prepared for:

The City of Beverly Hills  
Community Development Department  
455 North Rexford Drive, Room G-40  
Beverly Hills, California 90210



February 2008

**FINAL  
ENVIRONMENTAL IMPACT REPORT**

**for**

**9900 WILSHIRE PROJECT**

**SCH No. 2006071107**

**Prepared for:**

The City of Beverly Hills,  
Community Development Department (Planning Division)  
455 North Rexford Drive, Room G-40  
Beverly Hills, California 90210

**Prepared by:**

Impact Sciences, Inc.  
234 East Colorado Boulevard, Suite 205  
Pasadena, California 91101

**February 2008**

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## 1.0 INTRODUCTION TO THE FINAL EIR

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### 1.1 PURPOSE

*This document, along with the Draft Environmental Impact Report (Draft EIR) and the Recirculated Environmental Impact Report represents the Final Environmental Impact Report (Final EIR) for the 9900 Wilshire Project (Project). It has been prepared in accordance with the California Environmental Quality Act (CEQA) (Public Resources Code Sections 21000 et seq.), and its implementing guidelines (Title 14, California Code Regulations, Sections 15000 et seq., [CEQA Guidelines]) as amended. The City of Beverly Hills (City) will consider this Final EIR in its capacity as Lead Agency before it approves or denies the Project. The Findings of Fact and any Statement of Overriding Consideration would be made after the City has considered the information contained in this Final EIR. Likewise, the Mitigation Monitoring and Reporting Program (MMRP) would be adopted at the time the findings are adopted and would also be included in the public record.*

*As required by Section 15132 of the CEQA Guidelines, a Final EIR shall consist of the following:*

- The Draft EIR or a revision of the Draft EIR;*
- Comments received on the Draft EIR either verbatim or in summary;*
- A list of persons, organizations, and public agencies commenting on the Draft EIR;*
- The responses of the Lead Agency to significant environmental points raised in the review process; and*
- Any other information added deemed necessary by the Lead Agency.*

*The evaluation and response to public comments is an important part of the CEQA process as it allows for (1) the opportunity to review and comment on the methods of analysis contained within the Draft EIR, (2) the ability to detect any omissions which may have occurred during preparation of the Draft EIR, (3) the ability to check for accuracy of the analysis contained within the Draft EIR, (4) the ability to share expertise, and (5) the ability to discover public concerns.*

### 1.2 PROCESS

As defined by Section 15050 of CEQA Guidelines, the City is serving as Lead Agency, and is responsible for preparing the EIR for this Project. As such, the City is responsible for ensuring that the EIR satisfies the procedural and informational requirements of CEQA and for the consideration and certification of the adequacy of the EIR prior to making any decision regarding the Project.

The City determined that an EIR should be prepared for the proposed 9900 Wilshire Project. As a result, a Notice of Preparation (NOP) was prepared and circulated between July 21, 2006, and August 21, 2006, for the required 30-day review period. The purpose of the NOP was to solicit early comments from members of the public and public agencies with expertise in subjects that will be discussed in the Draft EIR. The City of Beverly Hills also held a public scoping meeting on the proposed project to solicit oral and written comments from the public and public agencies. The public scoping meeting was held on August 3, 2006. The NOP and written responses to the NOP are included within Appendix 1.0 of the Draft EIR.

The City circulated the Draft EIR and related Appendices to affected agencies, the public and other interested persons on August 8, 2007. In response to requests by the public, the review period was extended an additional seven days to September 28, 2007. Therefore, the Draft EIR was circulated for an extended 52-day comment period, which exceeds the 45-day public-comment period required by CEQA Guidelines Sections 15087(c) and 15105.

In order to provide the public with a meaningful opportunity to comment upon potential impacts related to traffic, air quality and noise, the Lead Agency determined that certain sections of the 9900 Wilshire EIR should be revised because another Draft EIR currently under consideration by the City used different baseline information in the existing conditions portion of the traffic section of that EIR.<sup>1</sup> Sections 4.11, Transportation, Traffic, Parking and Circulation, 4.2, Air Quality, and 4.8, Noise, were revised and recirculated with a shortened 30-day public review period beginning October 16 and ending November 13, 2007.

In addition, the Beverly Hills Planning Commission (Planning Commission) held public hearings on August 20, September 5, September 24, October 29, November 8, and November 28, 2007, and January 10, 2008, to receive testimony, both written and oral, regarding the project and the Draft EIR.

The Draft EIR was made available at the following locations:

- City of Beverly Hills City Hall

Community Development Department (Planning Division)  
455 North Rexford Drive, Room G-40 (until October 21, 2007)  
9357 West Third Street (temporary offices as of October 22, 2007)  
Beverly Hills, CA 90210

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<sup>1</sup> The other project is the William Morris project, is one of several projects currently undergoing environmental review by the City. The William Morris project is formally known as the 231 – 265 North Beverly Drive Project (State Clearinghouse No. 2006081074). The Draft EIR for this project was released for public review in May 2004.

- City of Beverly Hills City Hall  
Office of the City Clerk  
455 North Rexford Drive, Room 190  
Beverly Hills, CA 90210
- Beverly Hills Public Library  
444 North Rexford Drive  
Beverly Hills, CA 90210
- The City's website: [www.BeverlyHills.org](http://www.BeverlyHills.org)

### 1.3 CONTENTS OF THE FINAL EIR

As discussed above, the primary intent of the Final EIR is to provide a forum to raise and address comments pertaining to the analysis contained within the Draft EIR. Pursuant to Section 15088 of the *State CEQA Guidelines*, the City, as the Lead Agency for this Project, has reviewed and addressed all comments received on the Draft EIR prepared for the 9900 Wilshire Project that were submitted during the required public review periods for the Draft and Recirculated Draft EIRs. In addition, all written and oral comments received between August 7, 2007, and January 10, 2008, are being considered and responded to within this Final EIR.

In order to adequately address the comments provided by interested agencies and the public in an organized manner, this Final EIR has been prepared in four parts.

**Section 1.0, Introduction to the final EIR**, describes the purpose, process, and contents of the Final EIR.

**Section 2.0, Executive Summary**, contains the Executive Summary from the Draft EIR which has been revised to reflect changes made based upon comments received on the Draft EIR.

**Section 3.0, Comments and Responses to Comments on the Draft EIR**, provides a list of commenters who provided comments in writing and orally at public hearings for the project, copies of written comments (coded for reference), and the responses to those written and oral comments.

**Section 4.0, Corrections and Additions to the Draft EIR**, consists of minor text changes made to the Draft EIR as a result of comments raised during the public review process or by City staff.

## 2.0 EXECUTIVE SUMMARY

---

This section summarizes the information and analysis presented in the main body of the Environmental Impact Report (EIR). Section 15123 of the California Environmental Quality Act (CEQA) Guidelines requires an EIR to include a brief summary of the proposed project and its impacts in language as clear and simple as reasonably practical. In accordance with *CEQA Guidelines*, this summary presents information on the proposed 9900 Wilshire Project, the potential environmental effects of this project, and measures identified to mitigate these effects. A summary of the alternatives contained in the EIR is also provided.

### 2.1 PURPOSE

*It is the intent of the Executive Summary to provide the reader with a clear and simple description of the proposed project and its potential environmental impacts. Section 15123 of the California Environmental Quality Act (CEQA) Guidelines requires that the summary identify each significant effect, recommended mitigation measure(s), and alternatives that would minimize or avoid potential significant impacts (Table 2.0-1, Summary Table of Project Impacts and Mitigation Measures). The summary is also required to identify areas of controversy known to the lead agency, including issues raised by agencies and the public and issues to be resolved, including the choice among alternatives and whether or how to mitigate significant effects. This section focuses on the major areas of the proposed project that are important to decision makers and utilizes non-technical language to promote understanding.*

### 2.2 SITE LOCATION AND DESCRIPTION

The project site is located in the City of Beverly Hills, approximately 7 miles west of the City of Los Angeles Civic Center, and is located on the south side of the 9900 block of Wilshire Boulevard and north of Santa Monica Boulevard. The project site is bound by the Los Angeles Country Club and the Unocal 76 gas station on the west, Wilshire Boulevard to the north, the center-line of Merv Griffin Way to the east, and Santa Monica Boulevard to the south. The site totals approximately 346,124 square feet, or approximately 7.95 acres, and is currently developed with the former vacant 228,000-square-foot Robinsons-May department store building and an associated two-level, 956-space parking structure.

### 2.3 PROJECT DESCRIPTION

The 9900 Wilshire project ("proposed project" or "project") would be developed on the 7.95-acre western portion of the 17-acre area at the intersection of Wilshire Boulevard and Santa Monica Boulevard. The project as proposed involves the redevelopment of the property located at 9900 Wilshire Boulevard. The

existing Robinsons-May department store building and associated parking structure would be replaced with 252 luxury condominium residences in four separate buildings, approximately 19,856 square feet of commercial space fronting Santa Monica Boulevard, a two-level subterranean parking garage containing a total of 956 parking spaces, and landscaped gardens and other open space throughout the project site. The landscaped gardens would cover the majority of the project site and include an approximately 0.42-acre Entry Garden with public access fronting Wilshire Boulevard. The project would incorporate environmentally sensitive and sustainable design features such that the project would potentially qualify for Leadership in Energy and Environmental Design (LEED) certification from the U.S. Green Building Council. The project site is approximately 346,124 square feet in size, and the proposed land coverage for the project buildings would be approximately 117,918 square feet; therefore, approximately 34 percent of the site would be developed while the remaining approximately 66 percent of the site would remain available as landscaped open space. The total floor area ratio (FAR) would be 2.4:1. This number does not include the parking garage.

The 252 condominium residences would be located in four separate buildings. Two 12-story condominium buildings would be located on the western (Los Angeles Country Club) border of the site, each approximately 144 feet tall, and two four-story loft buildings approximately 48 feet tall would be located on the eastern (Merv Griffin Way) edge of the project site. The condominiums would include one-, two-, three- and four-bedroom units, plus eight penthouse units. The units would range in size from approximately 1,200 square feet for one-bedroom units and up to approximately 7,500 square feet for penthouse units. Overall, the average size of the 252 condominium units would be approximately 3,300 square feet.<sup>1</sup>

The commercial portion of the proposed project would be one story and approximately 16 feet in height as measured from Santa Monica Boulevard. The commercial building would front Santa Monica Boulevard and would consist of approximately 15,656 square feet of retail space, 2,400 square feet of restaurant dining space, and 1,800 square feet of "back-of-house" restaurant space, for a total of 19,856 square feet of retail and restaurant space, as well as 600 square feet of outdoor dining space.

Construction of the proposed project would involve several phases, including demolition of asphalt paving, demolition of the existing department store building and associated parking structure, excavation of the site for the underground parking, shoring of this excavation, and construction of the new buildings, parking areas, and related built improvements. This process would occur over an approximately 24-month period and some of the phases would overlap with other phases.

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<sup>1</sup> All building heights on a single parcel are measured from the single highest point on the public sidewalk adjoining that parcel (the reference datum).

## 2.4 TOPICS OF KNOWN CONCERN

City of Beverly Hills Planning staff circulated a Notice of Preparation (NOP) between July 21, 2006 and August 21, 2006, in order to receive input from interested public agencies and private parties. A public scoping meeting to receive input on the contents of the Draft EIR was held on August 3, 2006. A copy of the NOP is provided in Appendix 1.0 of the Draft EIR. Copies of all written responses to the NOP are also presented in Appendix 1.0 of the Draft EIR.

Based on the NOP and comments received at the scoping hearing, this EIR addresses the following topics:

- Aesthetics
- Air Quality
- Cultural Resources
- Geology and Soils
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Noise
- Population and Housing
- Public Services
- Transportation/Traffic/Parking and Circulation
- Utilities and Service Systems

## 2.5 ALTERNATIVES

The following project alternatives were identified to reduce or avoid the severity of potentially significant impacts identified through the environmental analysis and are included in Section 4.0, **Environmental Impact Analysis**, of the Draft EIR.

- **Alternative 1 – No Project Alternative.** Under the No Project Alternative, the existing 228,000-square-foot building, which historically has been operated as a Robinsons-May department store (the "Existing Building"), and the associated two-level, 956-space parking structure (the "Existing Parking Structure") would remain in substantially their current condition and the building would be re-leased and occupied as a single-tenant department store. The existing FAR is 0.66:1, which does not include parking.
- **Alternative 2 – Code-Compliant Office/Retail Alternative.** This alternative includes a mixed-use office/retail project that complies with the principal use and development standards for the C-3 Zone that currently govern the project site, including permitted uses, maximum floor area ratio (FAR), maximum height and number of stories, and applicable code parking requirements. This alternative includes three buildings that are all three stories and 45 feet in height and have a total FAR of 2:1. This alternative would require the elimination of the Entry Garden and significantly reduce the other landscaped gardens and open space associated with the proposed project.
- **Alternative 3 – Reduced Density Alternative.** Under this alternative, the principal components of the proposed project would be reduced by 35 percent, including the number of condominiums, the

residential and retail floor areas, building height and number of parking spaces. The total FAR for this alternative is 1.6:1.

- **Alternative 4 – Preservation/Reuse of Robinsons-May Building Alternative.** Under this alternative, the Existing Building would be rehabilitated and reused as a museum, the Existing Parking Structure would be demolished, the southern portion of the project site would be redeveloped with three residential buildings ranging in height from four levels and 48 feet to 12 levels and 144 feet and a new subterranean parking structure would be constructed under the southern portion of the project site with sufficient parking for all of the new and adaptive uses on the project site. The total FAR for this alternative is 2.4:1. The preservation and reuse of the Existing Building would require the elimination of the Entry Garden.
- **Alternative 5 – Modified Height and Configuration of North/South Buildings.** This alternative is similar to the proposed project, including the same number of units, the same amount of residential and retail floor area and the same FAR, except that (1) the height of the North Building would be reduced from 144 feet to 108 feet and the number of stories would be reduced from 12 to 9, (2) the height of the South Building would be increased from 144 feet to 180 feet and the number of stories would be increased from 12 to 15, (3) the North Building would be moved from 35 feet to 45 feet from the southerly boundary of Wilshire Boulevard and (4) the separation between the North and South Buildings would be increased from 45 feet to 60 feet.
- **Alternative 6 – Reconfiguration Alternative.** This alternative would include the same number of units, the same amount of residential and retail floor area and the same FAR as the proposed project, but would consist of five buildings that are each 60 feet in height and have five stories. The height reduction under this alternative would require the elimination of the Entry Garden and significantly reduce the other landscaped gardens and open space associated with the proposed project.

## 2.6 SUMMARY OF ENVIRONMENTAL IMPACTS AND MITIGATION MEASURES

A summary of the environmental impacts associated with implementation of the proposed project, as well as mitigation measures included to avoid or lessen the severity of potentially significant impacts, is provided in Table 2.0-1 below.

**Table 2.0-1  
Summary Table of Project Impacts and Mitigation Measures**

Project Impacts	Mitigation Measures	Significance After Mitigation
<b>AESTHETICS</b>		
<b>Visual Character and Quality</b>		
New residential land uses on the project site where none currently exist, increased development intensity, and building heights would conflict with General Plan Land Use Element Objective 3, "Areas of Transitional Conflict," and Objective 4, "Scale of the City," and with Land Use Element development criteria recommending compatibility between commercial and residential areas. This would alter the visual character and quality of the site and its surroundings and is a potentially significant impact.	No feasible mitigation available.	Significant and Unavoidable
The proposed project, considered together with the Beverly Hilton Revitalization Plan project, could result in cumulatively significant impacts on the visual character and quality of the project area.	No feasible mitigation available.	Significant and Unavoidable
<b>Views</b>		
Evaluation of views from nine viewpoints showed that impacts would be less than significant at eight viewpoints. Project implementation would adversely affect panoramic west-facing views from guestrooms in the Beverly Hilton Hotel's Wilshire Tower (Viewshed Nine). This is a potentially significant impact.	No feasible mitigation available.	Significant and Unavoidable

Project Impacts	Mitigation Measures	Significance After Mitigation
<b>AESTHETICS (continued)</b>		
<b>Views (continued)</b>		
Project implementation would create new panoramic views from buildings on the project site. Views of the Los Angeles Country Club and El Rodeo School would have less than significant effects on privacy at those locations.	None required.	Less Than Significant
The proposed project, considered together with the Beverly Hilton Revitalization Plan project, could result in cumulatively significant impacts on valued panoramic views from the hotel's Wilshire Tower guestrooms.	No feasible mitigation available.	Significant and Unavoidable
<b>Light and Glare</b>		
Nighttime lighting associated with the two tower buildings along the western side of the property could adversely affect nighttime views and is a potentially significant impact.	LG-1 Project light sources shall be shielded, directed downward when intended to illuminate walking or working surfaces, and focused on the project site, to prevent light spillover onto adjacent properties or roadways.	Less Than Significant
Building materials would be low-reflectivity and are intended to minimize glare. Glare impacts would be less than significant.	None required.	Less Than Significant
Building materials proposed for the 9900 Wilshire project would be low-reflectivity and are intended to minimize glare, and new development would be set back from surrounding roadways. The project's contribution to cumulative glare impacts is less than considerable and therefore not significant.	None required.	Less Than Significant



2.0 Executive Summary

Project Impacts	Mitigation Measures	Significance After Mitigation
<b>AESTHETICS (continued)</b>		
<b>Shade and Shadow</b>		
<p>At the Summer Solstice, small portions of the 16th hole of the adjacent Los Angeles Country Club's South Golf Course would be shaded for less than two morning hours, and El Rodeo School and Beverly Gardens Park would not be subject to any project-related shading. Project-related shadow impacts during the summer solstice would be less than significant.</p> <p>At the Winter Solstice, when shadows are longest, project buildings would not shade any areas not already shaded by trees on the Los Angeles Country Club's South Golf Course. Shadows from proposed buildings would only shade a portion of the golf course during the 9:00 AM hour. A classroom/administration building in the southern portion of El Rodeo School's campus and a portion of the outdoor recreational facilities in the southeastern corner of campus would be shaded prior to 10:00 AM; the area to be shaded is relatively small and is already shaded by trees. One block of Beverly Gardens Park, between Whittier Boulevard and Trenton Drive would be shaded for fewer than two hours beginning at approximately 2:30 PM. Shading impacts at the Winter Solstice would be less than significant.</p>	None required.	Less Than Significant

2.0 Executive Summary

Project Impacts	Mitigation Measures	Significance After Mitigation
<b>AESTHETICS (continued)</b>		
<b>Shade and Shadow (continued)</b>		
<p>The adjacent Beverly Hilton Revitalization Plan project was not determined to result in significant shadow impacts on off-site land uses, including El Rodeo School to the north. The 9900 Wilshire and The Beverly Hilton Revitalization would shade off-site land uses, including the school, park, and residences north of Wilshire, at different times of day, and no single land use would be shaded for more than three hours as a result of the combined shading effects of the two projects. The shading impacts of the 9900 Wilshire project, considered together with The Beverly Hilton Revitalization Plan project and other related projects, would be less than cumulatively considerable and therefore not significant.</p>	<p>None required.</p>	<p>Less Than Significant</p>



Project Impacts	Mitigation Measures	Significance After Mitigation
<b>AIR QUALITY</b>		
<b>Short-Term Construction Impacts</b>		
<p>During the demolition, grading and excavation, and building construction phases of project construction, oxides of nitrogen emissions (NO<sub>x</sub>) would exceed established thresholds of significance, even with compliance with South Coast Air Quality Management District (SCAQMD) Rule 403 - Fugitive Dust. This is a potentially significant impact.</p>	<p>AQ-1 The Developer shall prepare a Construction Traffic Emission Management Plan to minimize emissions from vehicles including, but not limited to, scheduling truck deliveries to avoid peak hour traffic conditions, consolidating truck deliveries, and prohibiting truck idling in excess of 5 minutes.</p> <p>AQ-2 The Contractor shall ensure that the use of all construction equipment is suspended during first-stage smog alerts.</p> <p>AQ-3 The Contractor shall promote the use of electricity or alternate fuels for on-site mobile equipment instead of diesel equipment to the extent feasible.</p> <p>AQ-4 The Contractor shall maintain construction equipment by conducting regular tune-ups according to the manufacturers' recommendations.</p> <p>AQ-5 The Contractor shall promote the use of electric welders to avoid emissions from gas or diesel welders, to the extent feasible.</p> <p>AQ-6 The Contractor shall promote the use of on-site electricity or alternative fuels rather than diesel-powered or gasoline-powered generators to the extent feasible.</p> <p>AQ-7 Prior to use in construction, the project applicant and contractor will evaluate the feasibility of retrofitting the large off-road construction equipment that will be operating for significant periods. Retrofit technologies such as particulate traps, selective catalytic reduction, oxidation catalysts, air enhancement technologies, etc., will be evaluated. These technologies will be required if they are verified by the California Air Resources Board (ARB) and/or the U.S. Environmental Protection Agency (EPA) and are commercially available and can feasibly be retrofitted onto construction equipment.</p>	<p>Significant and Unavoidable</p>

RESOLUTION NO. 08-R-12499

RESOLUTION OF THE CITY COUNCIL ADOPTING A SPECIFIC PLAN FOR A GATEWAY DEVELOPMENT TO THE CITY OF BEVERLY HILLS INCLUDING LUXURY RESIDENTIAL CONDOMINIUMS, PUBLIC GARDENS, AND ANCILLARY COMMERCIAL USES FOR THE PROPERTY LOCATED AT 9900 WILSHIRE BOULEVARD (THE FORMER ROBINSONS-MAY DEPARTMENT STORE SITE)

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

Section 1. The City of Beverly Hills has adopted a General Plan for the City.

The City Council desires to adopt a Specific Plan to implement the General Plan on the *approximately eight acre property known as 9900 Wilshire Boulevard, and described in Exhibit A.*

Section 2. The City of Beverly Hills Planning Commission has held numerous hearings to consider the proposed Specific Plan. The Planning Commission has provided the City Council with a written recommendation to adopt the Specific Plan.

Section 3. The City Council finds that the 9900 Wilshire Specific Plan *attached hereto as Exhibit B and incorporated herein by reference, is consistent with the Beverly Hills General Plan for the reasons set forth in Section 5.2 of the Specific Plan and the following:*

3.1 The 9900 Wilshire Specific Plan implements Section 2.2 of the Land Use Element of the General Plan, as amended. The development contemplated by the Specific Plan is appropriate for the anchor location of the project site, which is located at the western gateway to the City along both Wilshire Boulevard and Santa Monica Boulevard. The Specific Plan also contains a variety of land uses, including residential, restaurant and other commercial uses, and public and private open space. The mixed use

nature of the site, its architectural quality, and the extensive incorporation of public and private open space make this development unique in the City. The mix of proposed uses and the project design also provide an adequate transition from the single family residential neighborhood to the north as well as the El Rodeo School to the north. The design of the buildings and open spaces in the Specific Plan incorporate generous setbacks from Wilshire Boulevard, and the building heights step up from north to south. The buildings are set back from Wilshire Boulevard to the same extent as the northern wing of the Hilton Tower (specifically, the buildings are set back to the same extent as the mid point of the Wilshire facade of the northern wing of the Wilshire Tower). The Hilton Tower, which has been in existence for more than fifty years, establishes the long existing scale and appropriate transition for this area. Further, the area is readily accessible from the City's major shopping areas, including the City's department store corridor which is located several blocks east of the Specific Plan area. The Specific Plan also contains public gardens and pedestrian pathways to link the entire site, including the commercial uses along Santa Monica Boulevard, to the Beverly Gardens pedestrian pathway that leads to the City's business triangle and retail area. Thus, the Specific Plan area is also readily accessible to that major shopping area. Finally, this anchor location is bounded by it Wilshire and Santa Monica Boulevards which are major streets.

3.2 The Specific Plan is consistent with the General Plan Land Use Map, as amended to incorporate the 9900 Wilshire Specific Plan designation.

3.3 The Specific Plan, as adopted, is consistent with Land Use Objectives 1.3 and 1.4 and the discussion of commercial area standards in the Land Use Element because, as adopted, the Specific Plan serves as an anchor location, establishes a sense of

place through its architecture and landscaping and also provides for an adequate transition from surrounding uses, an appropriate scale for the area, and incorporates a significant buffer from nearby residential and institutional uses. The design of the buildings and open spaces in the Specific Plan incorporate generous setbacks from Wilshire Boulevard, and the building heights step up from north to south. The buildings are set back from Wilshire Boulevard to the same extent as the northern wing of the Hilton Tower (specifically, the buildings are set back to the same extent as the mid point of the Wilshire facade of the northern wing of the Wilshire Tower). The Hilton Tower, which has been in existence for more than fifty years, establishes the long existing scale and appropriate transition for this area.

3.4 The Specific Plan implements Program 4.3 of the housing element, as amended, by developing standards for a mixed residential commercial development, including additional height, for commercially zoned property at 9900 Wilshire Boulevard.

3.5 The Specific Plan would enable development of housing stock of exceptional quality that offers a variety of housing and neighborhoods rarely found elsewhere (Land Use Element Section 1.1.). The architectural design and features of the proposed development, along with its extensive open space and other amenities will ensure that the housing stock in the Specific Plan area is of exceptional quality.

3.6 The Specific Plan, and related Development Agreement, will implement Housing Element Objective 2.2, Program 2.6 which provides that the City should create a local fund to assist developers of housing affordable to lower income households. As a

condition of proceeding with the Specific Plan, the developer must contribute \$3 million to an affordable housing fund (Housing Element Objective 2.2, Program 2.6).

3.7 The Specific Plan implements Housing Element Goal 4, which is to expand the variety of housing products. The residential units proposed for this development are different from other units in the City due to the architectural design, the amenities provided, the location of the units, and the generous open space incorporated into the Specific Plan area.

3.8 The Specific Plan is consistent with Goal 1 of the Housing Element, which is to maintain the community's housing stock and to preserve the viability and stability of residential neighborhoods. The Specific Plan will meet the demand for new luxury housing by allowing a former commercial site to be developed with a mixed use development. This development will reduce the market pressure to replace older housing stock with new, more expensive, residential units.

3.9 The Specific Plan implements Recommendation 4.3 of the Open Space Element. Recommendation 4.3 recommends that open space standards in the multi-family (R-4) zone be developed so that there is an open space benefit to the City for permitting residential density in excess of the basic density of the zone. Recommendation 4.3 also indicates that the open space should be visible to the public. The Specific Plan implements Recommendation 4.3 for the multi-family portion of the Specific Plan area by requiring extensive open space visible from Wilshire Boulevard and Beverly Gardens Park. Additionally, a portion of this open space is also publicly accessible.

3.10 The Specific Plan is consistent with Section 3.4 of the Open Space Element of the General Plan. Section 3.4 reaffirms the importance of open space requirements in multi-family zones. Again, the Specific Plan provides for extensive open space in the multi-family portion of the Specific Plan area and furthers the City's distinctive atmosphere for commercial and residential areas.

3.11 The Specific Plan implements Circulation Element Recommendation 2.5.2.f. Recommendation 2.5.2.f recommends that the City encourage the development of interconnected pedestrian ways with the private sector. The Specific Plan requires the development of a public gardens on private property that will have a pedestrian way that links the pedestrian way of Beverly Gardens Park through the Specific Plan Area to Santa Monica Boulevard.

3.12 The Specific Plan is consistent with the Conservation Element. The Conservation Element does not require the preservation of all potentially significant historic structures. However, Program Goal 2 of the Landmark Preservation section of the Conservation Element provides that the City should preserve the heritage and maintain historical continuity for buildings which are to be demolished. The Specific Plan requires that the Robinson's-May department store shall be photographed with large format black and white photography and that a written report be prepared which follows Historic American Buildings Survey (HABS)/Historic American Engineering Record (HAER) standards at a minimum level 3 recordation. This documentation must be deposited in a suitable public depository. Additionally, the developer must fund the production of a video of the property in its current condition, including the interiors and

exteriors of the Robinson's-May building to show its history. This video will be placed in the City of Beverly Hills public library and on the City of Beverly Hills website.

Additionally, Program Goals 1 and 2 of the Solar Energy Program of the Conservation Element encourage the conservation of energy and the use of solar energy. The project will incorporate several energy saving measures and is designed to use passive solar heating.

Finally, the Program Goals of the Water Conservation Program of the Conservation Element provide that the City should provide an adequate supply of high quality potable water to meet existing and future needs and that the City should provide water at the lowest cost. The Specific Plan requires development of a gray water system that helps the City meet the need for potable water and reduces the cost of potable water by reducing demand for potable water through development of alternative water sources for uses that do not require potable water.

Section 4. The Project proposed for 9900 Wilshire Boulevard, including this Specific Plan, 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. A Final Environmental Impact Report (the "Final EIR") was prepared for the Project and is attached hereto as Exhibit C and is incorporated herein by reference. The City Council certified the Final EIR, made environmental findings, adopted a statement of overriding considerations and adopted a mitigation monitoring program concerning

the Project by separate Resolution No. 08-R-12497. That resolution is attached hereto as Exhibit D and incorporated herein by reference as if set forth in full.

Section 5. The City Council hereby adopts the 9900 Wilshire Specific Plan.

Section 6. The City Clerk shall certify to the adoption of this resolution and shall cause this resolution and his certification to be entered in the Book of Resolutions of the City Council.

Adopted: April 9, 2008



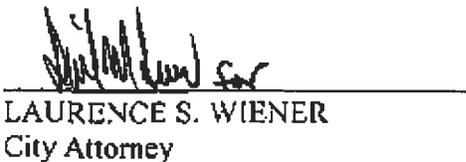
\_\_\_\_\_  
BARRY BRUCKER  
Mayor

ATTEST:



\_\_\_\_\_  
BYRON POPE  
City Clerk

Approved as to form:



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

Approved as to content:



\_\_\_\_\_  
VINCENT P. BERTONI, AICP  
Director of Community Development

EXHIBIT A  
LEGAL DESCRIPTION

**9900 WILSHIRE LEGAL DESCRIPTION**

That certain real property located in the State of California, County of Los Angeles described as follows:

PARCEL 1:

THAT PORTION OF BLOCK 33 OF BEVERLY, SHEET 2, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 13, PAGES 62 AND 63 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 4 OF SAID BLOCK 33; THENCE ALONG THE NORTHERLY LINE OF LOT 4 AND A PORTION OF LOT 3 OF SAID BLOCK 33, NORTH 89° 55' 00" EAST 300.00 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 3 OF SAID BLOCK 33; THENCE SOUTH 0° 05' 00" EAST 177.00 FEET; THENCE SOUTHEASTERLY SOUTH 38° 46' 45" EAST 583.79 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF LOT 7 OF SAID BLOCK 33, DISTANT 431.22 FEET FROM THE MOST SOUTHERLY CORNER OF LOT 6 OF SAID BLOCK 33; THENCE SOUTH 50° 19' 15" WEST 431.22 FEET TO THE MOST SOUTHERLY CORNER OF LOT 6 OF SAID BLOCK 33; THENCE ALONG THE SOUTHWESTERLY LINE OF LOTS 6 AND 4 OF SAID BLOCK 33, NORTH 30° 58' 05" WEST 798.43 FEET TO THE MOST SOUTHERLY CORNER OF LOT 5 OF SAID BLOCK 33; THENCE ALONG THE SOUTHEASTERLY LINE OF LOT 5 NORTH 19° 03' 30" EAST 235.27 FEET TO THE POINT OF BEGINNING.

PARCEL 2:

AN EASEMENT FOR PRIVATE ROAD PURPOSES OVER THE EASTERLY 20 FEET OF THOSE PORTIONS OF LOTS 3 AND 7 IN BLOCK 33 OF BEVERLY, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 13 PAGES 62 AND 63 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, INCLUDED WITHIN A STRIP OF LAND, 40 FEET WIDE, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID LOT 3, DISTANT NORTH 89° 55' 00" EAST 300 FEET MEASURED ALONG THE NORTHERLY LINE OF SAID BLOCK 33 FROM THE NORTHWEST CORNER OF LOT 4 OF SAID BLOCK 33; THENCE SOUTH 0° 05' 00" EAST 177.00 FEET; THENCE SOUTHEASTERLY SOUTH 38° 46' 45" EAST 583.79 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF LOT 7 OF SAID BLOCK 33, DISTANT 431.22 FEET FROM THE MOST SOUTHERLY CORNER OF LOT 6 OF SAID BLOCK 33, AS GRANTED BY DEED AND AGREEMENT DATED DECEMBER 20, 1950, AND RECORDED DECEMBER 22, 1950, IN BOOK 35141, PAGE 331, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

**EXHIBIT B**  
**SPECIFIC PLAN**

# 9900 Wilshire Specific Plan

April 9, 2008

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## CHAPTER 1.0 - INTRODUCTION

### 1.1 PURPOSE AND INTENT

This 9900 Wilshire Specific Plan (the "Specific Plan") was initiated to provide a framework for the redevelopment of a 7.95-acre site at the western gateway to the City of Beverly Hills (the "City") between Wilshire and Santa Monica Boulevards (the "Specific Plan Area" or "Site"). The existing improvements on the Site include the Robinsons-May department store building (the "Existing Building") and related above-ground parking structure. The development of the 9900 Wilshire project in the Specific Plan Area includes a maximum of 235 luxury condominiums, no more than 16,456 square feet of commercial development including a restaurant of not more than 4,800 square feet which includes not more than 600 square feet of outdoor dining, underground parking, private landscaped gardens with a pool and spa, and landscaped perimeter gardens (the "Public Gardens") located along the Wilshire frontage across from the El Rodeo School and Beverly Gardens Park, the western side of Merv Griffin Way, and at the intersection of Santa Monica Boulevard and Merv Griffin Way. Additional landscaping is also provided throughout the Site, including along Santa Monica Boulevard and the western property line of the Site.

The purpose of the Specific Plan is to facilitate the orderly and efficient development of the Specific Plan Area by, among other things, establishing appropriate size and density limits, which includes allowing an increase in height above the otherwise applicable height limit. The intent of the Specific Plan is to provide a concise development plan for the Specific Plan Area and to optimize the use of the Specific Plan Area in a manner that capitalizes on the Site's gateway location at the westerly entrance to the City. This would include incorporating garden-quality features that will compliment the adjacent Beverly Gardens Park while allowing higher scale residential development. Allowing an increase in height allows a significant portion of the site to be devoted to open space and landscaped gardens.

The Specific Plan contains policies, standards and guidelines and conditions of approval designed to ensure that the Specific Plan Area is improved in a manner that recognizes the site is a critical gateway into the City by incorporating open space and landscaping and thereby contributing to the garden quality of the City, effectively utilizing architectural elements and thereby providing a world class architectural landmark, and encouraging pedestrian circulation between the Specific Plan Area, nearby neighborhoods and the City's business triangle.

### 1.2 SPECIFIC PLAN AREA

#### A. Project Location

The Specific Plan Area is comprised of a single legal parcel generally bounded by Wilshire Boulevard to the north, Santa Monica Boulevard to the south, the centerline of Merv Griffin Way to the east, and the Los Angeles Country Club and the Union 76 gas station to the west. The site contains a slope differential of approximately 20 feet, with the northwest corner of the site along Wilshire Boulevard representing the highest elevation and the southeastern portion of the site, at the intersection of Merv Griffin Way and Santa Monica Boulevard, the lowest elevation. The net area of the Specific Plan Area is approximately 7.95 acres. Figure 1 illustrates the location of the Site and Figure 2 illustrates the Specific Plan Area.

## B. Existing Setting

### 1. Specific Plan Area

The improvements in the Specific Plan Area that existed when this Specific Plan was adopted include the 228,000-square-foot Existing Building, a two-level above-ground parking structure, and other street and roadway improvements. Figure 3 illustrates the existing site conditions. The implementation of the Specific Plan will require the demolition of all of the existing improvements in the Specific Plan Area, with the exception of Merv Griffin Way.

### 2. Surrounding Land Uses

The Site is surrounded by a mix of land uses:

**North:** Wilshire Boulevard. El Rodeo Elementary School, single family one-story and two-story homes, and Beverly Gardens Park are located across the street on the north side of Wilshire Boulevard.

**South:** Santa Monica Boulevard. The former railroad right-of-way is across the street on the south side of Santa Monica Boulevard. The property immediately south of the former railroad right-of-way includes privately operated surface parking, an automotive repair facility, retail (small shops) and office building uses.

**East:** The eastern half width of Merv Griffin Way and the eight-story Beverly Hilton Hotel and related structures and the above-ground parking structure fronting on Santa Monica Boulevard.

**West:** Los Angeles Country Club and the Union 76 gas station. The westerly boundary of the Site abuts a portion of one of the Los Angeles Country Club golf courses.

Figure 4 illustrates the surrounding land uses.

## 1.3 GOALS AND OBJECTIVES

Implementation of the Specific Plan will help to achieve the following goals and objectives:

- a. To create a world-class architectural landmark with a visual presence at the dual gateway to the City at Wilshire Boulevard and Santa Monica Boulevard that will enhance the beauty and image of Beverly Hills.
- b. To develop an environmentally sensitive and sustainable project.
- c. To develop a significant portion of the Specific Plan Area as landscaped gardens and other open space to enhance the visual character of the neighborhood and the City.
- d. To provide Public Gardens along Wilshire Boulevard, Merv Griffin Way and at the corner of Merv Griffin Way and Santa Monica Boulevard for the use and

enjoyment of the public during certain hours that enhances the garden qualities of the City.

- e. To redevelop the Specific Plan Area in a manner that does not substantially increase the traffic impacts and related operational air quality and noise impacts associated with the Existing Building.
- f. To improve the utilization and visual appearance of the Specific Plan Area by eliminating the existing above-ground parking structure and constructing subterranean parking for the Specific Plan Area.
- g. To provide high-quality housing for local and area residents to provide a variety of housing to meet the City's housing needs.
- h. To provide new housing within the City without having to tear down existing rental units or otherwise displace existing housing.
- i. To provide full-service luxury residential condominiums with vista views.
- j. To provide retail space along Santa Monica Boulevard and restaurant space on Merv Griffin Way to (i) serve project residents and others and (ii) enhance pedestrian activity and street life.
- k. To improve traffic circulation in and around the Specific Plan Area by providing additional vehicular access points on Wilshire Boulevard and Santa Monica Boulevard for project residents in order to reduce the amount of traffic on Merv Griffin Way.
- l. To provide housing in close proximity to the office and retail uses in Beverly Hills.
- m. To provide revenue to the City to offset the loss of commercial uses on the site.
- n. To provide affordable housing consistent with the City's Housing Element by providing a contribution to the City's affordable housing fund.

#### 1.4 CONTENTS

The Specific Plan consists of the following components:

Chapter 1.0 (Introduction): Chapter 1.0 provides a broad overview of the Specific Plan and its goals.

Chapter 2.0 (Planning Context): Chapter 2.0 describes the planning issues and process for the Specific Plan Area.

Chapter 3.0 (Plan Components): Chapter 3.0 sets forth the general land use concepts for the Specific Plan Area and describes land uses, building placement, traffic circulation and utilities.

Chapter 4.0 (Development Standards and Guidelines): Chapter 4.0 sets forth development standards and guidelines for the Specific Plan Area, including permitted uses, parking, building height, residential outdoor living space, sign standards and architecture and design.

Chapter 5.0 (Implementation and Administration): Chapter 5.0 provides a review of the Specific Plan's relationship to the General Plan and sets forth the implementation and amendment process.

Chapter 6.0 (Operational Standards): Chapter 6.0 sets forth the provisions governing the long-term operation of uses within the Specific Plan Area.

Chapter 7.0 (Mitigation Measures): Chapter 7.0 sets forth the mitigation measures and conditions of approval that have been adopted by the City Council and incorporates those mitigation measures and conditions into the Specific Plan.

Chapter 8.0 (Figures): Chapter 8.0 contains the Figures referenced throughout the remainder of the Specific Plan.

Exhibit 1: Conditions of Approval imposed on the Specific Plan

## CHAPTER 2.0 - PLANNING CONTEXT

### 2.1 INTRODUCTION

This chapter provides an overview of the specific plan process and the public participation in developing the Specific Plan.

### 2.2 AUTHORITY

The California Government Code (Title 7, Division 1, Chapter 3, Article 8, §§ 65450-65457) authorizes cities to adopt specific plans for the systematic implementation of the general plan for all or part of the area covered by the general plan. Any specific plan adopted pursuant to this authority shall be consistent with the adopted general plan. Once the Specific Plan is adopted, all zoning, subdivision, public works projects and development agreements shall then be consistent with the Specific Plan.

### 2.3 GENERAL PLAN AND ZONING DESIGNATIONS

The Specific Plan Area was designated as Low Density General Commercial on the General Plan land use map and had a zoning designation of C-3 prior to the adoption of this Specific Plan.

In connection with the adoption of the Specific Plan, the Land Use Plan Map in the Land Use Element of the General Plan was amended to designate the Specific Plan Area as "SP-9900 Wilshire Specific Plan". The zoning designation for the Specific Plan Area was also amended to change the designation for the Specific Plan Area to the "9900 Wilshire Specific Plan" zone. Section 5.2 of the Specific Plan provides an analysis of the Specific Plan's consistency with the City's General Plan.

### 2.4 RELATIONSHIP TO THE ZONING ORDINANCE

As set forth in Title 10, Chapter 3, Article 15.7 of the Beverly Hills Municipal Code (the "Municipal Code"), the Specific Plan supersedes other development regulations and standards set forth in the Beverly Hills Planning and Zoning Ordinances (Chapters 3 and 4 of Title 10 of the Municipal Code) for the Specific Plan Area. The provisions of this Specific Plan are applied in lieu of the provisions in the Planning and Zoning Ordinances. For development standards not established as part of the Specific Plan, the standards in the Planning and Zoning Ordinances shall apply. In addition, any terms used in this Specific Plan that are not defined or described herein shall have the meanings, if any, set forth for them in the Planning and Zoning Ordinances.

### 2.5 PUBLIC PARTICIPATION

The proposed development of the Specific Plan was first presented to a joint meeting of the City Council and Planning Commission on December 6, 2005. City staff conducted a public scoping meeting on August 3, 2006 for the purposes of obtaining public input regarding the potential environmental impacts associated with the Specific Plan, which were analyzed as part of the environmental review of the Specific Plan mandated by the California Environmental Quality Act (CEQA). A Draft Environmental Impact Report was circulated for public review from August 7, 2007 to September 28, 2007. Certain sections of the Draft Environmental Impact Report (traffic,

noise and air quality) were recirculated for public review from October 15, 2007 to November 15, 2007. The Planning Commission conducted public hearings on August 20th, September 5th, September 24th, October 29th, November 8th, November 28th 2007 and January 10th, January 24th and February 7, 2008. The City Council conducted public hearings on March 11th, March 20th, and March 27th, 2008, and discussed and approved the project on April 3rd and April 9th, 2008. The public was afforded the opportunity at each of the hearings to provide input into the development of the Specific Plan and other entitlements for the proposed project. The Specific Plan reflects changes recommended by the Planning Commission and City Council to the originally proposed Specific Plan, and the Specific Plan underwent important changes as a result of the public participation process.

## 2.6 CEQA COMPLIANCE

A Final Environmental Impact Report (the "Final EIR") has been prepared for the Specific Plan pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Section 21000 *et seq.* ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000 *et seq.*), and the City's Local Environmental Guidelines. The Final EIR addresses the potential environmental impacts resulting from the implementation of the proposed Specific Plan and sets forth mitigation measures to lessen those environmental impacts. These mitigation measures have been incorporated into the Specific Plan (see Chapter 7.0).

## CHAPTER 3.0 - PLAN COMPONENTS

### 3.1 INTRODUCTION

The Specific Plan is a comprehensive policy and regulatory document that will be used to guide development of the site. This chapter addresses (a) the location, distribution and extent of land uses within the Specific Plan Area and (b) the location, distribution and extent of essential facilities serving the Specific Plan Area.

### 3.2 LAND USES

The land use concept for the Specific Plan Area encourages a development consisting of luxury residential units, retail and restaurant uses, a central subterranean parking structure and landscaped gardens, including the Public Gardens, and other open space, all on 7.95 net acres of land. Figure 5 illustrates the basic land use concept for the Specific Plan Area.

The uses in the Specific Plan Area shall be limited to those uses shown on Figure 5 or otherwise described in Section 4.2 of Chapter 4.0 of this Specific Plan. Ancillary uses for the condominiums include health spas, private fitness centers, squash courts, pools, screening rooms, meeting rooms, game rooms, common areas, outdoor living areas, parking, storage, residential storage units, wine storage, security offices, back-of-house (BOH) kitchen, BOH laundry, BOH storage/services, for the exclusive use of the condominium residents and guests, and other amenities associated with luxury residential condominiums approved by the Director of Community Development (the "Director").

A maximum of 600 square feet of open air dining within the Specific Plan Area, in substantially the location shown on Figure 37, shall be permitted in conjunction the restaurant and shall not require separate authorization or approval of an Open Air Dining Permit, provided that such open air dining complies with the operational standards set forth in Section 6.4 of Chapter 6.0 of this Specific Plan. Any open air dining proposed in a public right of way shall require the approval of an Open Air Dining Permit in accordance with the procedures set forth in Article 35 of Chapter 3 of Title 10 of the Municipal Code or its successor.

### 3.3 SITE PLANNING

#### A. Building Placement

The location and distribution of buildings and open space, including building levels located below grade, shall be substantially as shown on Figure 6 of the Specific Plan. Within the open space and public rights-of-way, the location, distribution and type of pedestrian amenities and landscaping shall be substantially as shown on Figure 38 of the Specific Plan. Within the Public Gardens, the location and distribution of pedestrian amenities and the location, distribution and type of landscaping shall be generally as shown on Figure 39 of the Specific Plan.

The total floor area for commercial uses shall not exceed 16,456 square feet, which may include a maximum of 4,800 square feet of floor area for dining and bar uses (including a maximum of 600 square feet of open air dining area). A maximum of 235 residential units shall be permitted in the Specific Plan Area.

B. Circulation

1. Local Circulation

The Specific Plan Area is located within the area bounded by Wilshire Boulevard to the north, Santa Monica Boulevard to the south, Merv Griffin Way to the east, and the Los Angeles Country Club to the west. Other key streets in the vicinity include Whittier Drive and Elevado Avenue. The locations of these streets are shown on Figure 9.

Wilshire Boulevard is an east-west arterial roadway that runs between Ocean Avenue in Santa Monica to the west and Grand Avenue in downtown Los Angeles to the east. In the vicinity of the Specific Plan Area, Wilshire Boulevard provides six lanes of travel, which are divided by painted medians and two-way left turn lanes. On-street parking is not permitted before 7:00 p.m. on Wilshire Boulevard within the immediate vicinity of the Specific Plan Area. Wilshire Boulevard is on the Congestion Management Plan (CMP) road system as a part of the CMP roadway network.

Santa Monica Boulevard has been designated by the City as a Major Class 1 Highway. It is an east-west arterial roadway that runs between the City of Santa Monica to the west and Sunset Boulevard in Silver Lake to the east. The Santa Monica Boulevard Transit Parkway Project which was completed in 2007 consisted of the reconstruction and reconfiguration of 2.5 miles of Santa Monica Boulevard between I-405 on the west and Beverly Hills city limit on the east (Moreno Drive). This segment of the boulevard has three eastbound and three westbound travel lanes. The project includes a new street lighting and traffic signal system, a landscaped median, bicycle lanes and bus priority features. Santa Monica Boulevard is on the CMP road system as part of the CMP roadway network.

Whittier Drive is a local residential street. It is a north-south roadway, the southern terminus of which is directly across the street from the northern terminus of Merv Griffin Way. Elevado Avenue is a residential street. It is a north-south to east-west roadway, the southwestern terminus of which is at Whittier Drive.

Transportation improvements and facilities, including, but not limited to, alleys, driveways and parking facilities, shall be constructed within the Specific Plan Area to minimize the parking and circulation impacts on surrounding streets including impacts to public transportation. The alleys, driveways and parking facilities to be constructed within the Specific Plan Area shall be substantially as shown on Figures 10 through 12.

A new residential access road shall be constructed along the western edge of the Specific Plan Area. A new traffic signal at Merv Griffin Way and Santa Monica Boulevard shall be constructed and the intersection of Merv Griffin Way and Wilshire Boulevard shall be modified to provide one left-turn lane, one through lane, and one right-turn lane on the portion of Merv Griffin Way within the Specific Plan Area.

A new delivery access along Santa Monica Boulevard west of Merv Griffin Way shall be provided as well as a new access along Merv Griffin Way between Wilshire Boulevard and Santa Monica Boulevard. These two access points will also provide access for the retail and restaurant components of the project.

A residential access point on Wilshire Boulevard shall be limited to right turns in and right turns out only. The residential access point on Santa Monica Boulevard can provide for right turns in and out, and for left turns in. The access points, driveways and roadway improvements shall be substantially as shown on Figure 10.

Merv Griffin Way is a private street owned in part by the owner of the Specific Plan Area, and in part by the adjacent landowners to the east. Any proposal to realign, close or substantially change Merv Griffin Way shall require approval of the Planning Commission, which decision may be appealed to the City Council pursuant to the provisions of Chapter 4 of Title 1 of the City's Municipal Code provided, however, that Merv Griffin Way may be closed to the public from time to time for maintenance and repairs and improvement work if approved by the Director of Public Works and Transportation, and for emergencies.

## 2. Traffic Impacts

A traffic impact study was prepared in connection with consideration of the Specific Plan. Those studies analyzed the impact of the Specific Plan and concluded that the implementation of the Specific Plan would have no significant adverse traffic impacts.

## 3. Pedestrian Circulation

The commercial area along Santa Monica Boulevard is intended to enhance the pedestrian character of this portion of Santa Monica Boulevard. In addition, the Public Gardens will create an inviting pedestrian opportunity along Wilshire Boulevard, Merv Griffin Way and at the corner of Merv Griffin Way and Santa Monica Boulevard that does not exist today. The provision of this inviting pedestrian opportunity is designed to encourage pedestrians from neighboring areas to walk to the commercial uses at the Project Site, such as the restaurant, and to provide an attractive pedestrian link between the Business Triangle and the 9900 Wilshire and adjacent hotel area of the City.

## 4. Parking Facilities

The subterranean parking structure will provide approximately 803 parking spaces substantially as shown on Figures 11 and 12, including separate residential (681 with not more than 31 tandem spaces) and commercial (122 with not more than 30 tandem spaces) areas. These spaces will provide parking for all land uses within the Specific Plan Area.

## 3.4 UTILITIES

Due to the long-time operation of commercial uses in the Specific Plan Area and the urbanized nature of the surrounding area, the Specific Plan Area is currently provided with adequate facilities for sewage, water, drainage, solid waste disposal and energy. As limited in size and intensity of use by the Specific Plan, the Specific Plan Area will not require the development of additional sewage, water, solid waste disposal, energy, or other essential facilities. However, the Project will be required to pay its fair share to mitigate any cumulative impacts on City facilities. In addition, all utility construction, connections and maintenance shall conform to the provisions of the Beverly Hills Municipal Code. Implementation of the Specific Plan will require relocation of certain utilities

substantially as shown on Figures 31 through 36. The telephone facilities plan shall be substantially as shown on Figure 35.

A. Water

The City provides water to the Specific Plan Area. Figure 31 shows the location and size of the water distribution system that serves the Specific Plan Area. The existing supply and distribution of water can accommodate the level of water demand from the commercial and condominium uses proposed in the Specific Plan Area.

B. Sewer

Figure 32 shows the present size and location of the sewer facilities servicing the Specific Plan Area. Wastewater generated from the Specific Plan Area would be conveyed through these lines and treated at the Hyperion Water Treatment Plant in El Segundo. The calculations prepared by the City in connection with its review of the Specific Plan indicate that the existing sewer lines are adequate to accommodate the level of wastewater generated by the Specific Plan.

C. Solid Waste Disposal

Solid waste disposal for the Specific Plan Area is provided through a franchise with the City. All solid waste generated by the Specific Plan Area will be disposed of at landfills in Los Angeles or Riverside Counties. The City's solid waste is currently disposed of at the following landfills: Puente Hills Landfill, Bradley West Landfill, Chiquita Canyon Landfill, Sunshine Canyon Landfill, and El Sobrante Landfill (Riverside County). Based on the projected solid waste generation, the Specific Plan Area will not have significant solid waste disposal impacts and existing solid waste disposal facilities and landfill capacities are sufficient to accommodate the Specific Plan's projected solid waste.

D. Stormdrain

The Specific Plan Area is currently developed with commercial buildings and parking structures. Implementation of the Specific Plan will not increase the amount of impermeable land or result in changes in absorption rates that would increase the amount of stormwater runoff from the Specific Plan Area. In addition, development within the Specific Plan Area will be required to comply with all requirements of the City's National Pollution Discharge Elimination System (NPDES) Permit and the City's stormwater and urban runoff management ordinance (Article 5, Chapter 4, Title 9 of the Beverly Hills Municipal Code). The storm drain plan for the Specific Plan Area is shown on Figure 33 of the Specific Plan.

E. Energy

The Southern California Edison Company provides electricity to the Specific Plan Area. The Southern California Gas Company provides natural gas to the Specific Plan Area. According to the studies prepared for the Specific Plan, the existing supply and distribution of electricity and natural gas can accommodate the level of demand from the uses proposed in the Specific Plan. Figures 34 and 36 illustrate electrical and gas facilities, respectively.

## F. Graywater System

The Project shall include a graywater system to reduce overall water demands, and specifically, limit the demand for irrigation water. The graywater system may include: (1) dual piping to maintain graywater separate from potable water; (2) tanks to hold the graywater before and after treatment; (3) graywater treatment system including filtering and disinfecting systems; and (4) booster pumps to ensure water is delivered at pressures adequate for its intended uses. The graywater system shall collect drainage discharged from sinks, service sinks, bathtubs, showers and clothes washers. This "gray" wastewater shall then be filtered and treated until it reaches a level of quality consistent with its intended re-use. For example, graywater may be used for flushing water in toilets and urinals within the Project's residences, as well as public restrooms in the common areas. The remaining graywater shall be used for irrigation and other non-potable water using systems, thus reducing the Project's overall water demands and, in particular, demand for water which would be otherwise used for irrigation.

## CHAPTER 4.0 - DEVELOPMENT STANDARDS AND GUIDELINES

### 4.1 GENERAL PROVISIONS

The Specific Plan is a policy and regulatory document, and all development within the Specific Plan Area shall be governed by the Specific Plan in accordance with the development standards and guidelines contained herein.

### 4.2 PERMITTED USES

The uses set forth below are permitted uses within the Specific Plan Area. If a use is not listed below or is not a similar use that the Director of Community Development determines is consistent with the goals and objectives of the Specific Plan, then such use is presumed to be prohibited unless a Conditional Use Permit is approved by the Planning Commission pursuant to the procedures set forth in Title 10, Chapter 3, Article 38 of the Municipal Code, or any successor provision. The Planning Commission may approve such otherwise prohibited uses if the Commission determines that such uses do not materially alter the distribution, location and extent of the uses of land as set forth in the Specific Plan and the uses fulfill the intent of the Specific Plan as described in Section 1.3 (Goals and Objectives) of the Specific Plan. The foregoing notwithstanding, uses that must be permitted pursuant to State or Federal law shall be deemed permitted uses, and shall comply with any and all provisions of the Municipal Code regarding such uses.

#### A. COMMERCIAL AREA

The following uses are permitted within the portion of the Specific Plan Area designated for commercial use, as shown on Figures 2 and 37:

- Alcohol sales (on-site and off-site) and consumption in conjunction with the uses listed under food and beverage establishments, including open air dining within the Specific Plan Area, or in conjunction with open-air dining in the public right-of-way pursuant to Section 10-03-3505 of the Municipal Code, subject only to issuance of a Department of Alcoholic Beverage Control license.

- Art shop or gallery.
- Bank.
- Clothes dry cleaning (excluding plants).
- Decorating or interior design shop or store.
- Florist.
- Food and beverage establishments, including bakeries, cafes, delicatessens, gourmet beer and wine shops, ice cream parlors, restaurants (full service), bars (in conjunction with restaurants) and specialty food, but excluding drive-up, drive-in and drive-through.
- Live entertainment, conducted indoors, as an ancillary use in conjunction with a food and beverage establishment.
- Retail stores and shops.
- Offices, only on floors other than the ground floor and excluding real estate offices, medical offices, and physical therapy offices.
- Office supply, stationery and gift stores.
- A maximum of 600 square feet of open-air dining as shown in Figure 37 of this Specific Plan.
- Optical/eyewear, including optometry/opticians.
- Parks, gardens and open space.
- Photography shop or gallery.
- Shoe repair shop
- Tailor.
- Other similar uses determined by the Director to be consistent with the goals and objectives of the Specific Plan.

#### B. RESIDENTIAL AREA

The following uses are permitted on the portion of the Specific Plan Area designated for residential use, as shown on Figure 2:

- Residential dwellings, including condominiums, townhomes, and lofts, and the usual and customary accessory and appurtenant uses thereto, including without limitation the ancillary uses described in Section 3.2 of Chapter 3.0, provided that such uses are limited to use by residents of the Specific Plan Area.
- Parks, gardens and open space.
- Other similar uses determined by the Director to be consistent with the goals and objectives of the Specific Plan.

#### C. PUBLIC GARDENS

The following uses are permitted within the portion of the Specific Plan Area designated for the Public Gardens, as shown on Figure 2:

- Parks, gardens and open space.
- Other similar uses determined by the Director to be consistent with the goals and objectives of the Specific Plan.

The following uses, conduct and activities shall be prohibited in the Public Gardens:

- Making or kindling any fire.
- Consumption of any alcoholic beverages (except in conjunction with a permitted assembly or special event).
- Riding any bicycle, skateboard, roller skates or similar type of device except where such activity is authorized by the property owner.
- Selling, offering for sale, renting or offering for rent goods, wares, merchandise, foodstuffs, refreshments or other kinds of property or services (except when expressly allowed in conjunction with a permitted assembly or special event).

4.3 PARKING

A. Parking Requirements

Type of Use	Parking Spaces
Eating and bar facilities equal to or greater than 1,000 square feet	1 space per 45 square feet of dining and bar floor area plus 1 space per 350 square feet of kitchen and back-of-house floor area.
Eating and bar facilities less than 1,000 square feet	1 space per 350 square feet of floor area
Open air dining	1 space per 45 square feet of dining area
Commercial uses permitted under the Specific Plan and not otherwise specified in this Section 4.3	1 space per 350 square feet of floor area
Multi-family dwelling units	2 spaces for each one-bedroom unit 2-1/2 spaces for each two-bedroom unit 3 spaces for each three- or four-bedroom unit 4 spaces for each five-bedroom or more unit 1 permanent guest parking space for each four dwelling units 1 space for each efficiency unit containing less than 1,000 square feet 2 spaces for each efficiency unit containing 1,000 square feet or more

B. General Parking Provisions

The dimensions of the parking spaces shall be 9 feet by 19 feet as shown on Figures 11 and 12. All commercial parking shall be separated from the parking for the residents and their guests. Commercial parking shall be located on the first level of the subterranean parking structure. The balance of the parking located on the first level and all parking located on the second level of the parking structure shall be for residents and their guests. Valet parking shall be available for residents and their guests, and shall also be available to commercial patrons.

### C. Loading Docks

Two (2) loading docks shall be provided for the Specific Plan Area substantially in the locations and dimensions shown on Figure 13.

#### 4.4 BUILDING HEIGHT

Figure 7 illustrates the heights of buildings within the Specific Plan Area. The building heights shall be substantially consistent with the heights shown on Figure 7. Due to the natural slope of the Specific Plan Area there is an approximately 20-foot decrease in elevation from the northwest corner of the Specific Plan Area along Wilshire Boulevard to Santa Monica Boulevard, which results in a range of building heights across the site. In addition, the buildings are designed with varied building heights to add architectural interest. The building heights identified below are the highest portion of various sections of the building and should not be construed as the permitted height for the entire building. As shown on Figure 7 (a) the height of the south condominium building near the western boundary of the Specific Plan Area shall not exceed 205 feet from adjacent grade at its highest point, (b) the height of the north condominium building near the western boundary of the Specific Plan Area shall not exceed (i) 108 feet from adjacent grade for the first 90 feet from the northerly end of such north condominium building, and (ii) 161 feet from adjacent grade after the first 150 feet from the northerly end of such condominium building, with steps in height to 137 feet and 149 feet at different locations as shown on Figure 7 (c) the height of the commercial building and the Spa Building located along the southern boundary of the Specific Plan Area (fronting Santa Monica Boulevard) shall not exceed 48 feet from adjacent grade, and (d) the height of the commercial building located at the corner of Santa Monica Boulevard and Merv Griffin Way shall not exceed 50 feet from adjacent grade.

The calculation of the height of any building or structure shall be measured from the adjacent grade as shown on Figure 7. The buildings vary in height. In determining the height of a building or structure, *none of the structures, improvements, features and other elements now or hereafter* excluded from the calculation of height in the definition of "Height of Building" in Section 10-3-100 of the Municipal Code (or any successor provision) shall be considered when determining the height of a building or structure pursuant to this Section 4.4; provided, however, that for the purposes of Section 10-3-100 of the Municipal Code (or any successor provision) trellises shall be considered "unoccupied architectural features."

The natural slope of the Specific Plan Area results in an approximately 20-foot decrease in elevation from the northwest corner of the Specific Plan Area along Wilshire Boulevard to Santa Monica Boulevard, allowing a portion of the contemplated commercial space to be tucked underneath a landscaped platform. The restaurant will be setback approximately 90 feet from the Santa Monica Boulevard property line with landscaping provided in front of the restaurant at Santa Monica Boulevard and Merv Griffin Way. Figure 8 illustrates the slope of the Specific Plan Area between Wilshire and Santa Monica Boulevards.

#### 4.5 RESIDENTIAL OUTDOOR LIVING SPACE

The residential units in the Specific Plan Area shall include a minimum of two hundred (200) square feet of usable outdoor living space per unit. The usable outdoor living space shall be

provided through a combination of private balconies in the individual units and common access to the residential landscaped gardens and pool area shown on Figure 38.

#### 4.6 SIGN STANDARDS

A unified sign plan, satisfactory to the Director of Community Development (the "Unified Sign Plan") shall be prepared for the Specific Plan Area. The Unified Sign Plan shall encompass all exterior signage, including both permanent and temporary signs. The Director of Community Development shall have the authority to approve or conditionally approve the Unified Sign Plan, and that decision shall be appealable to the Planning Commission. After approval of the Unified Sign Plan, all signs that, in the determination of the Director, are consistent with the approved Unified Sign Plan shall be issued a building permit without further discretionary review. The provisions of Title 10, Chapter 4 of the Municipal Code are not applicable to the Unified Sign Program.

All other signs shall be subject to architectural review pursuant to the procedures set forth in Chapter 4 of Title 10 of the Municipal Code. The unified sign plan shall be consistent with the provisions in the Municipal Code in terms of permitted size but the Director shall have the authority to approve alternative locations of the signage to meet the objectives of the Specific Plan and provide direction to uses on the Site.

#### 4.7 ARCHITECTURE AND DESIGN

##### A. Residential Buildings

The residential buildings shall be constructed substantially as shown on Figures 14 through 30 of the Specific Plan.

The residential buildings positioned at the west property line are raised above the ground to allow light and views of the golf course landscape to the west to pass below the architecture, and are curvilinear and horizontal to reflect the natural forms and geometry of the open space to the west, and the classic horizontal massing of the Beverly Hilton Hotel.

##### B. Commercial Buildings

The commercial space shall be constructed substantially as shown on Figure 37 of the Specific Plan and in accord with plans approved pursuant to Section 4.7.E of the Specific Plan.

##### C. Open Space / Landscaping

The landscaping shall be developed substantially as shown on Figures 38 and 39 of the Specific Plan. The location and type of all plant materials shall respond to and complement the architectural design of the buildings in the Specific Plan Area and shall be integrated with the buildings as an additional architectural element. Landscaping shall be used to highlight entries, contrast with or reinforce building lines and volumes, and soften hard structural lines and building mass.

Landscaping shall be used to define pedestrian activity areas such as the commercial space and landscaped gardens. The landscaping shall be designed to enhance the garden quality of the City and shall incorporate mature plant material.

#### D Public Gardens

The Public Gardens are on a 0.81 acre (35,468 square feet) area located at the corner of Wilshire Boulevard and Merv Griffin Way, and include a garden pathway along Merv Griffin Way from Wilshire Boulevard to the corner of Merv Griffin Way and Santa Monica Boulevard as generally shown on Figures 2 and 39 of the Specific Plan. The gardens are provided for the use and enjoyment of Beverly Hills residents and visitors, including Specific Plan Area residents and visitors. They are designed to enhance the garden qualities of the City. The Public Gardens shall be open to the public during certain hours, and shall complement and extend the existing Beverly Gardens Park on the north side of Wilshire Boulevard. The Public Gardens shall be developed substantially as shown on Figure 39 of the Specific Plan. The Public Gardens shall include both functional and aesthetic elements such as water features, paths and benches.

#### E. Architectural Review

Prior to the issuance of building permits, the design, materials and finishes of the buildings, and proposed landscaping shall be subject to the review and approval of the Architectural Commission and shall be generally consistent with the building elevations presented to the City Council, as shown in figures 40 through 43. The Architectural Commission shall ensure that the building architecture substantially complies with the building elevations of the project as presented to the City Council during its consideration of the Specific Plan. After Architectural Commission approval, all development that, in the determination of the Director, is in substantial conformance with the Specific Plan shall be issued a building permit without further discretionary architectural review. Any future construction and modification to the exterior of the structures within the Specific Plan Area that is not in substantial conformance with the Specific Plan shall be subject to architectural review pursuant to the procedures set forth in Article 30 of Chapter 3 of Title 10 of the Municipal Code.

#### 4.8 GREEN BUILDING STANDARDS

Development in the Specific Plan area shall incorporate green construction standards and seek certification under the Leadership in Energy and Environmental Design (LEED) Green Building Rating System. The intent of LEED is to provide a national definition and standard of what constitutes green building and then to provide third party certification to assure correct implementation of the standard. LEED is based on a point system which determines one of four levels of certification a given building or project can achieve. The LEED categories include Sustainable Sites, Water Efficiency, Energy & Atmosphere, Materials & Resources, Indoor Environmental Quality, and Innovation and Design Process.

The following LEEDs features shall be incorporated into the project:

- Balconies and overhangs to shade window glazing, while allowing reflected and diffuse daylight into residential units to enhance the use of natural light and reduce the need for artificial light sources;

- The selection of a developed urban site and the conversion of a substantial portion of the site to green space;
- *Close proximity to public transportation;*
- Limiting the development footprint to approximately one-third of the project site;
- Landscaping and exterior design utilizing subterranean parking and landscaped and shaded non-roof surfaces and light-colored, low-albedo roof surfaces to reduce local heat island effects;
- The reduction of chlorofluorocarbons (CFCs) from the building systems;
- The recycling of building materials such as asphalt, metals, glass and concrete from demolition site work.
- The selection of materials, such as adhesives, sealants, paints, and carpeting, that reduce off-gassing to improve internal air quality; and
- The involvement during design and construction of a LEED Accredited Professional.
- A gray water system as set forth in Section 3.4F of this Specific Plan.

## CHAPTER 5.0 - IMPLEMENTATION AND ADMINISTRATION

### 5.1 PURPOSE

This chapter sets forth criteria for determining consistency with the Beverly Hills General Plan (the "General Plan"), the relationship between the Specific Plan and the General Plan and provisions for amendments to the Specific Plan, and financing.

### 5.2 RELATIONSHIP TO THE GENERAL PLAN

The General Plan serves as the long-term planning guide for future development throughout the City. *The General Plan operates as a guide to the type of community desired for the future and provides the means to accomplish that goal.* California law requires a specific plan to be consistent with the adopted general plan. The Specific Plan has been adopted in conjunction with general plan amendments to: (a) add text in the Land use Element identifying this site as an anchor location which permits higher intensity development; (b) amend the Land Use Element to change the land use designation for the Specific Plan Area from "Low Density General Commercial" to "SP-9900 Wilshire Specific Plan" in order to permit a mix of residential condominiums and commercial uses in the Specific Plan Area in a manner consistent with the General Plan, and (c) amend Housing Element Program 4.3 of Objective 4.3 to add the 9900 Wilshire Site to the list of areas zoned commercial for which mixed use could be appropriate (collectively, the "General Plan Amendments").

The Specific Plan is consistent with the General Plan, as amended, and advances the policies, objectives, goals, recommendations and characteristics identified below:

A. Land Use Element

The Land Use Element of the General Plan contains the following policies, recommendations and characteristics that are important to the Specific Plan:

Section 1.1: "Beverly Hills is fortunate in that it is able to serve a variety of residential and commercial demands in a manner and combination which is difficult to duplicate elsewhere in the Los Angeles area. . . . The characteristics which contribute to the special opportunities available in Beverly Hills include:

- The quality of the physical environment, such as its extensive network of trees and landscaping. . . .
- The scale of the community, which fosters a sense of place and identity rather than a sense of anonymity.
- The pride of its residents and businesses, as reflected in many ways, such as the architecture, landscaping and overall concern for the welfare of the community. . .
- The exceptional quality of its housing stock which offers a variety of housing and neighborhoods rarely found elsewhere."

**2.2 Commercial Areas.** This subsection of the General Plan Land Use Element, as amended, provides:

"It is also recommended that certain anchor locations be set aside to permit development of a higher intensity type of development that is not otherwise provided in the community. These areas should be located so as to be accessible from the City's major shopping areas and close to the City's major streets. These anchor locations should include large parcels that are located at the gateways to the City, such as the site at 9900 Wilshire Boulevard where additional building height is appropriate. A variety of land uses such as commercial, residential, and mixed use should be considered for the gateway locations. A change of use from commercial to residential or mixed use should be allowed only if such uses provide an adequate transition to adjacent single family neighborhoods."

The Specific Plan is consistent with each of these policies, recommendations and characteristics. The implementation of the Specific Plan will enhance the quality of the physical environment and foster a strong sense of place with the development of an architectural landmark at this important gateway to Beverly Hills, which features extensive landscaping over approximately 4.28 acres of the Specific Plan Area, including the Public Gardens that complement the Beverly Gardens Park on the north side of Wilshire Boulevard. The scale of the development provides an effective and appropriate transition between the much taller existing and proposed commercial and residential buildings in Century City and the lower-scale development east of the Specific Plan Area and the Beverly Hilton Hotel. The luxury residential condominiums that will be developed in the Specific Plan Area will be of exceptional quality and will offer a variety of housing in the City.

In addition, the site is located at a gateway location at the western entry into the City along Santa Monica and Wilshire Boulevards. The General Plan Amendments include amendments to the Land Use Element that include this gateway site as one of the anchor locations for which the

General Plan would allow higher intensity type of development, and specifically additional height for the Site. These anchor locations could include commercial, residential, or mixed uses. The General Plan Amendment incorporates language that would require any development proposed on an anchor location to effectively mitigate the transition to single family residences. The General Plan Amendments result in the consistency of the Specific Plan with the Land Use Element.

#### B. Open Space Element

The Open Space Element of the General Plan contains the following statement that is important to the Specific Plan:

Section 2.3: "Possibly the City's greatest informal resource, however, is the elaborate network of landscaping and vistas which fosters a sense of spaciousness within an urban setting which sets this community apart."

While not an express policy, the Specific Plan contributes to this valuable resource by maximizing open space opportunities and landscaping in the Specific Plan Area. The Public Gardens along Wilshire Boulevard, Merv Griffin Way and at the corner of Merv Griffin Way and Santa Monica Boulevard will enhance the garden quality of the City and add to the existing elaborate network of landscaping and vistas throughout the City. In addition, the Public Gardens have been located to complement the existing Beverly Gardens Park on the north side of Wilshire Boulevard.

#### C. Circulation Element

The Circulation Element of the General Plan contains the following policies that are important to the Specific Plan:

Section 2.1: Access traffic (traffic destined for and/or originating in Beverly Hills) should be restricted to the extent possible to "through traffic" streets as well as certain north-south streets.

Section 2.2: Centrally located parking facilities which can provide common parking for commercial establishments . . . should be encouraged.

The Specific Plan is consistent with these provisions of the Circulation Element. It provides centrally located parking facilities to serve both the residential and commercial uses in the Specific Plan Area. It also includes new access points that will diminish the traffic load on Merv Griffin Way compared to the historical use of the Specific Plan area as well as improving both on-site circulation and access to Santa Monica Boulevard and Wilshire Boulevard, the two commercial corridors adjacent to the Specific Plan Area.

#### D. Housing Element

The Housing Element of the General Plan contains the following policies that are important to the Specific Plan:

Section 2.5.1.1.1: "The range of theoretical [residential] densities possible is from 25.6 units per acre to 48.4 units per acre."

Objective 2.2: "Expand supply of housing affordable to lower income households.

Program 2.6: Create a local fund to assist developers of housing affordable to lower income households. Possible methods of creating this fund could include requiring an in-lieu fee ... or could include an inclusionary requirement on new, market rate multifamily residential development above some minimum size with the requirement met by a choice of development of low income units or an in-lieu payment to the housing fund.

The Specific Plan is consistent with these policies and programs. The Specific Plan is also consistent with Program 4.3 of the Housing Element as amended by the related General Plan Amendment to list the Project Site as appropriate for mixed use development. The permitted residential density in the Specific Plan is approximately 29.5 units per acre, which is well within the desired range of 25.6 to 48.4 units per acre. As part of the project approvals, the project will contribute funds that will be set aside for affordable housing.

### 5.3 ADMINISTRATION

Although every effort has been made to include provisions in the Specific Plan that are clear, the necessity of interpreting such provisions in light of specific and unusual cases may occur from time to time. When such interpretations are necessary, the Director of Community Development shall be responsible for the interpretation of the provisions of the Specific Plan. The Director shall be the City administrator responsible for enforcing the regulations, site development standards and procedures set forth in the Specific Plan. The Director shall have the administrative authority for interpretation related to the enforcement of the Specific Plan.

### 5.4 AMENDMENTS AND MODIFICATIONS TO THE SPECIFIC PLAN

Formal amendment ("Amendment") to the Specific Plan will require the review and approval of both the Planning Commission and the City Council. Amendments are governed by the provisions of Section 65450 et seq. of the California Government Code and require compliance with specific notice and public hearing requirements. An Amendment to the Specific Plan shall be required for (a) any proposed modifications that would substantially alter the distribution, location, extent or density of the uses and buildings permitted in the Specific Plan, including (i) any increase in the total number of residential condominiums or the floor area of the residential or commercial uses or (ii) a reduction in the size or change in the location of the Public Gardens, and (b) an increase in the maximum height of the buildings.

Notwithstanding the foregoing, the Director of Community Development may, without the review and approval of the Planning Commission or the City Council, approve Administrative Modifications to the Specific Plan that do not substantially alter the distribution, location, extent or density of the uses and buildings permitted in the Specific Plan. An Administrative Modification shall be required with respect to changes to the site plan and building elevations that would materially alter the approved architectural style or modulation of the buildings. An Administrative Modification shall be processed pursuant to the procedures set forth in Article 36 of Chapter 3 of Title 10 of the Municipal Code for "Minor Accommodations to Certain Development Standards", except that the limitations on the type of accommodations set forth in Section 10-3-3600 shall not apply. The

applicant or any person aggrieved by any decision regarding an Administrative Modification may appeal to the City Council as provided in Section 10-3-3604 of the Municipal Code (or any successor provision).

Notwithstanding anything to the contrary in this Section, the following modifications to the Specific Plan shall not require an Amendment to the Specific Plan or an Administrative Modification: (a) the relocation or alteration of residential ancillary uses provided the Director determines that the relocation or alteration does not increase parking demand, (b) variations between the conceptual plans set forth in Chapter 8.0 and the final construction documents for the Specific Plan Area development, provided the final construction documents substantially conform to the conceptual plans set forth in Chapter 8.0; (c) changes to the number and location of the residential and commercial parking spaces in the subterranean parking structure, provided that the subterranean parking structure includes a sufficient number of parking spaces to satisfy the parking requirements in Section 4.3 of Chapter 4.0 of this Specific Plan; (d) changes to the configuration of the subterranean parking structure, provided that the Director determines the access points to the subterranean parking structure do not materially change and do not present any safety issues; (e) changes to the locations of the permitted retail and restaurant uses provided that the total floor area of the commercial uses does not exceed 16,456 square feet, the total square footage of the restaurant uses (inclusive of open air dining) does not exceed 4,800 square feet, there is no material change to the location of the restaurant and the Director determines that the changes do not increase parking demand; (f) changes to the location of the open air dining area provided that the total square footage of the open air dining area does not exceed 600 square feet, there is no material change to the location of the open air dining, and provided that the Director determines that the changes do not increase parking demand; (g) an increase in the square footage of the non-restaurant permitted use(s) in the commercial building, provided that the total floor area for commercial uses does not exceed 16,456 square feet; (h) the substitution of similar types of plant species in the landscaping plan; or (i) minor changes to the site plan, building elevations and Public Gardens, provided such changes do not materially alter the approved architectural style, modulation or height of the buildings or the size or location of the Public Gardens.

## 5.5 FINANCING

The developer shall be responsible for all on-site improvements and shall pay its fair share allocation of any off-site improvements as required to mitigate significant environmental impacts associated with implementation of the Specific Plan, as identified in the Final EIR. No public funds are necessary to implement the Specific Plan.



- E. No umbrellas or other overhead furniture or fixtures shall have a clearance of less than seven feet and no such articles shall extend beyond the seating area.
- F. Portable heaters shall be located a minimum of three feet from any combustible material and shall be located entirely within the seating area.
- G. The seating area and any adjacent pedestrian travel aisle shall be maintained in a clean and orderly state at all times.
- H. The open air dining area shall comply with all applicable provisions of the Beverly Hills Building Code, including, but not limited to, maintaining proper building ingress and egress at all times, observing maximum seating capacities, providing proper circulation and providing appropriate handicapped access.

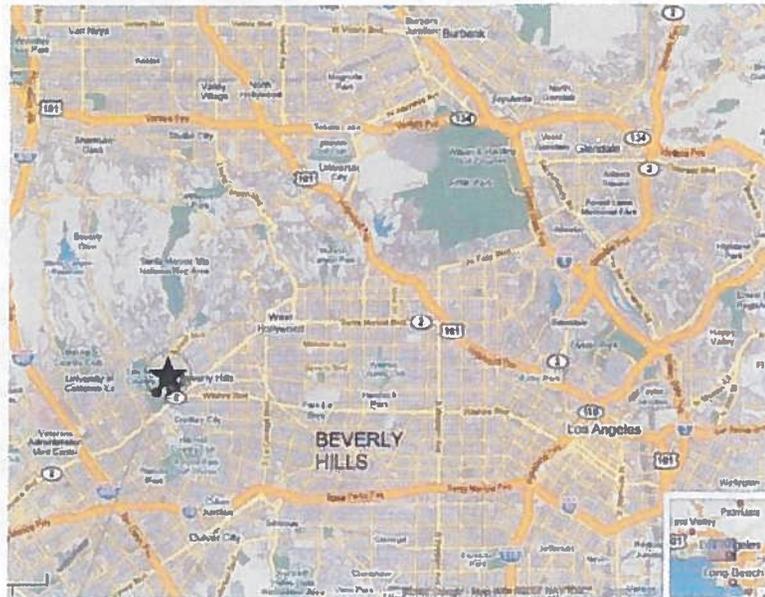
April 9, 2008

## CHAPTER 7.0 – CONDITIONS OF APPROVAL AND MITIGATION MEASURES

The conditions of approval attached hereto as Exhibit 1, and the Mitigation Monitoring and Reporting Program adopted for the Specific Plan which is included as part of Exhibit 1, are hereby incorporated by reference, and shall be part of the Specific Plan as if set forth in full in this Chapter 7.

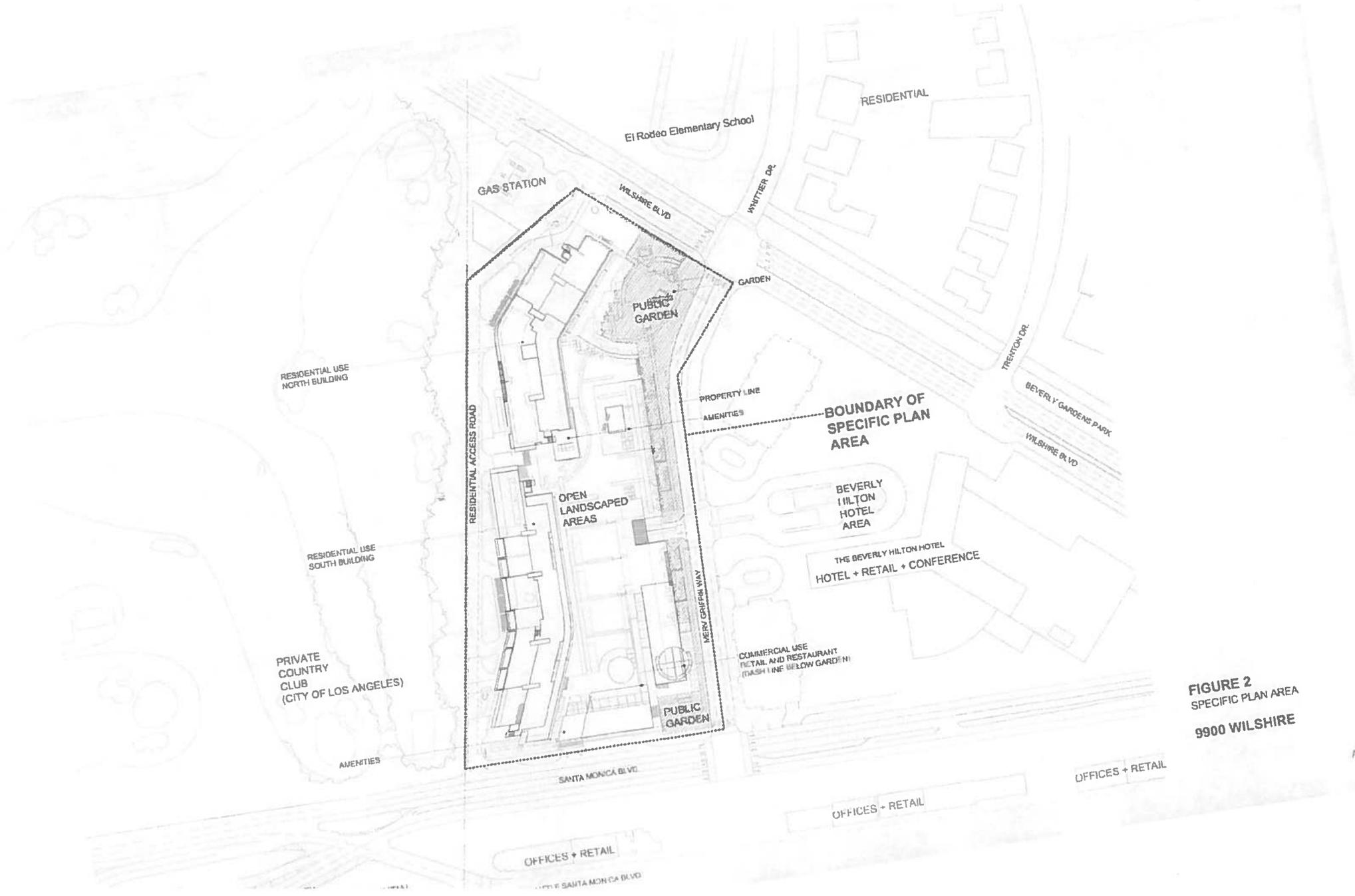
CHAPTER 8.0  
FIGURES

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PROJECT  
AREA

**FIGURE 1**  
SPECIFIC PLAN  
AREA LOCATION MAP  
**9900 WILSHIRE**



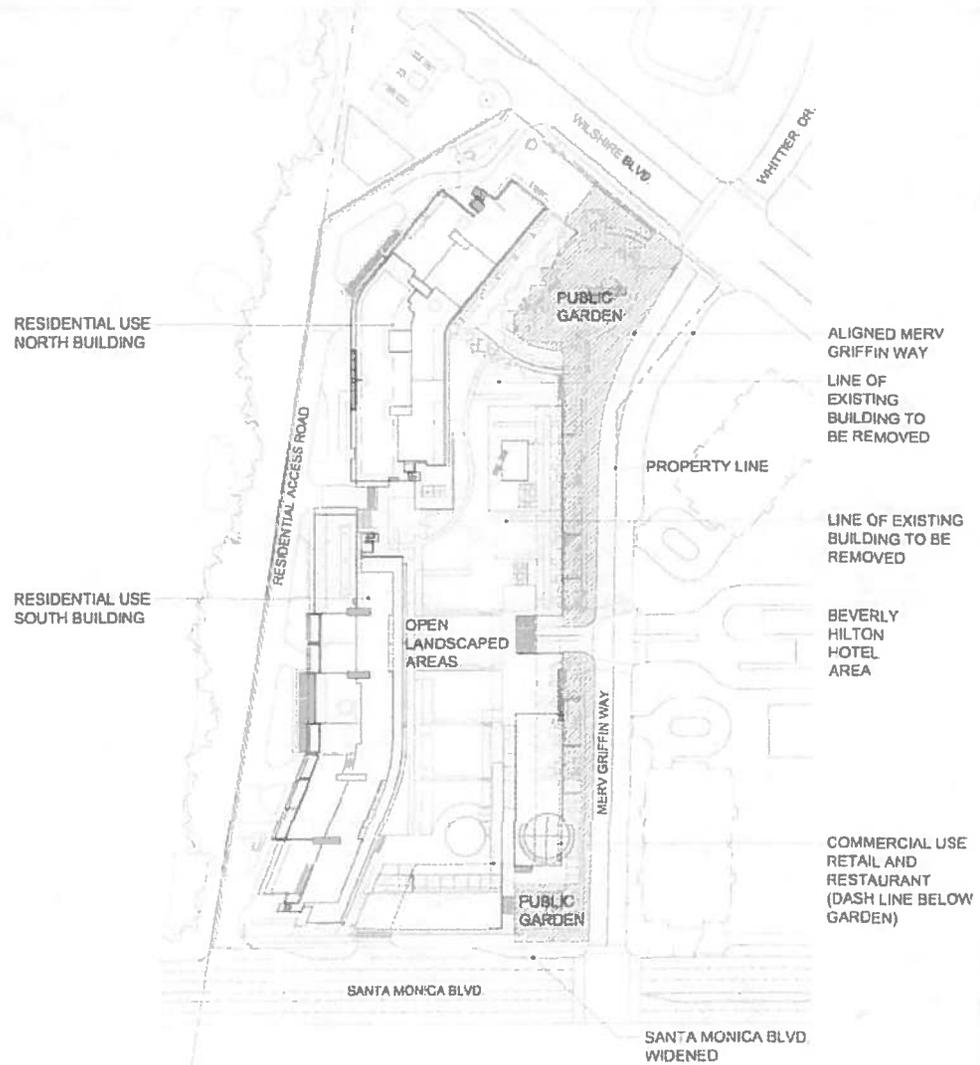
**FIGURE 2**  
 SPECIFIC PLAN AREA  
 9900 WILSHIRE



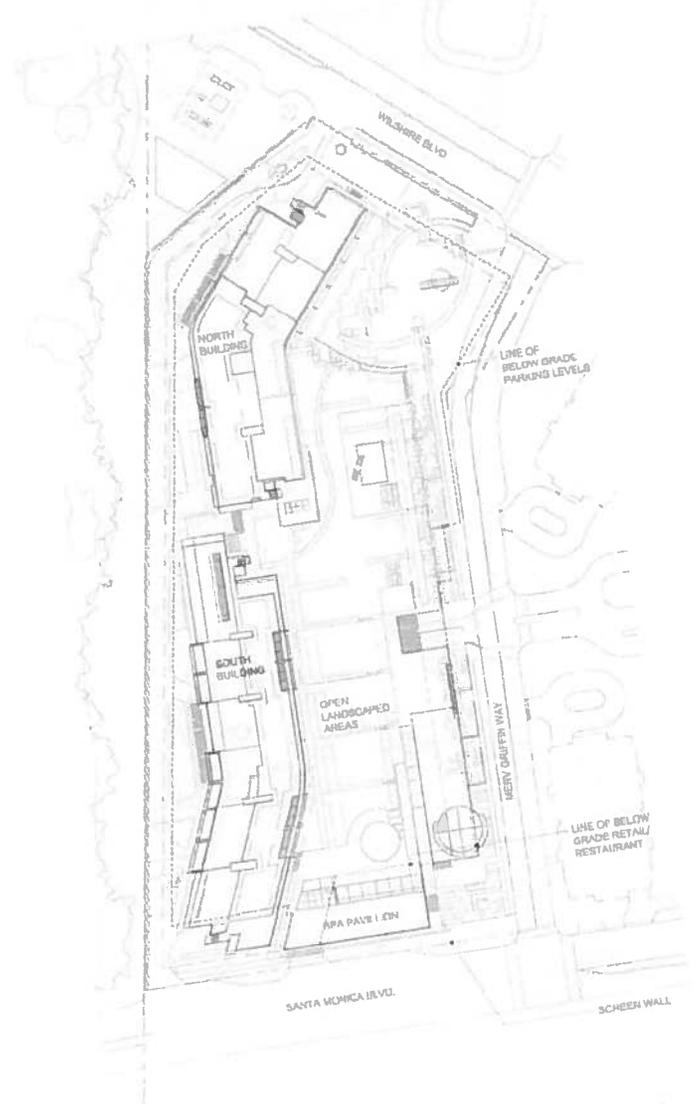
**FIGURE 3**  
EXISTING SITE CONDITIONS  
9900 WILSHIRE



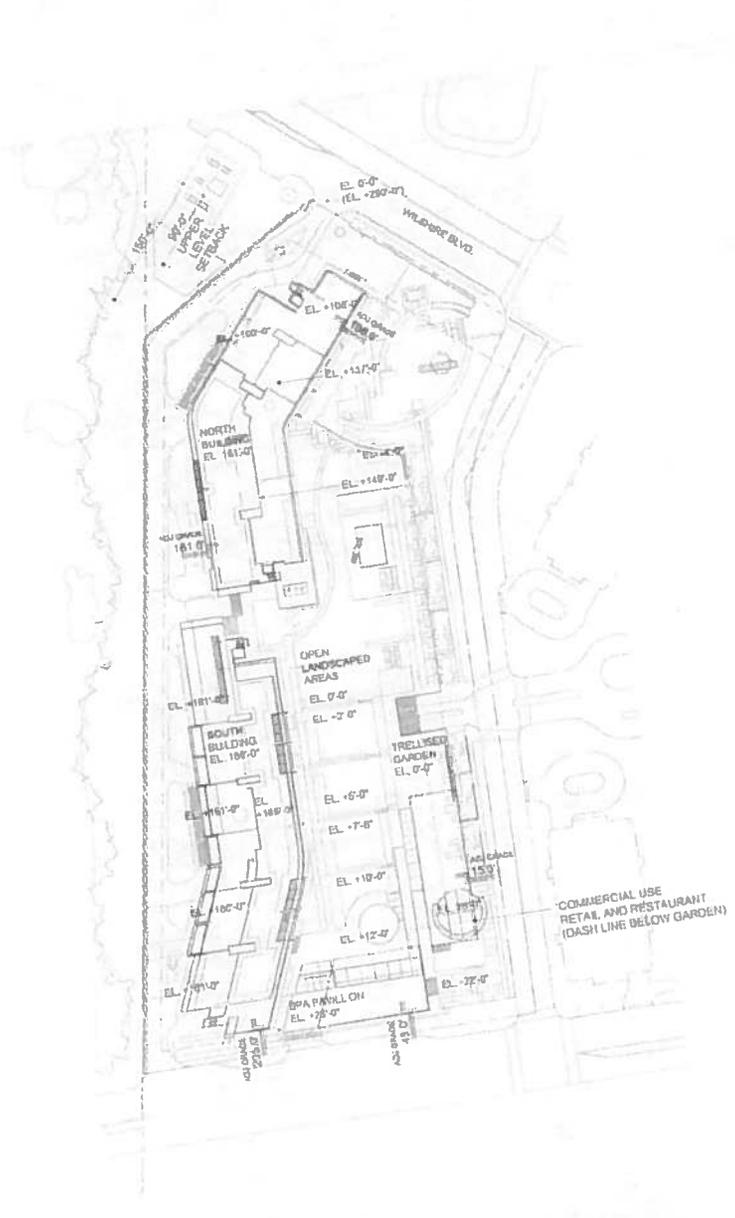
**FIGURE 4**  
**SURROUNDING LAND USES**  
**9900 WILSHIRE**



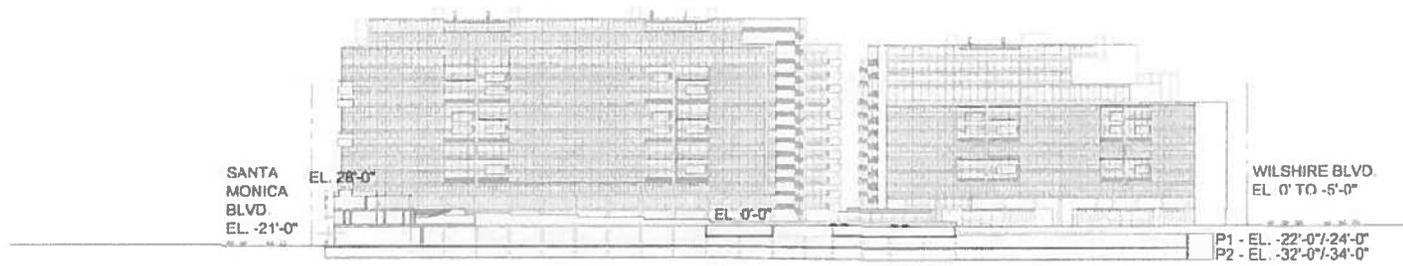
**FIGURE 5**  
 SPECIFIC PLAN  
 LAND USE CONCEPTS  
 9900 WILSHIRE



**FIGURE 6**  
SPECIFIC PLAN SITE  
/ BUILDING PLACEMENT  
9900 WILSHIRE



**FIGURE 7**  
**BUILDING HEIGHT**  
**9900 WILSHIRE**

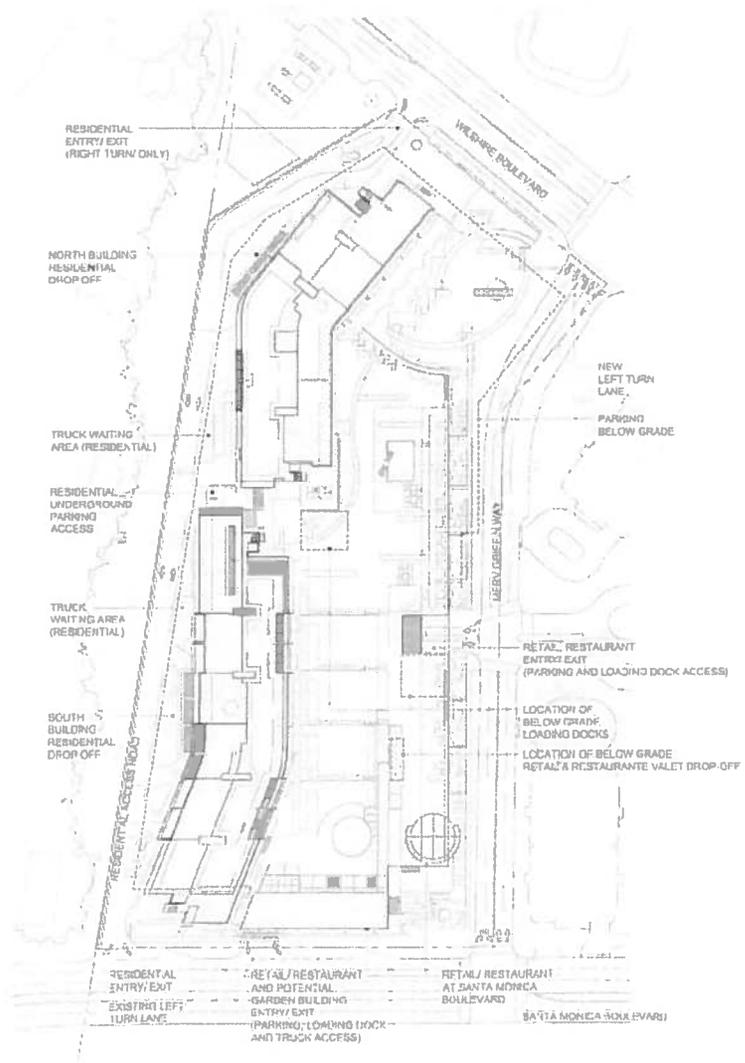


**FIGURE 8**  
 SITE SECTION  
 WILSHIRE TO  
 SANTA MONICA  
 BOULEVARDS

**9900 WILSHIRE**

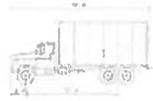


**FIGURE 9**  
**SURROUNDING CIRCULATION**  
**9900 WILSHIRE**

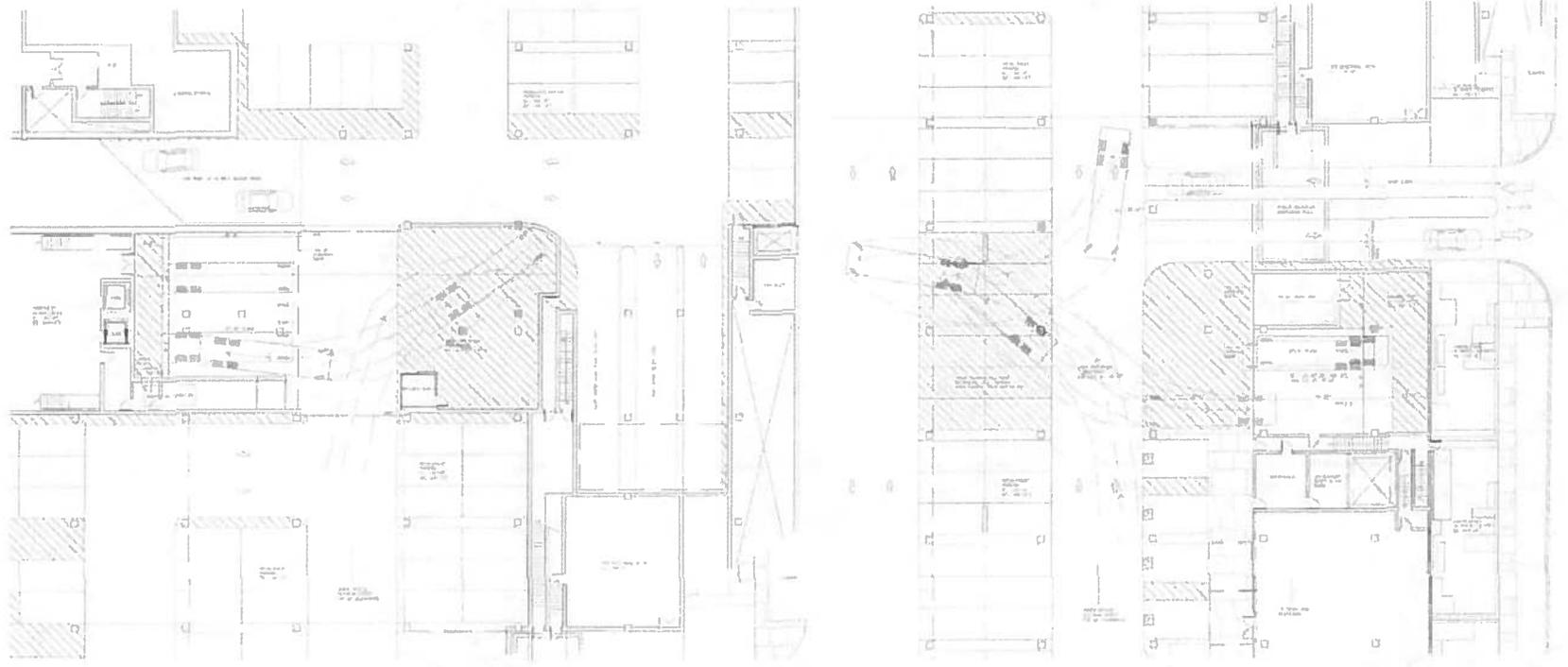


**FIGURE 10**  
**ON-SITE CIRCULATION,**  
**ACCESS,**  
**DRIVEWAYS,**  
**ROADWAY**  
**IMPROVEMENTS**  
**9900 WILSHIRE**





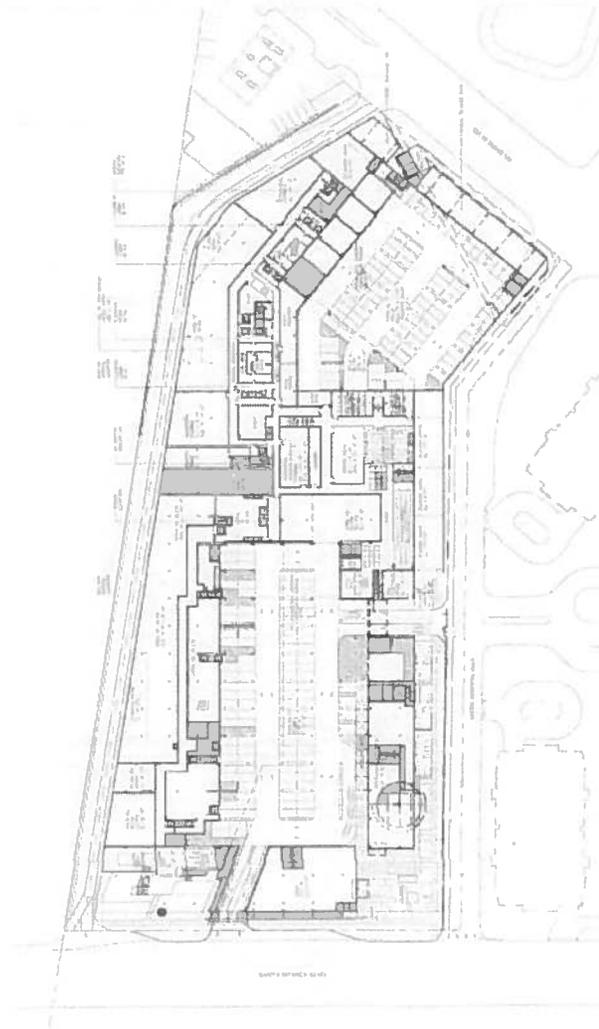
TRUCK - 32 ft  
 Width 8' 4"  
 Turn 8' 2"  
 Load to Latch 10' 2"  
 Steering Angle 30°



Prevented Loading Dock - WPADE 02 10/2009

Final Loading Dock

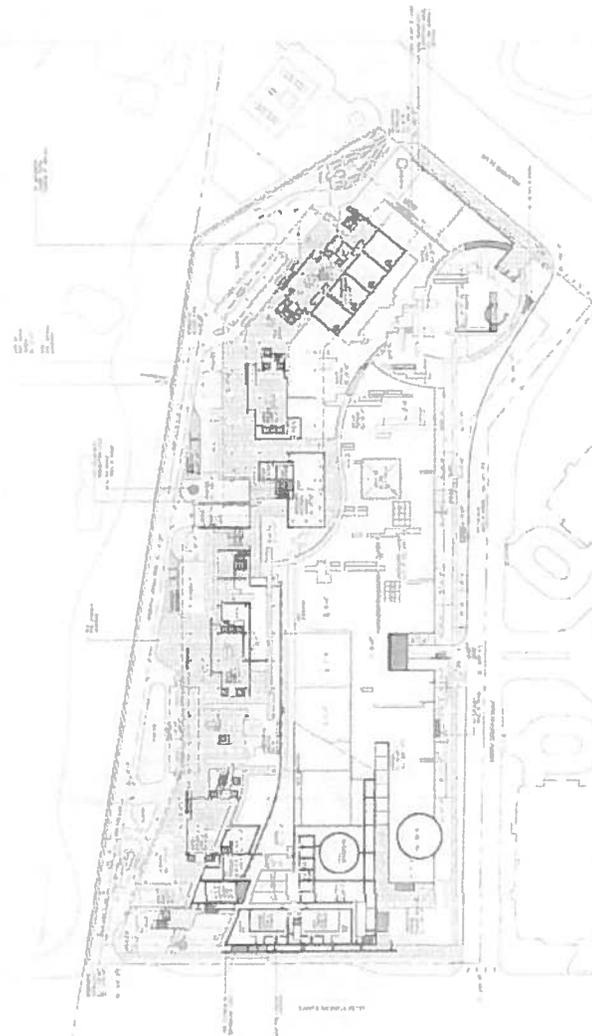
**FIGURE 13**  
**LOADING DOCKS**  
**9900 WILSHIRE**



**FIGURE 14**  
CONDOMINIUM BUILDINGS PLAN - MEZZANINE LEVEL  
9900 WILSHIRE



**FIGURE 16**  
 CONDOMINIUM BUILDINGS PLAN - LEVEL 2  
 9900 WILSHIRE



**FIGURE 15**  
 CONDOMINIUM BUILDINGS PLAN - LEVEL 1  
 9900 WILSHIRE



**FIGURE 18**  
CONDOMINIUM BUILDINGS PLAN - LEVEL 4  
9900 WILSHIRE



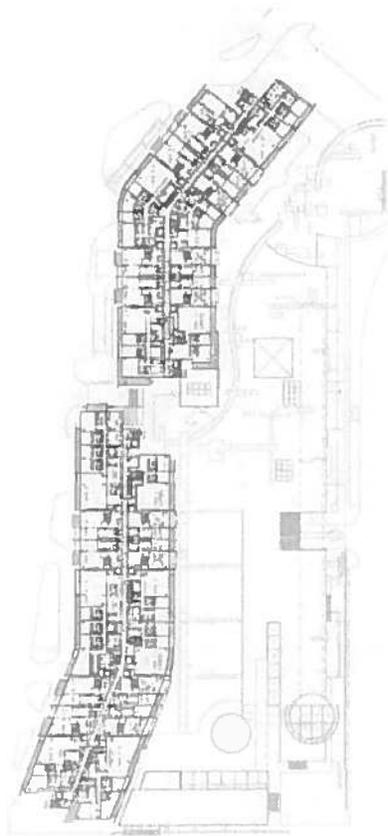
**FIGURE 17**  
CONDOMINIUM BUILDINGS PLAN - LEVEL 3  
9900 WILSHIRE



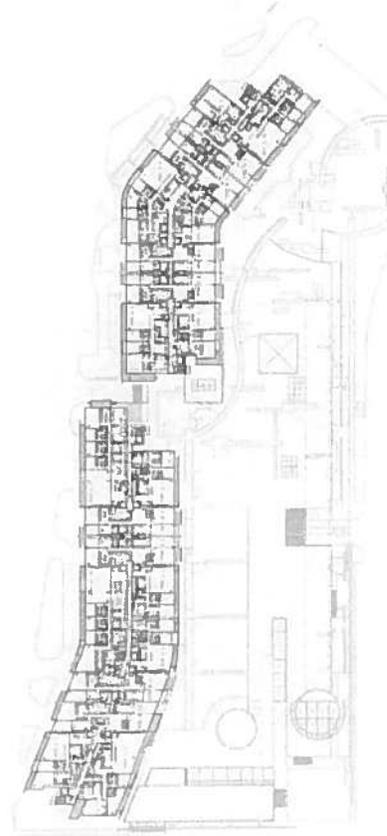
**FIGURE 20**  
CONDOMINIUM BUILDINGS PLAN - LEVEL 6  
9900 WILSHIRE



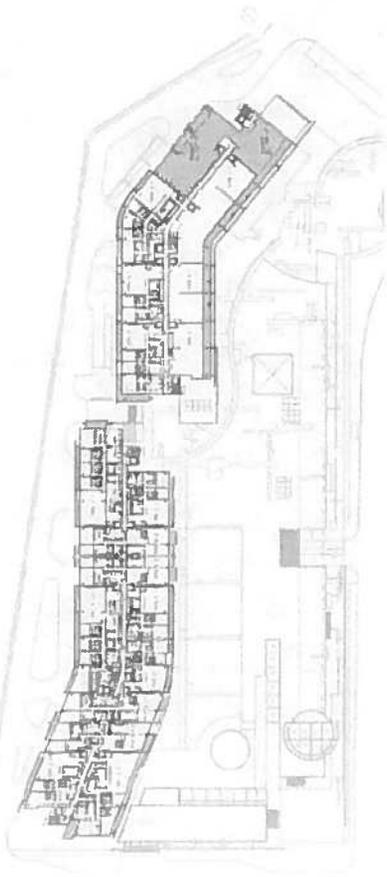
**FIGURE 19**  
CONDOMINIUM BUILDINGS PLAN - LEVEL 5  
9900 WILSHIRE



**FIGURE 22**  
CONDOMINIUM BUILDINGS PLAN - LEVEL 8  
9900 WILSHIRE



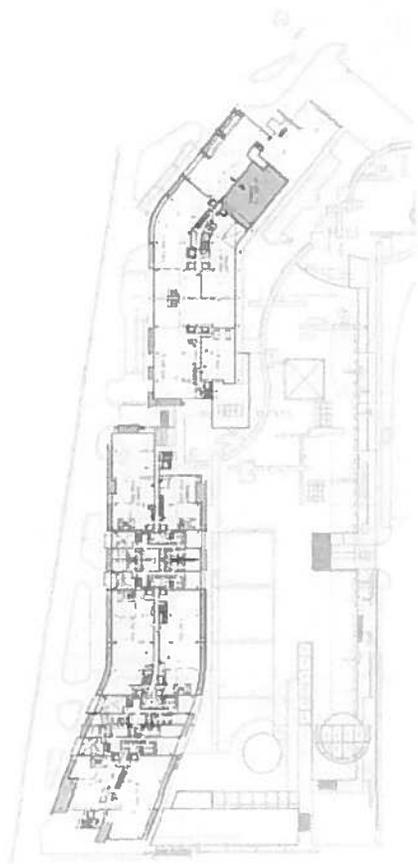
**FIGURE 21**  
CONDOMINIUM BUILDINGS PLAN - LEVEL 7  
9900 WILSHIRE



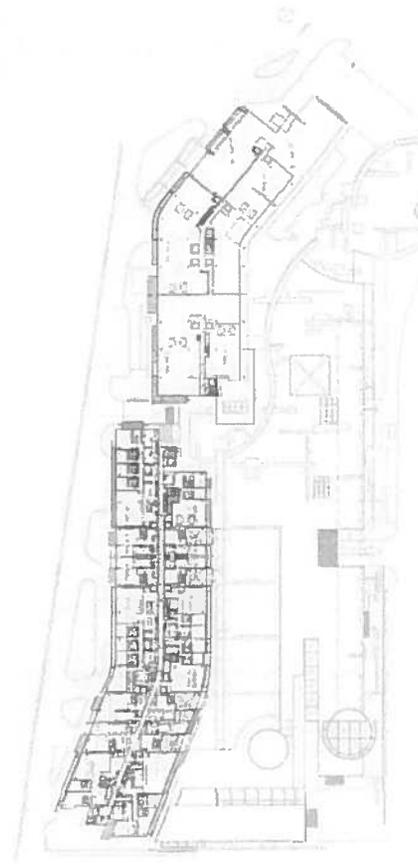
**FIGURE 24**  
CONDOMINIUM BUILDINGS PLAN - LEVEL 10  
9900 WILSHIRE



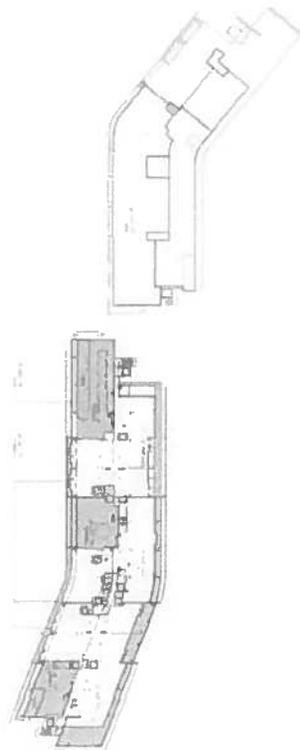
**FIGURE 23**  
CONDOMINIUM BUILDINGS PLAN - LEVEL 9  
9900 WILSHIRE



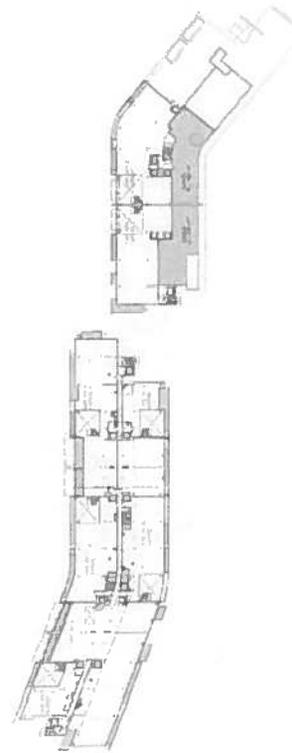
**FIGURE 26**  
CONDOMINIUM BUILDINGS PLAN - LEVEL 12  
9900 WILSHIRE



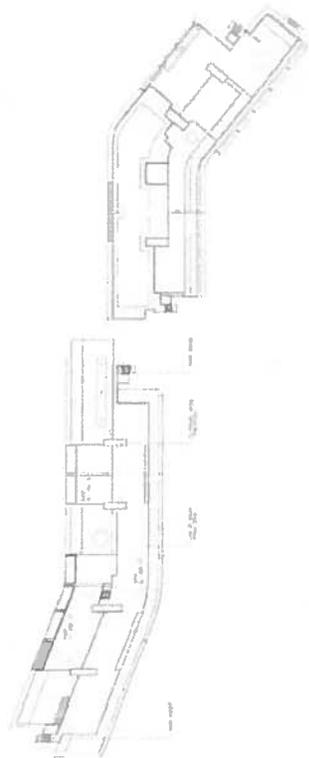
**FIGURE 25**  
CONDOMINIUM BUILDINGS PLAN - LEVEL 11  
9900 WILSHIRE



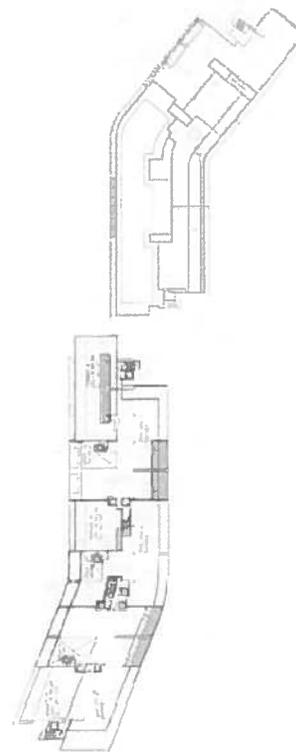
**FIGURE 28**  
CONDOMINIUM BUILDINGS PLAN - LEVEL 14  
9900 WILSHIRE



**FIGURE 27**  
CONDOMINIUM BUILDINGS PLAN - LEVEL 13  
9900 WILSHIRE



**FIGURE 30**  
CONDOMINIUM BUILDINGS PLAN - ROOF LEVEL  
9900 WILSHIRE



**FIGURE 29**  
CONDOMINIUM BUILDINGS PLAN - LEVEL 15  
9900 WILSHIRE

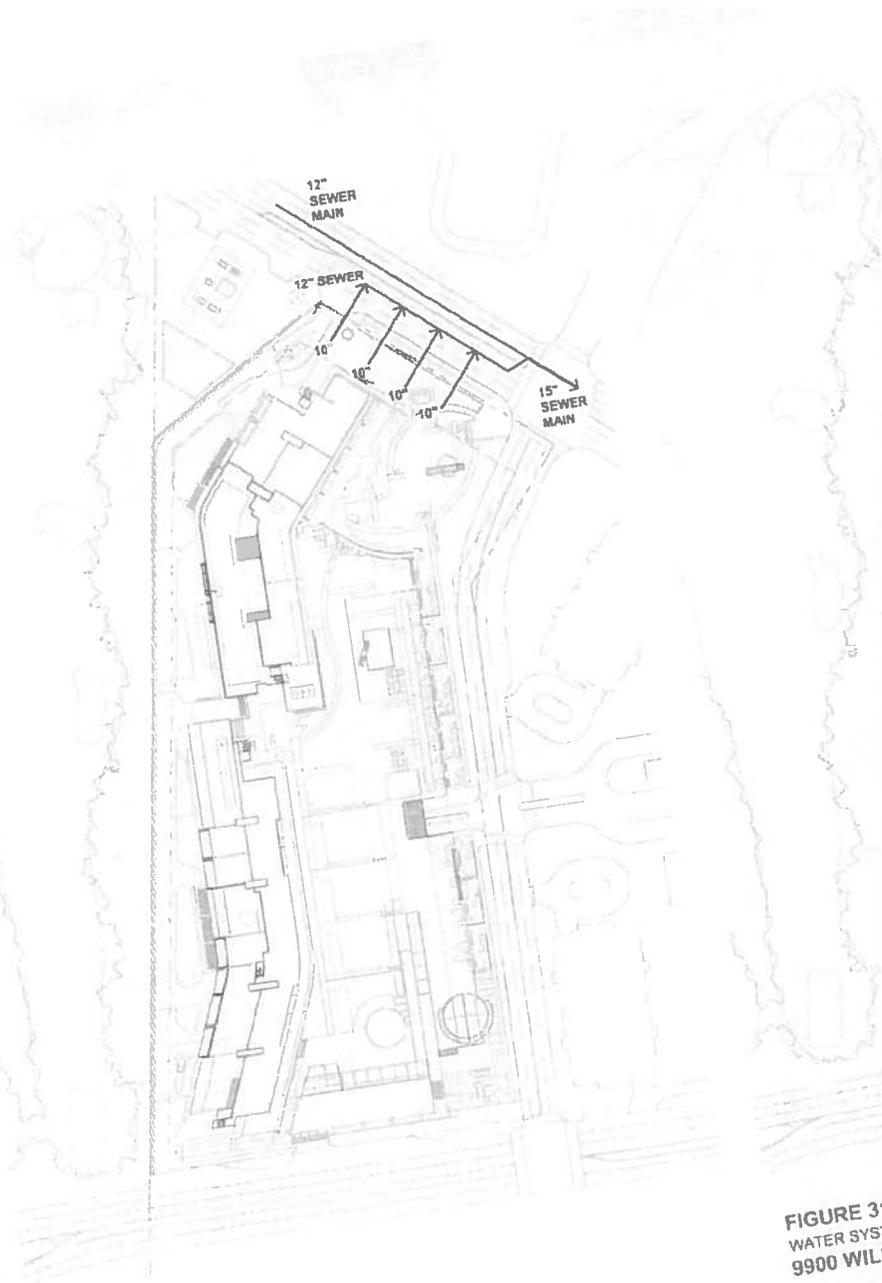


FIGURE 32  
SEWER PLAN

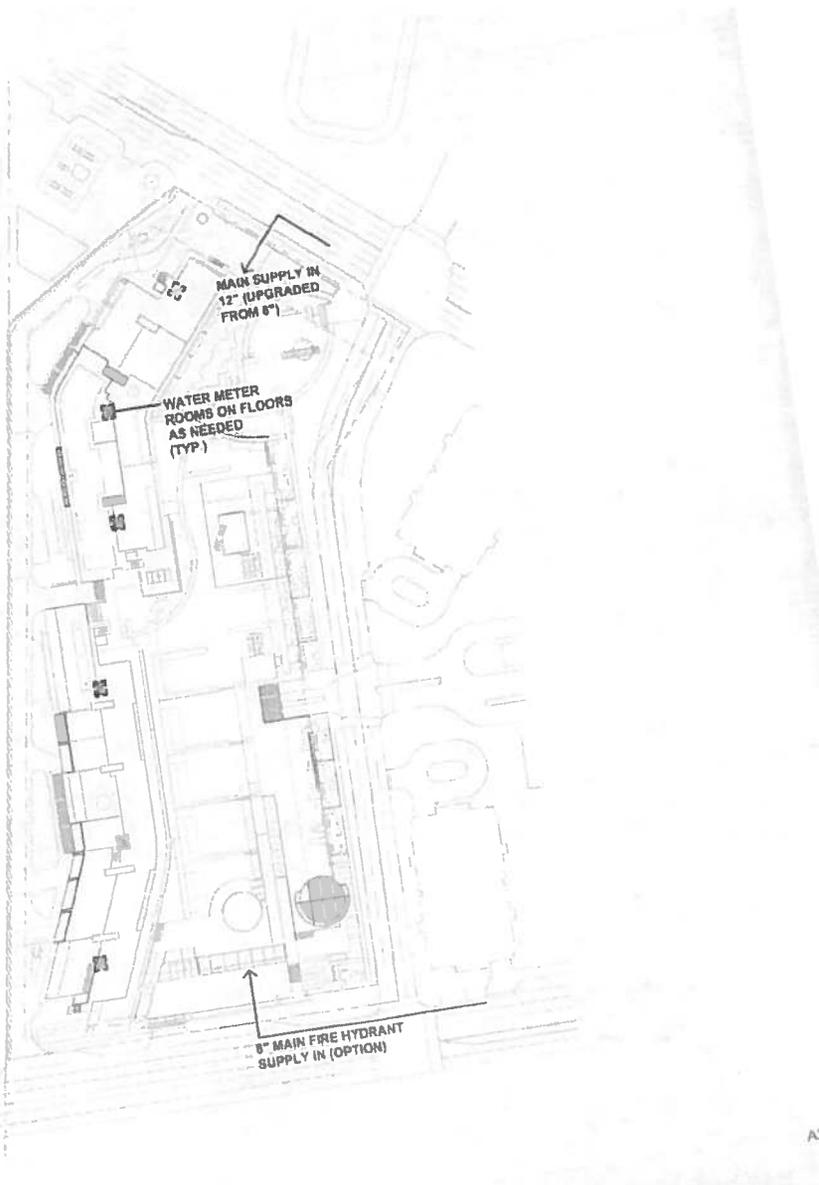
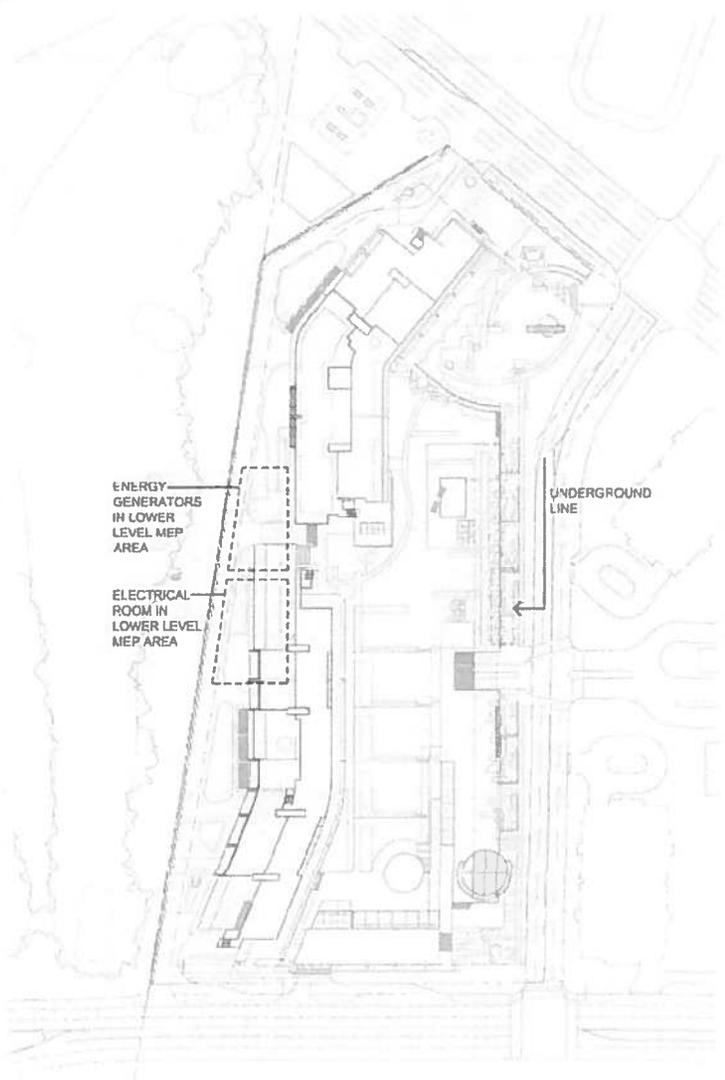
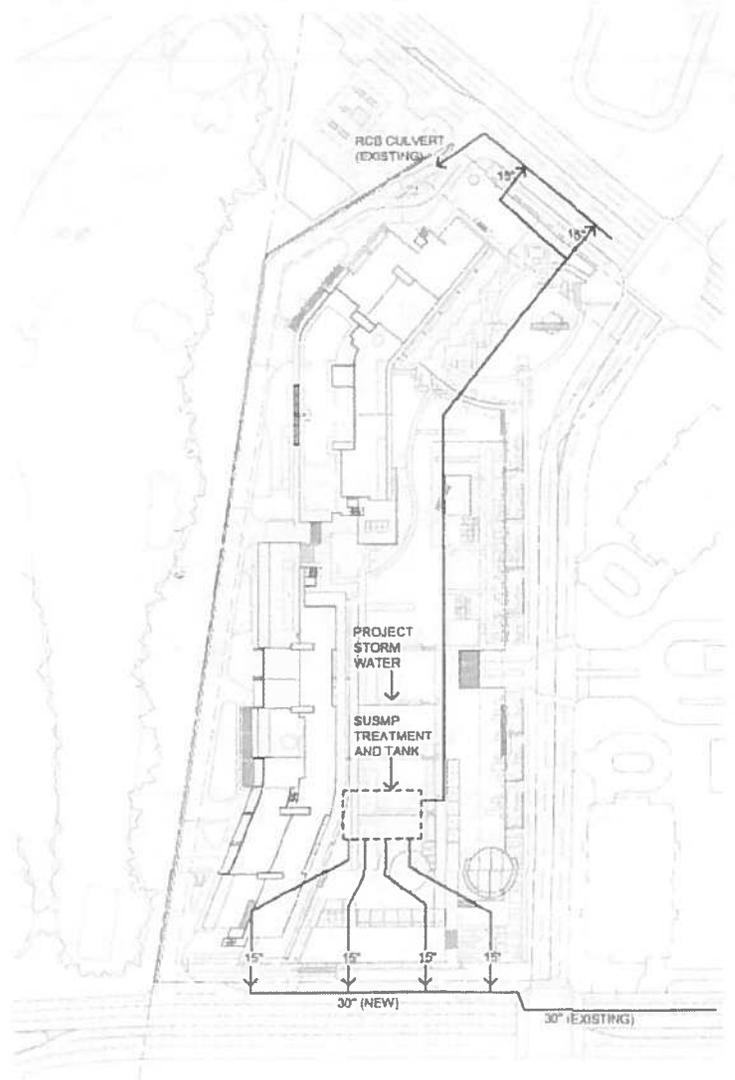


FIGURE 31  
WATER SYSTEM PLAN  
9900 WILSHIRE



**FIGURE 34**  
ELECTRIC FACILITIES PLAN  
9900 WILSHIRE



**FIGURE 33**  
STORMDRAIN PLAN  
9900 WILSHIRE

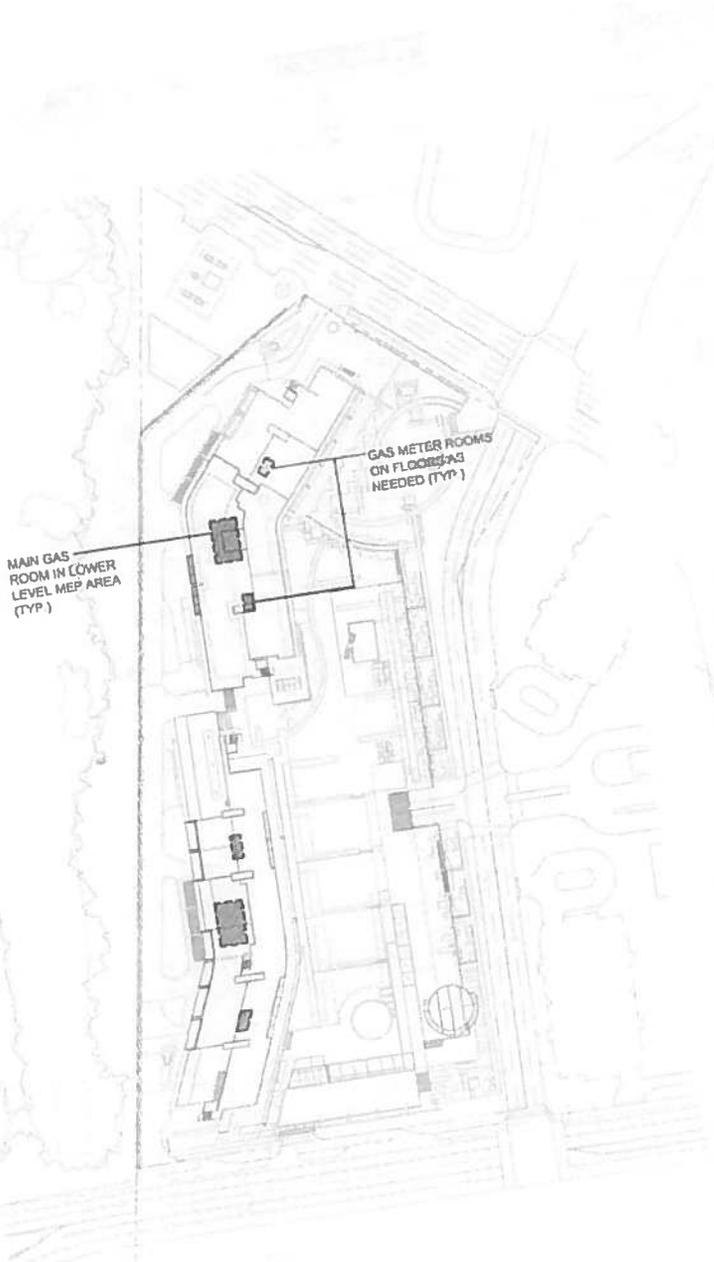


FIGURE 36

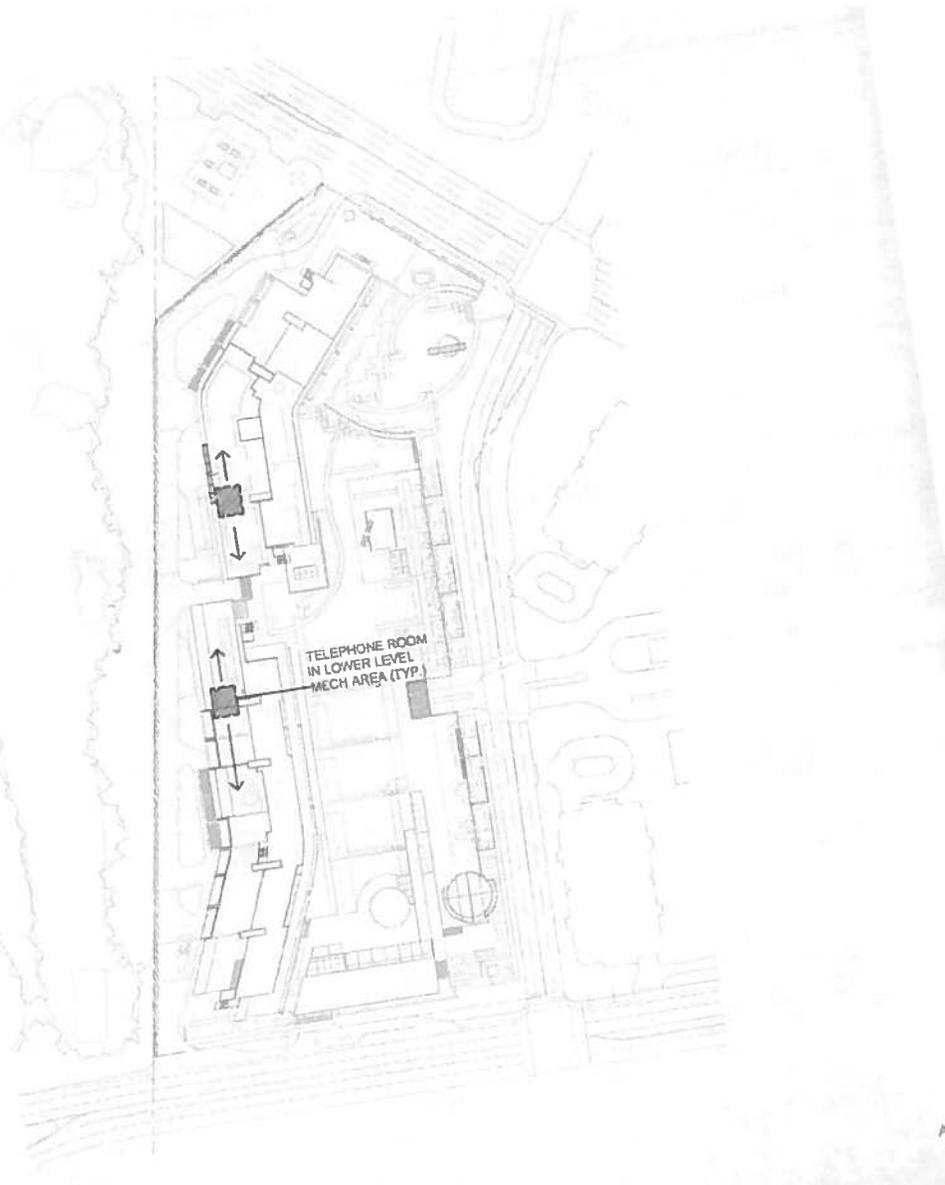
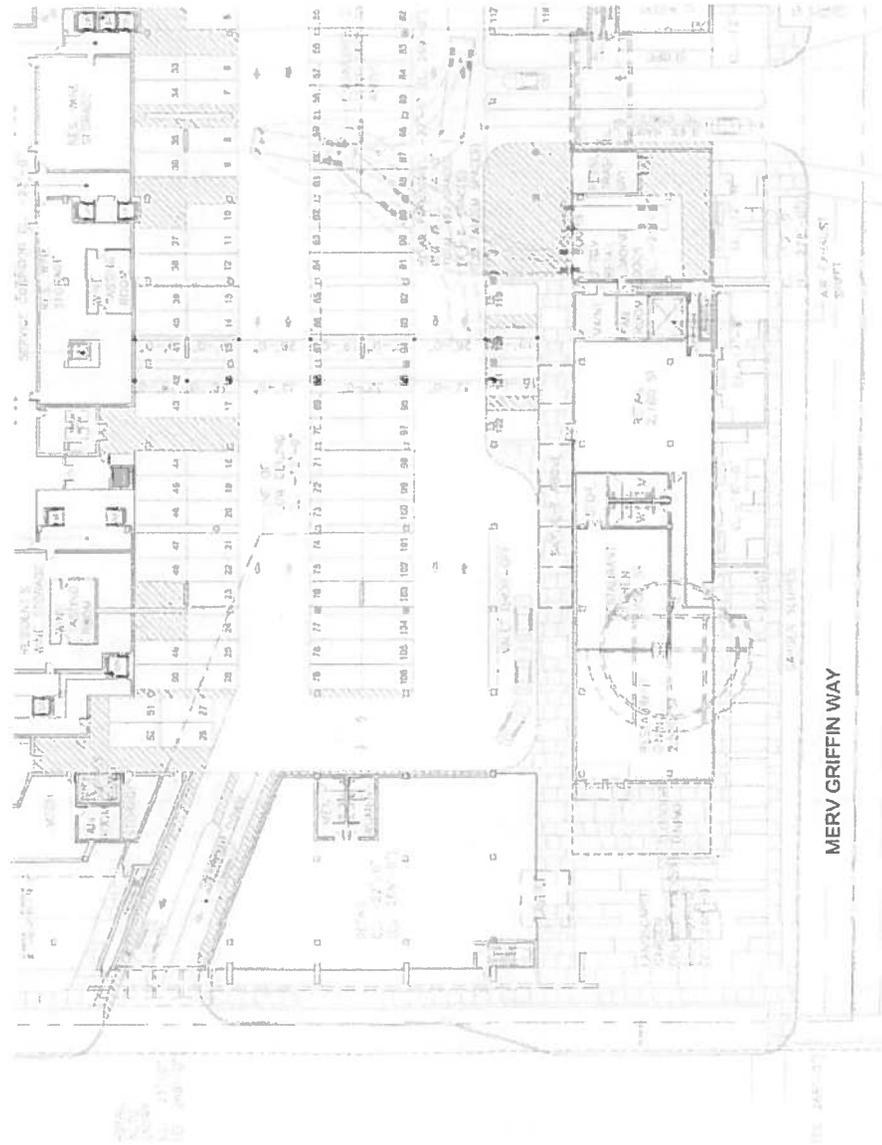
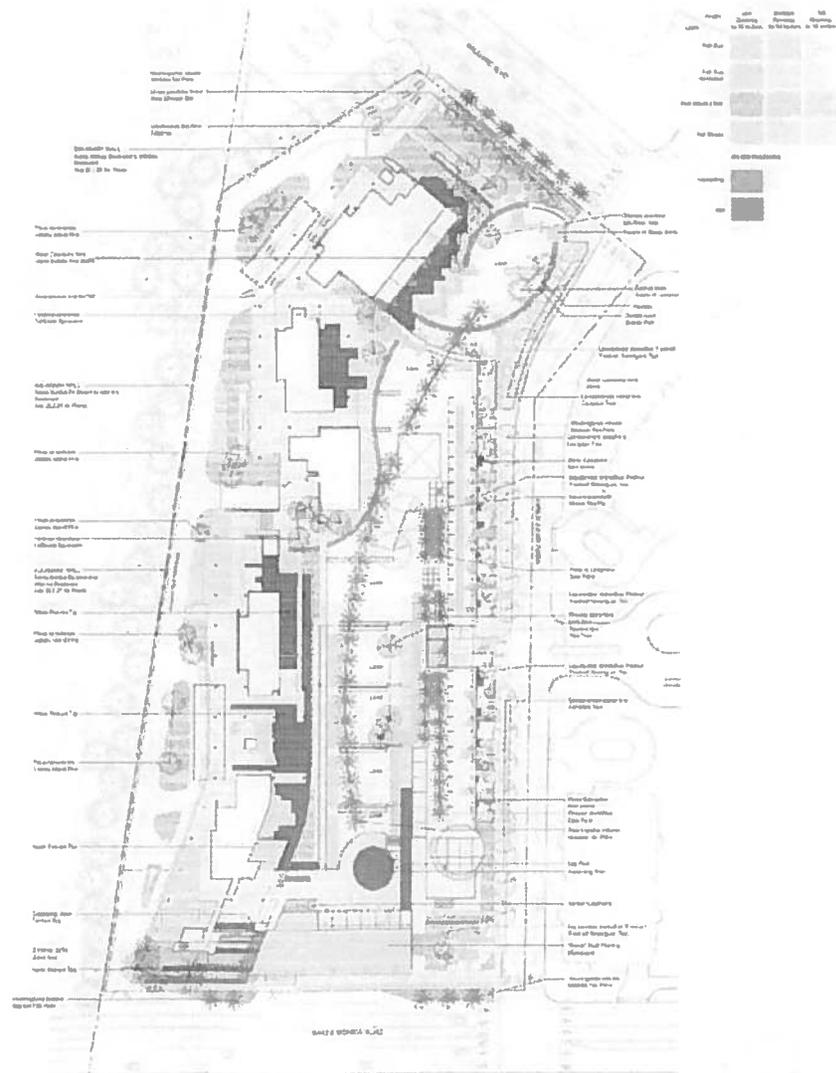


FIGURE 35  
TELEPHONE PLAN  
9900 WILSHIRE



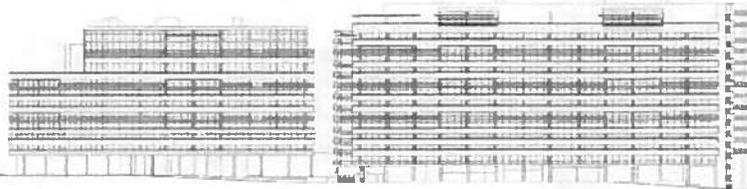
**FIGURE 37**  
**RETAIL/RESTAURANT PLAN**  
**9900 WILSHIRE**



**FIGURE 38**  
**OPEN SPACE/  
 LANDSCAPE PLAN**  
**9900 WILSHIRE**



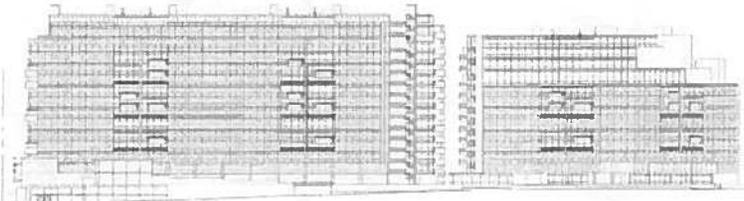
WILSHIRE BLVD.  
EL. 0' TO -5'



SANTA  
MONICA  
BLVD.  
EL. -20' TO EL. -21'

WEST ELEVATION

SANTA  
MONICA  
BLVD.  
EL. -20' TO EL. -21'

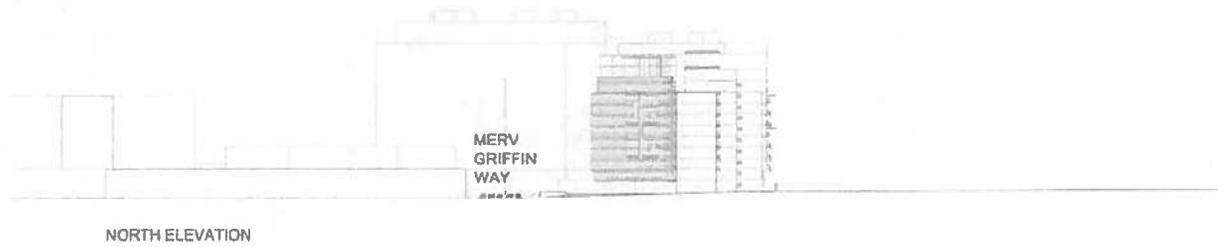


WILSHIRE BLVD.  
EL. 0' TO -5'

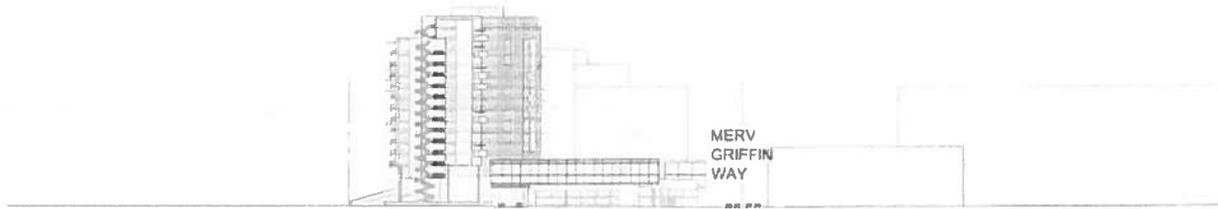
EAST ELEVATION

**FIGURE 40**  
EAST AND WEST  
ELEVATIONS

**9900 WILSHIRE**



NORTH ELEVATION



SOUTH ELEVATION

**FIGURE 41**  
NORTH AND SOUTH  
ELEVATIONS

**9900 WILSHIRE**



**FIGURE 42**  
MERV GRIFFIN WAY/  
ANTA MONICA BOULEVARD  
RENDERING

**9900 WILSHIRE**



NOTE: EARLY RENDERING  
WITHOUT SOUTH BUILDING  
SETBACK ON TOP 2 FLOORS

**FIGURE 43**  
WILSHIRE BOULEVARD  
RENDERING

**9900 WILSHIRE**

# Exhibit 1

## Conditions of Approval

# 9900 Wilshire Specific Plan

## Exhibit 1

### Conditions of Approval

#### Community Development/Planning Project Conditions

1. Compliance with Plans. The Project shall be built in substantial compliance with the plans bearing a revision date of April 7, 2008 and submitted for review to the City Council along with the Planning Commission's recommendations on the project. These plans shall be kept on file with the City Clerk's office and the Department of Community Development/ Planning, inclusive of Exhibit A, "Standard Conditions List," and Exhibit B, "Mitigation Monitoring and Reporting Program," which are incorporated herein by reference and made conditions to the approval of the Project. The Project shall be subject to additional conditions as may be imposed by the Architectural Commission.
2. Minor Amendments. Minor amendments to the Conditions of Approval may be approved by the Director of Community Development and shall not require an amendment to the 9900 Wilshire Specific Plan.
3. Number of Residential Units. In no case shall the Project include more than 235 residential units in accordance with the approved plans and details contained in approved 9900 Wilshire Specific Plan. The total square footage of the two condominium buildings including back of house and common areas shall not exceed 885,658 inclusive of the 80,587 square feet of below grade (mezzanine) back of house area.

4. Commercial Space. In no case shall the project include more than a maximum 16,456 square feet of commercial space which includes a maximum 4,800 square foot restaurant including not more than 600 square feet of outdoor dining in the location shown in the Specific Plan.

5. Restaurant Noise. No amplified music is permitted in the outdoor dining area of the restaurant. And no amplified music inside the restaurant shall be audible from the exterior of the restaurant.

6. General Parking Requirements. The project shall provide not less than 803 standard size parking spaces as shown in the approved plans. This number may be modified by the Director of Community Development up to 5 spaces to accommodate the final design of the parking layout.

7. Residential Parking. A total of not less than 681 standard size residential parking spaces shall be provided. Of these, not more than 31 spaces may be tandem., Tandem spaces may not be used for guest parking. Parking spaces for residential units are required to comply with the City's Municipal Code standards and shall be used solely for the parking of the personal vehicles of residents, their guests, and employees associated with the condominium units. Parking spaces for residential units may not be leased, subleased, sold, transferred, or otherwise separated from the unit for which the parking spaces are required and shall not be dedicated to or used to provide parking for any off-site use. Parking spaces for the residential units shall be permanently assigned to each unit and shall be labeled as such.

8. Commercial Parking: A minimum of 99 parking spaces (including not more than 30 tandem spaces) shall be provided for the commercial uses. A total of 122 spaces shall

be provided for the commercial area, however, the excess 23 spaces may be leased on a month to month basis or shorter term. A valet shall be on-site and operating pursuant to the approved Parking Valet/Operations Plan set forth under Condition 14 below for the tandem spaces.

9. Parking Accessibility. A minimum of 19 (15 residential and 4 commercial) parking stalls shall meet the requirements of the Americans with Disabilities Act ("ADA") for an accessible parking space.

10. Employee Parking. Commercial tenants, including any restaurant, shall provide free on-site parking for all on-site employees at all times. All leases or sales agreements for commercial space within the Project shall contain provisions to implement this requirement. An employee shall be defined as a person in the service of another under any contract of hire, express or implied, oral or written, where the employer has the power or right to control and direct the employee in the material details of how the work is to be performed.

11. Customer Parking. Two hours free validation parking shall be provided for patrons of the commercial tenants, after which market rates for parking may be imposed. All leases or sales agreements for commercial space within the Project shall contain provisions to implement this requirement.

12. Pedestrian Signage. Prior to the issuance of occupancy permits for the Project, the Applicant shall install sufficient signage, as determined by the City Traffic Engineer, on both the interior and exterior of the parking garage to protect pedestrians from drivers entering/exiting all access points of the residential and commercial garages.

13. Signage. Prior to the issuance of a building permit, the Applicant shall submit the unified sign plan required by Section 4.6 of the Specific Plan for review and approval. Said unified sign plan shall include, but not be limited to, provision of appropriate signage and precautionary devices inside the parking garage. After approval of the Unified Sign Plan, all project signage shall conform to the approved Unified Sign Plan.

14. Parking Valet/Operations Plan. Prior to the issuance of any occupancy permit, Project Lotus, LLC or its successors in interest (referred to as the applicant or developer herein) shall prepare and shall have received approval from the Director of Community Development and Director of Public Works and Transportation of a Parking Valet/Operations Plan for both commercial tandem parking operations and residential parking operations. The residential parking operations plan shall include plans to meet the parking needs generated by large on-site events and parties (i.e. to include the aggregate number of people generated for multiple, simultaneous small events occurring on-site). Thereafter, the applicant and subsequent homeowners association shall implement said plan for any large on-site events and parties. The requirement for this residential operations plan shall be incorporated into the Covenants, Conditions and Restrictions for the condominiums.

15. Safety/Technology. The Applicant shall install state-of-the-art devices or equipment as approved by the City's Police and Fire Departments to ensure that wireless telecommunication reception in the parking garage and in the project is adequate for police, fire and other emergency responders and the health and safety of residents and visitors. The system shall include an In-Building Bi-Directional Amplification System that will (a) provide City Emergency services personnel the ability to communicate reliably and

efficiently by supported City radio systems, within any occupiable spaces inside the respective buildings; and (b) contain back-up / emergency power to ensure on-going, uninterrupted functionality in the event of any power failures or interruptions. Further, the System shall be tested on a regular basis to ensure reliable performance at all times, and the building owner or future homeowners association shall work cooperatively with the City to design, build, maintain and update the system as conditions require.

16. Loading. Prior to issuance of occupancy permits and subject to the review and approval of the Directors of Community Development and Public Works and Transportation, the Applicant shall provide a Loading Management Plan to minimize loading-related impacts from the Project on adjacent land uses. The Loading Management Plan shall identify permissible hours for loading and shall designate a delivery monitor to monitor the loading area and deliveries in order to control the circulation activities and to prevent overcrowding in the loading area. The City hereby retains the authority to impose additional conditions on the Project to address loading, delivery and parking issues, including without limitation the authority to require valet parking for patrons of the commercial uses. The Applicant shall comply with the approved Loading Management Plan and any additional conditions imposed after adoption of this Resolution and after adoption of the Loading Management Plan, in order to address parking, loading and delivery issues. No loading shall occur on Wilshire Boulevard or Santa Monica Boulevard.

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

18. Rooflop Uses. Rooflop uses and structures on the North and South Condominium Buildings shall be limited to the 5 private terraces with pools/spas and trellises, and the 3 private terraces with trellises but without pools/spas as shown on the approved plans. The trellises shall be limited to a maximum 10 feet in height and shall be set back from the face of any exterior wall of the floor immediately below so that a forty five degree (45°) angle to the vertical plane of the nearest outside wall is not intersected.

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

20. Gray Water Usage Requirement. The applicant shall install a gray water system as required by Section 3.4 F of the Specific Plan, including sufficient plumbing features to allow gray water to be used for landscaped areas on the property. All plumbing

requirements shall be subject to review and approval by the City's Building and Safety Division.

21. Architectural Commission Review. Prior to the issuance of building permits, the design, materials and finishes of the building, and proposed landscaping shall be subject to the review and approval of the Architectural Commission. The Applicant shall submit final landscape, lighting and irrigation plans that include mature-sized plantings along the property to provide an appropriate visual and aesthetically pleasing transition between the property and the neighboring property on the east side of Merv Griffin Way. Particular attention shall be paid to the garden areas. Landscape plans shall be prepared by a licensed landscape architect.

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

23. Traffic/Crossing Guard. In addition to the existing City crossing guards in the vicinity of the Project site, during Project construction, the City shall hire and the applicant shall pay for, one or more additional crossing guards to assist children in crossing Wilshire Boulevard, Santa Monica Boulevard and Little Santa Monica at the beginning and end of each school day, as deemed appropriate by the Director of Community Development. In addition, if deemed necessary by the Environmental Compliance Monitor, an additional guard shall be hired during construction on an as-needed basis to ensure the safety of children walking the length of Merv Griffin Way before and after school. The cost of any such additional crossing guards may be shared by the applicant and the applicant for the Beverly Hilton Revitalization Project if such cost sharing is directed by the Director of Community Development.

24. Hiring Practices. The applicant shall require the Construction Manager/Supervisor to verify that no construction workers have prior felony records prior to hiring of any such workers, and shall not hire any such workers with such prior felony record to work on this Project. The on-site Construction Manger/Supervisor shall assure that no employees, subcontractors of any tier, material suppliers or consultants have direct contact with students from the Beverly Hills Unified School District during the performance of their duties, unless required within the scope of their duties and with the knowledge or approval of the Construction Manager/Supervisor and prior approval from the School District. The applicant shall be responsible for verifying that any security personnel and/or crossing guards have no prior felony record prior to hiring of any such workers, and shall not hire any such workers with such prior felony record to work on this Project. Compliance with this provision shall be verified by the Environmental Compliance Monitor. Further, each contractor on the site shall provide the Environmental Compliance Monitor and the Beverly Hills Unified School District Superintendent a certification form certifying that there are no known felons working on the site.

25. Traffic Signal at Merv Griffin Way/Santa Monica Boulevard. The applicant shall install a traffic light at the Merv Griffin Way/Santa Monica Boulevard intersection. Installation and plans for the traffic light are subject to review and approval by the City's Traffic Engineer and Building Official. The applicant may be entitled to a fair share reimbursement from other projects that impact this intersection and necessitate the traffic light. The traffic light either shall be installed and operational prior to construction, or the applicant shall provide adequate security for installation prior to the approval of any final subdivision map.

26. Santa Monica Boulevard Roadway Improvements. Prior to the issuance of a certificate of occupancy, the applicant shall provide the right-of-way dedications to the City as shown on the approved plans and subject to review and approval by the City's Public Works Director. As approved by the Public Works Director, the applicant shall install and pay for improvements to the Santa Monica Boulevard right-of-way adjacent to the Project as shown on the approved plans, including but not limited to landscaping and street improvements.

**Landscaping and Irrigation**

27. Prior to final building inspection, the Applicant shall install all proposed irrigation and landscaping, including irrigation controllers, staking, and mulching, in accordance with the Architectural Commission's approval of the final project design.

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

29. The property owners and successors in interest, including but not limited to any homeowners association, shall be responsible for the maintenance of the site drainage system, sidewalks, parkways, street trees and other landscaping, including irrigation, within and along the adjacent public right of-way and all public and private open areas on the site including the western half of Merv Griffin Way. The Covenants, Conditions and Restrictions for this project shall specifically reflect this obligation.

**Other City Departments' Requirements**

30. The Applicant shall comply with all applicable conditions and permits required from the Public Works and Transportation Department and Community Services-

Recreation and Parks Department attached as Exhibit A. The Applicant shall secure all necessary permits from the Engineering Division of Public Works prior to commencement of any demolition or Project related work.

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

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

#### **Construction Management**

33. The Applicant shall comply with a Construction Management Plan that has been approved by the Director of Community Development prior to issuance of a building permit. The Construction Management Plan shall incorporate the Construction Traffic Management Plan and the Construction Workers Parking Plan as described in the attached Mitigation Measures for the project. The Construction Management Plan shall also include, at a minimum, the following requirements:

- a. Parking and transportation to and from the construction parking area for construction workers, which shall be paid for by the Project applicant.
- b. A map identifying routes and parking lots to be utilized and shall be provided to the City and include written certification from the owner(s) of the parking lots proposed to be used that such parking will be available to the Applicant throughout the construction period.

- c. A plan for the proposed demolition/construction staging for the Project to determine the amount, appropriate routes and time of day of heavy hauling truck traffic necessary for demolition, deliveries etc., to the subject site shall be included in the Construction Management Plan. The construction haul route shall be reviewed and approved by the City Traffic Engineer and the Director of Community Development. The approved haul route is subject to change if the haul route creates unanticipated traffic congestion or noise impacts.
- d. All final construction mitigation measures.
- e. An implementation plan for each phase of construction (demolition, excavation, concrete, superstructure, etc).
- f. A requirement that the Robinsons-May building be wrapped during demolition.
- g. Specification that construction hauling shall be restricted to Santa Monica Boulevard to/from Interstate 405; any deviations from this requirement first shall be reviewed by the School District and approved by the Director of Community Development.
- h. Specification that hauling of debris and/or soil from the site shall be allowed to take place at night and/or weekends as approved by the Director of Community Development in accordance with an after hours work permit (BHMC Section 5-1206).
- i. Measures to protect the artificial turf field and associated drainage system on El Rodeo School's campus from construction dirt and debris.
- j. Requirements for measures such as a sign-in/sign-out requirement for all persons accessing and leaving the site, defined separations between public and

construction areas, fencing and/or landscape barriers, active surveillance, privacy screening, and other similar measures to prevent unauthorized access between such areas.

34. A third-party Construction Management Plan Coordinator shall be retained to develop and maintain the Construction Management Plan. The developer shall deposit funds sufficient to pay for the Construction Management Plan Coordinator who shall be hired by and work for the City.

a. The Construction Management Plan Coordinator hired to provide these services shall be selected from a list of individuals or firms deemed qualified by the Director of Community Development, and shall be mutually agreed upon by the City of Beverly Hills and the Beverly Hills Unified School District.. If the District does not agree with the City on a Coordinator within a 14 calendar day period after being presented with the list of qualified coordinators, the Director of Community Development shall have the authority to select the Coordinator.

b. The Construction Management Plan Coordinator should have experience in large private and public development including experience with school or hospital construction. The Coordinator must have a broad range of experience in construction management, estimating, scheduling and large commercial construction practices and techniques. Past experience with development projects in the City of Beverly Hills will be a consideration in the selection process.

35. An updated copy of the Construction Management Plan shall be provided to the designated Beverly Hills Unified School District representative, and shall be available at El Rodeo School at all times. Further, an up-to-date copy of the Construction Management

Plan shall be made available to the general public on the project's publicly accessible web page.

36. The Beverly Hills Unified School District shall be given a 14 calendar day period in which to review and comment on the Construction Management Plan before the City approves it.

37. The Construction Management Plan shall be updated, as deemed necessary by the Coordinator, throughout all phases of the construction process. This Plan shall be amended and updated to coordinate all construction activity at the site area should the adjacent Beverly Hilton Revitalization Project move forward concurrently.

38. The Construction Management Plan Coordinator shall participate in meetings throughout the construction process and shall provide necessary and prudent advice and resources to the City to properly develop, implement and modify the mitigation plan. Further, the applicant shall invite School District representatives and the City's representatives including but not limited to the Construction Management Plan Coordinator and Environmental Compliance Monitor to attend and participate in regular construction progress meetings.

39. Requests for after hours construction permits shall be reviewed by the City's Building Official in accordance with BHMC Section 5-1-206. The Building Official shall confer with the Environmental Compliance Monitor and revise any after hours permits as necessary to mitigate noise to residential neighbors of the project.

40. The applicant shall maintain a current construction schedule on a publicly accessible project web page and shall provide the web page address on construction

signage placed on the boundary of the property or in a location visible to the public as determined by the Environmental Compliance Monitor.

41. A cash deposit of \$25,000 shall be deposited with the City to ensure compliance with the conditions of this Resolution regarding construction activities. The \$25,000 deposit shall be replenished as deemed necessary by the City's Building Official. 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 \$25,000 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 \$25,000, 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.

42. During construction, the Applicant shall install a minimum twelve-foot (12') construction fence to reduce noise and dust impacts on neighboring properties. The final height of the fence shall be approved by the Director of Community Development in order to mitigate environmental impacts as provided in the Mitigation Monitoring and Reporting Program for the project. The design of the construction fence shall be subject to Architectural Commission review and approval. The applicant shall provide temporary aesthetic improvements, which may include landscaping, to improve the appearance of the site around the fence during the construction period.

43. The Applicant shall maintain the site in an orderly condition prior to commencement of and during construction, including but not limited to, maintenance of the orderly appearance of existing structures and landscaping on the site, dust suppression for areas cleared by demolition, maintenance of safety barriers and adjacent public sidewalks.

44. The applicant shall designate a Community Liaison Officer as outlined in the attached Mitigation Measures, directly accessible to the public by telephone in the event that the public has any concerns regarding the maintenance of the site. The name and telephone number of the Community Liaison Officer shall be transmitted to the Director of Community Development, the City's Building Official, and the Beverly Hills Unified School District Superintendent and Principal at El Rodeo School. In addition, the Applicant shall post the name and telephone number of the Community Liaison Officer on the site in a location readily visible to the general public as approved by the Director of Community Development. Said signs shall also include the name and number of a City contact from the Community Development Department. The Applicant representative's telephone number provided shall be manned during construction hours.

45. Within three working days after approval of this Resolution, the Applicant shall remit to the City a cashier's check, payable to the County Clerk, in the amount of \$50.00 for a documentary handling fee in connection with Fish and Game Code requirements in addition to the Department of Fish and Game filing fee imposed pursuant to Fish and Game Code Section 711.4.

**Property Maintenance**

46. The property owners and successors in interest, including but not limited to any homeowners association shall be responsible for the operation and maintenance of the private sewer connection to the public sewer in the public right-of-way, the site drainage system, the maintenance of the common areas and facilities, the exterior of the building, and any costs or corrections due to building or property maintenance code enforcement actions. The Covenants, Conditions and Restrictions for this project shall specifically reflect this obligation.

**Environmental Compliance Monitor**

47. The Construction Management Plan Coordinator shall provide assistance in the selection of a full-time Environmental Compliance Monitor. The developer shall deposit funds sufficient to pay for the Environmental Compliance Monitor who shall be hired by and work for the City. The Environmental Compliance Monitor shall be selected from a list of individuals deemed qualified by the Director of Community Development and shall be mutually agreed upon by the City of Beverly Hills and the Beverly Hills Unified School District. If the District does not agree with the City on a Monitor within a 14 calendar day period after being presented with the list of qualified monitors, the Director of Community Development shall have the authority to select the Monitor.

48. The field office of the Environmental Compliance Monitor shall be located in a office trailer provided by the developer on or adjacent to the El Rodeo School campus for easy access to District staff, parents, and local residents. The location of the field office shall be approved by the Community Development Director. All utility and maintenance costs associated with the installation and maintenance of this trailer shall be paid for by the developer.

49. The Environmental Compliance Monitor shall maintain a daily log and provide monthly reports to the City and School District.

50. The Environmental Compliance Monitor shall immediately report any violations of the construction mitigation measures to the City.

51. City staff shall have the authority to immediately stop construction upon verification of any violation of the Construction Management Plan. Work shall not be allowed to restart until the problem is abated and/or corrective actions are taken to mitigate the violation.

52. The Environmental Compliance Monitor shall conduct a weekly meeting with the project construction manager(s) and shall invite City and School District representatives to attend such meetings.

### **Specialty Testing**

53. Specialty consultants (noise and air quality) shall be hired to provide testing and monitoring and provide recommendations as described in the EIR, and imposed by these conditions of approval. The developer shall deposit funds sufficient to pay for the specialty consultants who shall be hired by and work for the City.

54. The Construction Management Plan Coordinator shall provide assistance in the selection of these specialists.

55. Consultants hired to provide specialty testing services shall be selected from a list of individuals or firms deemed qualified by the Director of Community Development, and shall be mutually agreed upon by the City of Beverly Hills and the Beverly Hills Unified School District. If the District does not agree with the City on specialty testing consultants within a 14 calendar day period after being presented with the list of qualified specialty testing consultants, the Director of Community Development shall have the authority to select the specialty testing consultants.

56. All test results shall be maintained on file with the Environmental Compliance Monitor and included in monthly reports submitted to the City and School District.

57. Construction noise and vibration shall be monitored at El Rodeo School as part of the Construction Management Plan. Construction activities and/or measures may be modified to correct any excesses in the event acceptable thresholds are exceeded.

58. The Environmental Monitor shall initiate, and the Developer shall pay for a traffic study to be undertaken within 45 days after the beginning of each school year during construction of the Project to measure the then existing conditions and to determine whether unanticipated impacts resulting from the Project construction are occurring. Additional measures as may be identified by any such study that address impacts from the Project shall be implemented by the developer.

59. Construction traffic shall be monitored at the site so that the frequency of construction to/from the project site during periods when most schoolchildren are

arriving/departing to/from schools will be reduced in the event that construction traffic exceeds thresholds that shall be identified in the Construction Management Plan.

**General Conditions.**

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

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

62. In accordance with the requirements set forth in City Council Resolution 71-R-4269, the applicant shall file a formal written request with the Civil Engineering Department for approval of any type of temporary construction encroachment (steel tieback rods, etc.) within the public right-of-way. Shoring plans and elevations prepared by a registered civil engineer must be submitted for review by the Civil Engineering Department. An indemnity bond must be submitted and approved by the City Attorney prior to excavation.

63. 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.

64. The Applicant shall comply with the requirements of the Street Tree Mitigation Plan of the Recreation and Parks Department, attached hereto as Exhibit C and incorporated herein by this reference.

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

66. 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.

67. Prior to the earlier of either the issuance of any occupancy permit or the sale or lease of any residential unit in the project, a subdivision map shall be approved by the City and the final map for such subdivision shall have been recorded with the County of Los Angeles Recorder and the condominium plan filed with the Department of Real Estate.

68. Prior to the approval of any final map, the applicant shall prepare and submit CC&R's for review and approval by the Director of Community Development and the City Attorney. The CC&R's shall be recorded prior to the approval of any final map.

69. Prior to the recordation of any final subdivision map, the applicant shall record a reciprocal parking and access agreement for the site in form and content satisfactory to the Community Development Director and the City Attorney.

70. The applicant shall install insulated laminated clear safety glass on the exterior of all the condominium units facing the Los Angeles County Club.

71. Unanticipated Traffic Impacts. In the event that the Director of Community Development determines that operation of the project is having unanticipated traffic or

parking impacts, the Director shall require the owner or Homeowners Association to provide an analysis of the traffic or parking impacts and recommend and implement mitigation for the impacts. If, in the opinion of the Director, the owner or Homeowners Association fails to implement sufficient mitigation to mitigate the unanticipated traffic or parking impacts, then the Director shall schedule a hearing before the Planning Commission concerning the impacts being created by the project. The owner or Homeowners Association shall receive at least ten days notice of such hearing. Upon conclusion of the hearing, the Planning Commission may impose additional conditions upon the project as necessary to mitigate any unanticipated traffic or parking impacts caused by the project, and the owner or Homeowners Association and operator shall forthwith comply with any such additional conditions at their sole expense. However, the owner or Homeowners Association may appeal the decision of the Planning Commission to the City Council pursuant to the provisions of the Beverly Hills Municipal Code and any decision of the Planning Commission shall be stayed pending a decision by the City Council on appeal.

72. The Construction Management Plan shall contain a provision prohibiting construction trucks from queuing on Santa Monica Boulevard or Wilshire Boulevard during all aspects of construction.

73. An air cleaning/filtering system shall be installed in the condominium buildings subject to the review and approval of the Building Official to assist in the removal of pollutants emanating from the adjacent streets.

74. The provisions of the Specific Plan shall not become effective until the ordinance approving the zone text amendment and zone change establishing the 99(X)

Wilshire Specific Plan zoning and applying the zoning to the subject property becomes effective.

75. The provisions of the Specific Plan shall not become effective, and no development or implementation of the Specific Plan shall be permitted until a) the ordinance approving the development agreement has become effective and b) the Development Agreement is executed and recorded.

76. Merv Griffin and Wilshire Boulevard Intersection Improvements. The north bound configuration of Merv Griffin Way portion of the southern leg of the intersection of Merv Griffin Way and Wilshire Boulevard shall be modified to provide one left-turn lane, one through lane, and one right-turn lane on the portion of Merv Griffin Way within the Specific Plan Area. The improvements shall be completed prior to the recordation of any final subdivision map.

77. Uses ancillary to the residential uses in the Specific Plan, including but not limited to the spa, screening rooms, and common event spaces, shall be for the exclusive use of residents within the Specific Plan. Guests of residents may use such facilities except that there shall be no charge to or for non-resident guests and in no event shall memberships be given or sold to any person or entity that is not a resident within the Specific Plan.

78. The applicant shall execute and record against the 9900 Wilshire property, a covenant and agreement to facilitate the continuation of the Golden Globe Awards, or successor event, at The Beverly Hilton Property. The CC&Rs shall be in a form satisfactory to the City Manager and the City Attorney, after consultation with the Beverly Hills Fire and Police Departments. The covenant and agreement shall include provisions

providing for (a) the closure of Merv Griffin Way the day prior to and the day of the Golden Globe Awards event, (b) prohibitions on the use of vehicles on or access of persons to Merv Griffin Way the day prior to, the day or and the day after the Golden Globe Awards event, (c) grant of a license to use Merv Griffin Way for camera equipment, satellite truck use, celebrity arrivals, or any similar event-related use on the day prior to and the day of the Golden Globes Awards event, (d) closure of any pedestrian and vehicular access points (other than emergency access as may be required by the Beverly Hills Fire or Police Departments) from the 9900 Wilshire property to Merv Griffin Way and to prohibit persons or vehicles from entering Merv Griffin Way from such access points on the day prior to and the day of the Golden Globe Awards event. These provisions also shall apply to the day after the Golden Globe Awards event to the extent reasonably necessary to remove equipment utilized in the Golden Globe Awards event. In addition, the covenant and agreement shall provide for a grant of access to the 9900 Wilshire Property and its buildings at any time as requested by the Beverly Hills Police Department, United States Secret Service, Federal Bureau of Investigation, or other governmental security agency and/or their successors, as needed, to provide security for the Golden Globe Awards event, and (c) cooperation with requests by the Beverly Hills Police Department, United States Secret Services, Federal Bureau of Investigation, or other governmental security agency and/or their successors for a security perimeter on the 9900 Wilshire Property for the Golden Globe Awards event. The covenant and agreement shall provide for notice to all owners of the 9900 Wilshire Boulevard Property, including without limitation successors and assigns, owners of condominium interests, and tenants, of the existence of the covenant and agreement, which covenant and agreement shall be recorded prior to final map

approval, but not prior to the issuance of a Building Permit, as that term is defined in the development agreement approved as part of this project.

### **Demolition**

79. The developer shall take all reasonable actions to start and complete the demolition phases of construction on the 9900 Wilshire Project site during the summer months when El Rodeo School is not in session (approximately June 22nd through September 2nd). In the event that the demolition phases of construction are delayed for any reason such that substantial completion of those activities cannot be accomplished during the summer months of 2008, the Community Development Director shall have the discretion, but not the obligation, to allow demolition to proceed while El Rodeo School is in session. The decision of the Director pursuant to this condition of approval 79 shall be appealable to the City Manager.

80. Work at the site shall be accelerated during the summer months and while school is not in session to the fullest extent that is approved by the City.

81. The applicant shall provide the Beverly Hills Unified School District with a full set of final demolition plans and specifications and construction plans and specifications, before the start of demolition and construction respectively. The applicant shall also provide the Beverly Hills Unified School District with a copy of the detailed construction schedule prior to commencement of demolition.

### **Other Measures**

82. During construction, the developer shall install and maintain at least two (2) remotely controlled cameras made accessible via the internet to City staff, the Construction Management Coordinator, and the Environmental Compliance Monitor for mitigation

monitoring purposes. The cameras are to be placed at a height and location so that 100% of the project site is visible at all times. Cameras shall be maintained regularly and accessible at all times and shall be equipped with microphones.

83. During construction, the Construction Management Coordinator, Environmental Compliance Monitor or the specialty testing consultants shall have the authority to require additional measures deemed necessary to address unanticipated issues that may arise due to construction of the Project. The developer shall fund any and all such recommended measures regardless of the cost.

84. Any lighting associated with permitted night-time construction shall be shielded, directed downward, and directed to face west or south, as approved by the Environmental Compliance Monitor.

**CITY OF BEVERLY HILLS**  
**STANDARD CONDITIONS LIST**  
**FOR THE PLANNING COMMISSION**

**ENGINEERING, UTILITIES AND RECREATION & PARKS:**

1. The applicant shall remove and replace all defective 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.)

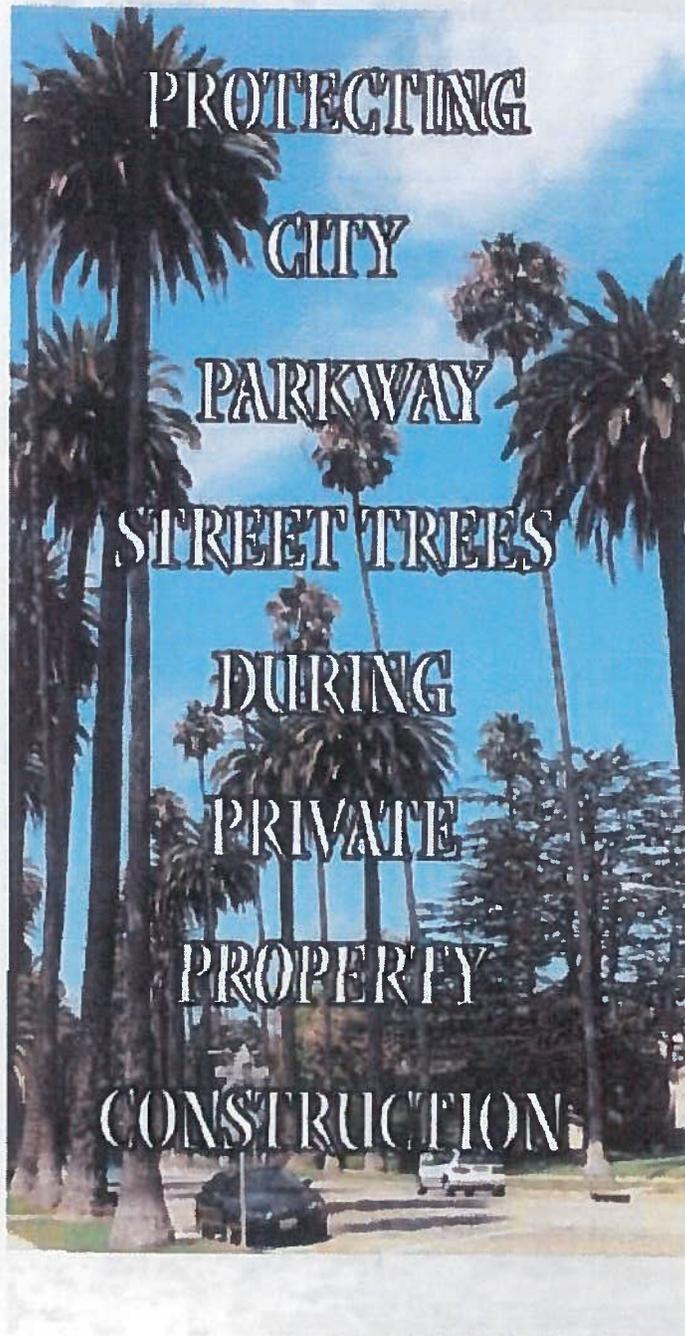
Removal and/or replacement of any street trees shall not commence until the applicant has provided the City with an improvement security to ensure the establishment of any relocated or replaced street trees. The security amount will be determined by the Director of Recreation and Parks, and shall be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

Standard Conditions List  
for the Planning Commission

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

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.



PROTECTING  
CITY  
PARKWAY  
STREET TREES  
DURING  
PRIVATE  
PROPERTY  
CONSTRUCTION

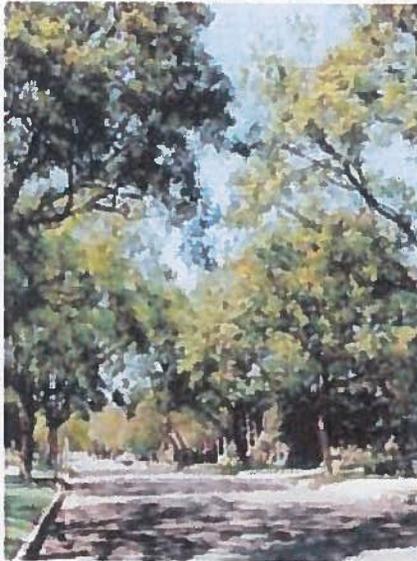


## PROTECTING CITY PARKWAY STREET TREES DURING PRIVATE PROPERTY CONSTRUCTION

In addition to their numerous environmental benefits, trees in the parkway areas along the streets of Beverly Hills are a tremendous asset to residential and commercial communities. Street trees are protected by Beverly Hills Municipal Code (Sec. 5-6-1001) as follows: "It is illegal for parties who are not official representatives or authorized agents of the City of Beverly Hills to prune, remove, make attachment to, or otherwise damage a City street, park or protected tree."

It is a violation of this City code to affix a sign, residence number plaque, mirror, light fixture, etc. to a City tree.

The maintenance and protection of street trees is a shared responsibility between property owners and the City of Beverly Hills. If you feel that a street tree is unhealthy, damaged or in need of pruning, please contact the Department of



Recreation and Parks  
Urban Forestry Division at  
310.550.4638.

Construction activities can have severe and long lasting effects on the health of trees. Consideration must be given to street trees during a project's planning stages. Tree loss or damage can have a significant effect on the uniformity and value of a tree canopy along a street. The planning and implementation of any construction project must include the preservation of this important City asset.

Planning and protecting the health of trees during construction is part of doing business in the City of Beverly Hills.

This brochure is provided to assist you to avoid endangering City trees during your construction project.

## PROJECT PLANNING

- During the design process, please consider the long term effects that construction may have on City trees. Plan activities carefully, as the City of Beverly Hills will seek compensation for any damage to the trees caused by your construction activities.
- For any projects that include construction work in the public right-of-way, plans that accurately depict the public right-of-way will need the approval of the Departments of Recreation and Parks and Civil Engineering prior to any permits being issued by the Department of Building and Safety.
- All preliminary plans, sketches and drawings should identify all City parkway trees adjacent to the project site. The actual location and canopy diameter of City trees must be shown clearly on the plans.
- A City tree protection plan must be included in the initial plan submittal package. The tree protection plan may include a fenced tree protection zone, and must demonstrate how the parkway will be watered and maintained for the duration of the project. If it is determined that the proposed construction work will jeopardize the health of a street tree, or if the tree protection plan is deemed inadequate, you may be asked to provide a detailed report by a certified arborist showing the adequate protection of the tree and its value based on the International Society of Arboriculture (ISA) recognized standards.
- The negative effects of construction may take years to become apparent in the decline of trees. A claim may be filed with you and your general liability carrier should damage become apparent at a later date.
- You may wish to retain an International Society of Arboriculture (ISA) Certified Arborist to assist you with your project. Contact information is provided in this brochure.



*Do not design projects at  
the expense of trees.*

## PROJECT APPROVAL

- All construction related permits will be processed by the Department of Building and Safety. Public Works permits are required for trucking, hauling and work conducted in the public sight-of-way.
- The tree protection plan must be approved by the Recreation and Parks Urban Forest Division. If a tree protection zone fence is required, it must be installed and inspected prior to the commencement of any demolition or construction work. These inspections can be arranged by calling (310) 550-4638.



*Maintain the tree protection zone fencing and parkway condition at all times.*

## SPECIFICATIONS

- A tree protection zone may require that the entire parkway be fenced. Fencing may be of a chain link or flexible configuration, but may not exceed 4 feet in height. Fence installation should be such that lines of sight are maintained so as to avoid any vehicle or pedestrian hazards. A warning sign must be displayed on the street side of the fence. The size of the sign must be no less than 8.5 x 11 inches. The sign must clearly state "Warning: Tree Protection Zone". The sign shall clearly list the name and current contact information of the project owner or authorized representative.

## DURING THE PROJECT

- Maintain the integrity of the tree protection zone fencing and keep the parkway site clean and maintained at all times.
- The site will be inspected by Building and Safety Department and the Urban Forest Division of the Recreation and Parks Department. If the tree protection plan is not complied with, or proves inadequate, additional measures may be required.
- It is recommended that trees be deep watered on a weekly basis for the duration of the project.



*Do not allow cranes or other equipment to damage City trees.*

## CONTACT/RESOURCE INFORMATION

### City of Beverly Hills contact information

- Recreation and Parks Department-  
Urban Forest Division Office: (310) 550-4638  
[recreationandparks@beverlyhills.org](mailto:recreationandparks@beverlyhills.org)
- Civil Engineering Department-  
Administration Office: (310) 285-2506  
[civilengineering@beverlyhills.org](mailto:civilengineering@beverlyhills.org)
- Building and Safety Department-  
Permit Desk: (310) 285-1141  
[buildingandsafety@beverlyhills.org](mailto:buildingandsafety@beverlyhills.org)

### Determining the value of trees

- Council of Tree and Landscape Appraisers  
(CTLA), 2000. *Guide for Plant Appraisal*, 9th  
Ed. Savoy, IL: ISA, 143 pp.  
Order this reference guide online at  
<http://www.wcisa.net/pblitem.asp?PubID=30>

A library use only copy of this publication is  
available in the reference section of  
The Beverly Hills Public Library  
444 North Rexford Drive  
Beverly Hills, CA 90210  
(310) 288-2244

### Find an International Society of Arboriculture (ISA) Certified Arborist

- Western Chapter ISA: (530) 892-1006
- ISA, find an Arborist by phone: (217) 355-9411
- ISA, find an Arborist online: <http://www.isa-arbor.com/arborists/arbsearch.html>

**Attachment 3**

# City of Beverly Hills Green Building/Sustainability Checklist

New Commercial, Multi-Family and Mixed-Use Development

Project Name:

Project Address:

<b>Compliance Level</b>
Buildings > 25,000 sq. ft. = Silver (33 - 38 points) or Certified (26 - 32 points) - if the lot is vacant
Buildings > 10,000 to 24,999 sq. ft. = Certified
Buildings < 10,000 sq. ft. = 10% above Title 24 and Solar Ready Construction

<b>Sustainable Sites</b>	<b>9 Points Maximum</b>
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C.E.	<b>Construction Activity Pollution Prevention</b>	Required	SS P1**
C.E.	<b>Stormwater Design Requirement</b>	Required	
OWNER	<b>Development Density &amp; Community Connectivity</b>	1	SS 2**
OWNER	<b>Brownfield Redevelopment</b>	1	SS 3**
ARCH.	<b>Alternative Transportation, Public Transportation Access</b>	1	SS 4.1**
ARCH.	<b>Alternative Transportation, Bicycle Storage &amp; Changing Rooms</b>	1	SS 4.2**
ARCH.	<b>Alternative Transportation, Low-Emitting &amp; Fuel-Efficient Vehicles</b>	1	SS 4.3**
C.E.	<b>Alternative Transportation, Parking Capacity</b>	1	SS 4.4**
C.E.	<b>Site Development, Protect or Restore Habitat</b>	1	SS 5.1**
C.E.	<b>Site Development, Maximize Open Space</b>	1	SS 5.2**
C.E.	<b>Stormwater Design, Quantity Control</b>	1	SS 6.1**
C.E.	<b>Stormwater Design, Quality Control</b>	1	SS 6.2**
C.E./ARCH.	<b>Heat Island Effect, Non-Roof</b>	1	SS 7.1**
C.E./ARCH.	<b>Heat Island Effect, Roof</b>	1	SS 7.2**
E.E.	<b>Light Pollution Reduction</b>	1	SS 8**

<b>Water Efficiency</b>	<b>5 Points Maximum</b>
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LANDSCAPE	<b>Water Efficient Landscaping, Reduce by 50%</b>	1	WE 1.1**
LANDSCAPE	<b>Water Efficient Landscaping, No Potable Use or No Irrigation</b>	1	WE 1.2**
M.E.	<b>Innovative Wastewater Technologies</b>	1	WE 2**
M.E.	<b>Water Use Reduction, 20% Reduction</b>	1	WE 3.1**
M.E.	<b>Water Use Reduction, 30% Reduction</b>	1	WE 3.2**

<b>Energy &amp; Atmosphere</b>	<b>17 Points Maximum</b>
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COMM.	<b>Fundamental Commissioning of the Building Energy Systems</b>	Required	EA P1**
M.E.	<b>Minimum Energy Performance</b>	Required	EA P2**
M.E.	<b>Fundamental Refrigerant Management</b>	Required	EA P3**
M.E.	<b>Optimize Energy Performance</b> (Report from M.E. based on ASHRAE is required)	1 to 10	EA 1**
M.E.	<b>On-Site Renewable Energy</b> (Report from M.E. based on ASHRAE is required)	1 to 3	EA 2**
COMM.	<b>Enhanced Commissioning</b>	1	EA 3**
M.E.	<b>Enhanced Refrigerant Management</b>	1	EA 4**
M.E.	<b>Measurement &amp; Verification</b>	1	EA 5**
OWNER	<b>Green Power</b>	1	EA 6**

### Materials & Resources

13 Points Maximum

ARCH.	<b>Storage &amp; Collection of Recyclables</b>	Required	MR P1**
ARCH.	<b>Building Reuse, Maintain 75% of Existing Walls, Floors &amp; Roof</b>	1	MR 1.1**
ARCH.	<b>Building Reuse, Maintain 100% of Existing Walls, Floors &amp; Roof</b>	1	MR 1.2**
ARCH.	<b>Building Reuse, Maintain 50% of Interior Non-Structural Elements</b>	1	MR 1.3**
CONT.	<b>Construction Waste Management, Divert 50% from Disposal</b>	1	MR 2.1**
CONT.	<b>Construction Waste Management, Divert 75% from Disposal</b>	1	MR 2.2**
ARCH.	<b>Materials Reuse, 5%</b>	1	MR 3.1**
ARCH.	<b>Materials Reuse, 10%</b>	1	MR 3.2**
ARCH.	<b>Recycled Content, 10% (post-consumer + ½ pre-consumer)</b>	1	MR 4.1**
ARCH.	<b>Recycled Content, 20% (post-consumer + ½ pre-consumer)</b>	1	MR 4.2**
ARCH.	<b>Regional Materials, 10% Extracted, Processed &amp; Manufactured Regionally</b>	1	MR 5.1**
ARCH.	<b>Regional Materials, 20% Extracted, Processed &amp; Manufactured Regionally</b>	1	MR 5.2**
ARCH.	<b>Rapidly Renewable Materials</b>	1	MR 6**
ARCH.	<b>Certified Wood</b>	1	MR 7**

### Indoor Environmental Quality

13 Points Maximum

M.E.	<b>Minimum IAQ Performance</b>	Required	EQ P1**
LEED AP	<b>Environmental Tobacco Smoke (ETS) Control</b>	Required	EQ P2**
M.E.	<b>Outdoor Air Delivery Monitoring</b>	1	EQ 1**
M.E.	<b>Increased Ventilation</b>	1	EQ 2**
CONT.	<b>Construction IAQ Management Plan, During Construction</b>	1	EQ 3.1**
CONT.	<b>Construction IAQ Management Plan, Before Occupancy</b>	1	EQ 3.2**
ARCH.	<b>Low-Emitting Materials, Adhesives &amp; Sealants</b>	1	EQ 4.1**
ARCH.	<b>Low-Emitting Materials, Paints &amp; Coatings</b>	1	EQ 4.2**
ARCH.	<b>Low-Emitting Materials, Carpet Systems</b>	1	EQ 4.3**

ARCH.	Low-Emitting Materials, Composite Wood & Agrifiber Products	1	EQ 4.4**
LEED AP	Indoor Chemical & Pollutant Source Control	1	EQ 5**
M.E.	Controllability of Systems, Lighting	1	EQ 6.1**
M.E.	Controllability of Systems, Thermal Comfort	1	EQ 6.2**
M.E.	Thermal Comfort, Design	1	EQ 7.1**
M.E.	Thermal Comfort, Verification	1	EQ 7.2**
ARCH.	Daylight & Views, Daylight 75% of Spaces	1	EQ 8.1**
ARCH.	Daylight & Views, Views for 90% of Spaces	1	EQ 8.2**

<b>Innovation &amp; Design Process</b>	<b>8 Points maximum</b>
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ALL PROFS.	Innovation in Design: Provide Specific Title	1	ID 1.1**
ALL PROFS.	Innovation in Design: Provide Specific Title	1	ID 1.2**
ALL PROFS.	Innovation in Design: Provide Specific Title	1	ID 1.3**
ALL PROFS.	Innovation in Design: Provide Specific Title	1	ID 1.4**
	<b>LEED® Accredited Professional</b>	1	ID 2**

<b>Project Totals (Pre-certification estimates) =</b>
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\* Certified 26- 32 points; Silver 33 - 38 points; Gold 39 - 51 points; Platinum 52 - 69 points

\*\* Refers to LEED Source Book for New Construction for Intent and Requirement of each category

ORDINANCE NO. 08-O- 2550

AN ORDINANCE OF THE CITY OF BEVERLY HILLS ADDING THE 9900 WILSHIRE SPECIFIC PLAN ZONING TO THE CITY OF BEVERLY HILLS MUNICIPAL CODE, AND APPLYING THE 9900 WILSHIRE SPECIFIC PLAN ZONING IN CONJUNCTION WITH THE PROPOSAL TO DEVELOP LUXURY RESIDENTIAL CONDOMINIUMS, PUBLIC GARDENS, AND ANCILLARY COMMERCIAL USES, FOR THE PROPERTY LOCATED AT 9900 WILSHIRE BOULEVARD (THE FORMER ROBINSONS-MAY DEPARTMENT STORE SITE)

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

Section 1. Formal applications were submitted by Project Lotus, LLC, a Limited Liability Company (the "Applicant"), to allow construction of a residential condominium project with commercial space, public and private gardens and subterranean parking for the property located at 9900 Wilshire Boulevard (the "Project"). The Project includes requests for a general plan amendment, zone text amendment, zone change, specific plan, and development agreement for the subject property.

Section 2. Legislative Findings. Due to special circumstances surrounding the property at 9900 Wilshire Boulevard, the City Council finds that the property is unique in size and location and therefore is appropriate for development of a mixed-use project consisting of multi-story residential condominium buildings, commercial and restaurant uses and open space. The 9900 Wilshire Specific Plan has been prepared for the subject property and creation of the 9900 Wilshire Specific Plan zoning designation and application of that zoning designation to the property is necessary and appropriate for adoption and implementation of the 9900 Wilshire Specific Plan.

Section 3. The Planning Commission considered the zone text amendment and zone change set forth in this Ordinance at duly noticed public hearings on August 20, 2007, September 5, 2007, September 24, 2007, October 29, 2007, November 8, 2007, November 28, 2007, January 10, 2008, January 24, 2008 and February 7, 2008. Evidence both written and oral was presented during the hearings. After considering the evidence, the Planning Commission recommended that the City Council adopt this Ordinance.

Section 4. The City Council considered this Ordinance at duly noticed public hearings on March 11, 2008, March 20, 2008 and March 27, 2008. Evidence, both written and oral, was presented during the hearings.

Section 5. The Project, including this Ordinance, has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* ("CEQA")), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the City's Local CEQA Guidelines. The City prepared an initial study and, based on the information contained in the initial study, concluded that there was substantial evidence that the Project might have a significant environmental impact on several specifically identified environmental resources. Pursuant to CEQA 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 ("EIR") for the Project to analyze the Project's potential impacts on the environment. The City Council, by Resolution No. 08-R-12497 adopted on April 3, 2008, (a) made certain CEQA findings and determinations, (b) certified the Final Environmental Impact Report ("FEIR") (c) adopted a Statement of Overriding Considerations and (d) adopted a Mitigation Monitoring and Reporting Program. Resolution No. 08-R-12497 is incorporated herein by

reference, and made a part hereof as if fully set forth herein. The documents and other material that constitute the record on which this decision is based are located in the Department of Community Development and are in the custody of the Director of Community Development. Further, the mitigation measures set forth therein are made applicable to the Project at 9900 Wilshire Boulevard.

Section 6. The City Council hereby adds a new Article 15.7 regarding the 9900 Wilshire Specific Plan to Chapter 3 of Title 10 of the Beverly Hills Municipal Code to read as follows:

**“Article 15.7. 9900 Wilshire Specific Plan.**

**10-3.1570. Uses Permitted.**

No lot, premises, roadway, open space, building or portion thereof within the area of the 9900 Wilshire Specific Plan shall be erected, constructed, built, altered, enlarged, built upon, used or occupied except as authorized by and in conformance with the 9900 Wilshire Specific Plan.

**Sec. 10-3.1571. Development Restrictions.**

Notwithstanding any other provisions of this Chapter and Chapter 4 of this Title, development in accordance with the 9900 Wilshire Specific Plan shall not be governed by any other regulations of this Chapter or Chapter 4 of this Title governing development, including, without limitation, those regulations governing development in commercial zones, unless otherwise provided in the Specific Plan.

**Sec. 10-3.1572. Conditions Ensuring Implementation of 9900 Wilshire Specific Plan.**

All development within the 9900 Wilshire Specific Plan shall be reviewed pursuant to the provisions of the 9900 Wilshire Specific Plan.”

Section 7. The City Council hereby changes the zoning on that certain property commonly known as 9900 Wilshire Boulevard and more particularly and legally described in the legal description attached hereto as Exhibit A, from C-3 to "9900 Wilshire Specific Plan."

Section 8. 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 9. 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: June 3, 2008  
Effective: July 4, 2008

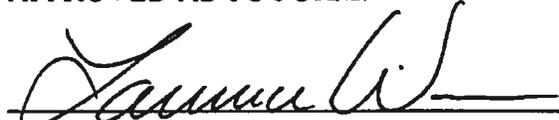
  
\_\_\_\_\_  
BARRY BRUCKER  
Mayor of the City of Beverly Hills, California

ATTEST:

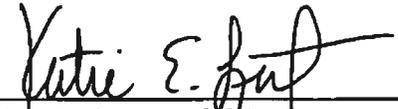
  
\_\_\_\_\_  
BYRON POPE (SEAL)  
City Clerk

[signatures continued on next page]

APPROVED AS TO FORM:

  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

  
RODERICK J. WOOD  
City Manager

  
VINCENT P. BERTONI, AICP  
Director of Community Development

**EXHIBIT A**

**Legal description of the Project Site**

**9900 WILSHIRE LEGAL DESCRIPTION**

That certain real property located in the State of California, County of Los Angeles described as follows:

**PARCEL 1:**

**THAT PORTION OF BLOCK 33 OF BEVERLY, SHEET 2, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 13, PAGES 62 AND 63 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:**

**BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 4 OF SAID BLOCK 33; THENCE ALONG THE NORTHERLY LINE OF LOT 4 AND A PORTION OF LOT 3 OF SAID BLOCK 33, NORTH 89° 55' 00" EAST 300.00 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 3 OF SAID BLOCK 33; THENCE SOUTH 0° 05' 00" EAST 177.00 FEET; THENCE SOUTHEASTERLY SOUTH 38° 46' 45" EAST 583.79 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF LOT 7 OF SAID BLOCK 33, DISTANT 431.22 FEET FROM THE MOST SOUTHERLY CORNER OF LOT 6 OF SAID BLOCK 33; THENCE SOUTH 50° 19' 15" WEST 431.22 FEET TO THE MOST SOUTHERLY CORNER OF LOT 6 OF SAID BLOCK 33; THENCE ALONG THE SOUTHWESTERLY LINE OF LOTS 6 AND 4 OF SAID BLOCK 33, NORTH 30° 58' 05" WEST 798.43 FEET TO THE MOST SOUTHERLY CORNER OF LOT 5 OF SAID BLOCK 33; THENCE ALONG THE SOUTHEASTERLY LINE OF LOT 5 NORTH 19° 03' 30" EAST 235.27 FEET TO THE POINT OF BEGINNING.**

**PARCEL 2:**

**AN EASEMENT FOR PRIVATE ROAD PURPOSES OVER THE EASTERLY 20 FEET OF THOSE PORTIONS OF LOTS 3 AND 7 IN BLOCK 33 OF BEVERLY, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 13 PAGES 62 AND 63 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, INCLUDED WITHIN A STRIP OF LAND, 40 FEET WIDE, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:**

**BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID LOT 3, DISTANT NORTH 89° 55' 00" EAST 300 FEET MEASURED ALONG THE NORTHERLY LINE OF SAID BLOCK 33 FROM THE NORTHWEST CORNER OF LOT 4 OF SAID BLOCK 33; THENCE SOUTH 0° 05' 00" EAST 177.00 FEET; THENCE SOUTHEASTERLY SOUTH 38° 46' 45" EAST 583.79 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF LOT 7 OF SAID BLOCK 33, DISTANT 431.22 FEET FROM THE MOST SOUTHERLY CORNER OF LOT 6 OF SAID BLOCK 33, AS GRANTED BY DEED AND AGREEMENT DATED DECEMBER 20, 1950, AND RECORDED DECEMBER 22, 1950, IN BOOK 35141, PAGE 331, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.**

ORDINANCE NO. 08-O-2551

AN ORDINANCE OF THE CITY OF BEVERLY HILLS APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BEVERLY HILLS AND PROJECT LOTUS, LLC FOR CONSTRUCTION OF LUXURY RESIDENTIAL CONDOMINIUMS, PUBLIC GARDENS AND ANCILLARY COMMERCIAL USES, IN ACCORDANCE WITH THE 9900 WILSHIRE SPECIFIC PLAN FOR PROPERTY AT 9900 WILSHIRE BOULEVARD (THE FORMER ROBINSONS-MAY DEPARTMENT STORE SITE)

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

Section 1. Project Lotus, LLC ("Developer") proposes to enter into a development agreement (herein, the "Development Agreement"), which is attached to this Ordinance as Exhibit "A," in connection with the construction of a luxury residential condominium project with ancillary commercial uses and gardens to be located at 9900 Wilshire Boulevard (the "Project"). The Project includes requests for a general plan amendment, zone text amendment, zone change, specific plan and a Development Agreement for the subject property.

Section 2. The Project, including this Ordinance and the Development Agreement, has been environmentally reviewed pursuant to the provisions of the California Environmental Quality Act (Public Resources Code Sections 21000, *et seq.* ("CEQA"), the State CEQA Guidelines (California Code of Regulations, Title 14, Sections 15000, *et seq.*), and the City's Local CEQA Guidelines. The City prepared an initial study and, based on the information contained in the initial study, concluded that there was substantial evidence that the Project might have a significant environmental impact on several specifically identified resources.

Pursuant to CEQA 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 ("EIR") for the Project to analyze the Project's potential impacts on the environment. The City Council, by separate Resolution No. 08-R-12497, adopted on April 3, 2008 (a) made certain CEQA findings and determinations, (b) certified the Final Environmental Impact Report ("FEIR") (c) adopted a Statement of Overriding Considerations and (d) adopted a Mitigation Monitoring and Reporting Program. Resolution No. 08-R-12497 is incorporated herein by reference, and made a part hereof as if fully set forth herein. 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. Further, the mitigation measures set forth therein are made applicable to the Project at 9900 Wilshire Boulevard.

Section 3. On January 24, 2008 and February 7, 2008, 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 recommended that the City Council adopt an ordinance approving a Development Agreement incorporating revisions recommended by the Planning Commission with respect to setting aside funds for affordable housing, requiring the Developer to make a school benefit payment to the Beverly Hills Unified School District, and setting aside a portion of the Public Benefit Fee for implementation of improvements to address congestion at the intersection of Santa Monica Boulevard and Wilshire Boulevard.

Section 5. On March 11, 2008, March 20, 2008 and March 27, 2008, the City Council conducted a duly noticed public hearing to consider the Development Agreement and the Project. Notices of the time, place and purpose of the public hearing were duly provided in accordance with California Government Code Sections 65867, 65090 and 65091.

Section 6. The City Council finds that the provisions of the Development Agreement are consistent with the City of Beverly Hills General Plan, as proposed to be amended as a part of the Project, and complies with its objectives and policies including the objective of developing large parcels at anchor locations that serve as gateways to the City with a variety of land uses at higher intensities, provided such developments serve as adequate transition to adjacent single family neighborhoods. The Development Agreement implements the terms of the General Plan, the 9900 Specific Plan and City ordinances, including a General Plan Amendment processed in connection with the Project to change the land use designation of the project site from Commercial to 9900 Wilshire Specific Plan, and does not allow development except in conformance with the General Plan, as amended.

Section 7. The City Council hereby approves the Development Agreement and authorizes the Mayor to execute the Development Agreement on behalf of the City.

Section 8. No later than ten (10) days after the effective date of this Ordinance, the City Clerk shall record with the County Recorder a copy of the Development Agreement and the notice shall describe the land to which such contract applies.

Section 9. The City Clerk shall cause this Ordinance to be published at least once in a newspaper of general circulation published and circulated in the City within fifteen

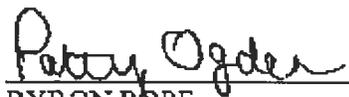
(15) days after its passage, in accordance with Section 36933 of the Government Code; shall certify to the adoption of this Ordinance and shall cause this ordinance and this certification, together with proof of publication, to be entered in the Book of Ordinances of the Council of this City.

Section 10. 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.

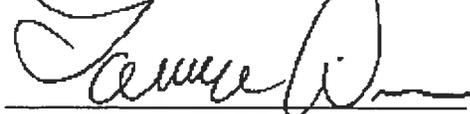
Adopted: June 3, 2008  
Effective: July 4, 2008

  
BARRY BRUCKER  
Mayor of the City of Beverly Hills, California

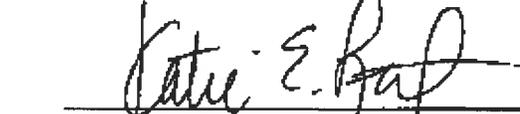
ATTEST:

 (SEAL)  
BYRON POPE  
City Clerk

APPROVED AS TO FORM:

  
LAURENCE S. WIENER  
City Attorney

APPROVED AS TO CONTENT:

  
RODERICK J. WOOD  
City Manager

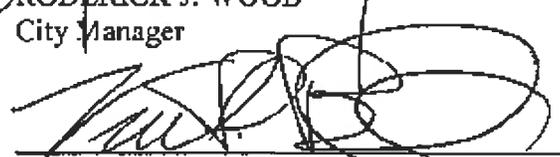
  
VINCENT P. BERTONI, AICP  
Director of Community Development

EXHIBIT A  
DEVELOPMENT AGREEMENT

RECORDING REQUESTED BY:  
CITY OF BEVERLY HILLS

WHEN RECORDED MAIL TO:

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

### **DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (this "Agreement") is made by and between THE CITY OF BEVERLY HILLS, a California municipal corporation (the "City"), and PROJECT LOTUS, LLC, a Delaware Limited Liability Company (the "Developer"). The City and Developer are individually referred to herein as a "Party" and collectively referred to as the "Parties."

### **RECITALS**

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

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

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

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

D. In anticipation of the development of the Project, Developer has made or will make application to the City (in its governmental capacity) for certain approvals, entitlements, findings and permits required for the development and construction of the Project, including, without limitation: (1) a general plan amendment, (2) a specific plan, (3) a zone change; (4) a zoning code amendment, (5) a vesting tentative tract map, and (6) 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 development of the Project in a manner consistent with the City's Zoning Regulations (as

hereafter defined), the Applicable Rules (as hereafter defined) and the General Plan (as hereafter defined).

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

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

I. On January 24, 2008 and February 7, 2008, 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 March 11, 2008, March 20, 2008 and March 27, 2008, 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 April 9, 2008, the City Council adopted Ordinance No.08-O-2546 approving this Agreement, and such ordinance became effective on May 10, 2008.

M. By Resolution No. 08-R-12497 adopted by the City Council on April 3, 2008, the City Council reviewed and certified, after making appropriate findings, the EIR (as hereafter defined) that contemplates this Agreement.

## AGREEMENT

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

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

(a) "Applicable Rules" means the rules, regulations, ordinances, resolutions, codes, guidelines, and officially adopted procedures and official policies of the City governing the use and development of real property, including, but not limited to, the City's Zoning

Regulations and building regulations, adopted as of the Effective Date. Among other matters, the Applicable Rules set forth and govern the permitted uses of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings, parking requirements, setbacks, and development standards, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction guidelines, standards and specifications applicable to the development of the Property.

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

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

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

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

(f) "Change of Control" shall refer to a transaction whereby a transferee acquires a beneficial ownership interest in Developer (or in an Existing Owner) such that after such transaction there is a change of identity of the person or entity that has the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of voting securities, by contract or otherwise.

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

(h) "Developer Fees" shall mean those fees established, adopted, or imposed by the City pursuant to Section 66000 et seq., of the Government Code of the State of California or the California Subdivision Map Act to offset the impact of development on the City's capital facilities, including impact fees, linkage fees, exactions, assessments or fair share charges, or other similar impact fees imposed by the City on or in connection with new development. Notwithstanding the foregoing, Developer shall not be obligated to pay any Developer Fees in connection with the Project, as all Developer Fees are included within the "Public Benefit Contribution" (as defined below). Developer Fees do not mean or include Processing Fees.

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

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

(k) "Discretionary Action(s)" or "Discretionary Approval(s)" means an action which requires the exercise of judgment, deliberation or discretion on the part of the City, including any board, agency, commission or department and any officer or employee thereof, in

the process of approving or disapproving a particular activity, as distinguished from a Ministerial Permit or Ministerial Approval (as hereafter defined).

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

(m) "EIR" shall mean the final Environmental Impact Report (SCH No. 2006071107) which addresses the Project and was prepared, circulated and certified in accordance with applicable law, including, without limitation, CEQA.

(n) "EMS Fee" means the fee paid pursuant to the provisions of Section 10(e) of this Agreement, which payments may be used by the City for various public projects and programs.

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

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

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

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

(s) "Processing Fees" means all processing fees and charges required by the City that are applied uniformly to all construction or development related activity including, but not limited to, fees for land use applications, Building Permit applications, Building Permits, grading permits, hauling permits, encroachment permits, demolition permits, subdivision or parcel maps, lot line adjustments, street vacations, inspections, certificates of occupancy and plan check. Processing Fees shall not mean or include Developer Fees.

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

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

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

(w) "Public Benefit Contribution" means the payment from the Developer to the City pursuant to Section 10(d) of this Agreement, which payment may be used by the City for various public projects and programs, and which payment includes any and all Developer Fees (as defined above).

(x) "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).

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

(z) "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.

(aa) "Subsequent Project Approvals" shall mean all further Discretionary Actions or Discretionary Approvals, Ministerial Permits and Ministerial Approvals required or requested with respect to the Project, including, without limitation, any tentative subdivision

map, whether vesting or non-vesting. Following adoption or approval, a Subsequent Project Approval shall become a Project Approval.

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

2. Recitals of Premises, Purpose and Intent.

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

"The Legislature finds and declares that:

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

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

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

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

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

4. Application of Agreement. This Agreement shall apply to the development and use of the Property. Such development 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 two (2) years. If a vesting tentative subdivision map for the Project is approved by the City, then the term of this Agreement shall be extended until expiration of that vesting tentative map or approval and recordation of a final subdivision map for the Project, whichever is earlier. Additionally, if a final subdivision map for the Project is approved by the City, then the term of this Agreement shall be extended until the expiration of the vested rights that accompany the vesting tentative tract map for the Project. In addition to the above, at any time, the term may be extended by Developer for one year or more provided that the total extension period does not exceed three years. An extension by Developer pursuant to the prior sentence shall be effective upon written request of Developer provided to the City at least ten (10) days before the expiration of the term (including any previous extension) and a concurrent payment to the City of the following amounts: for the first year of extension, Developer shall pay five hundred thousand dollars (\$500,000), for the second year of extension, Developer shall pay seven hundred fifty thousand dollars (\$750,000) and for the third year of extension, Developer shall pay one million dollars (\$1,000,000). Notwithstanding the term set forth above, the obligation to pay the Environmental Mitigation and Sustainability Fee pursuant to Section 10 shall continue indefinitely as provided in Sections 10 and 13.

Additionally, in the event of any litigation or referendum initiated by third parties to attack, set aside, modify, void or annul this Agreement, any of the Project Approvals, or the EIR (a "Challenge"), the term of this Agreement shall be tolled for the period during which such Challenge is proceeding until fully and finally resolved.

6. Timing of Development. The Parties acknowledge that Developer cannot at this time predict when or if the Property will be developed. Such decisions depend upon numerous factors that are not within the control of Developer. Because the California Supreme Court held in *Pardee Construction Co. v. City of Camarillo* (1984) 37 Cal. 3d 465, (the Pardee Case) that the failure of the parties therein to provide for the timing of development resulted in a later adopted initiative restricting the timing of development to prevail over such parties' agreement, it is the Parties' intent to cure that deficiency by acknowledging and providing that Developer shall have the right to develop the Property consistent with the Project Approvals and the Conditions of Approval in such order and at such rate and at such times as Developer deems appropriate within the exercise of its sole and subjective business judgment during the term of this Agreement. This provision shall be broadly construed to provide Developer the greatest amount of time and flexibility (in light of the Pardee Case and/or any other similar or distinguishing cases) as necessary or appropriate to permit Developer to complete the development of the project irrespective of later adopted rules, regulations or initiatives which would otherwise restrict the Developer's time to complete the Project.

7. Permitted Uses; Density; Building Heights and Sizes; Required Dedications. The City and Developer hereby agree that the permitted uses of the Property, the density and intensity of such uses, the maximum heights and sizes of the buildings and improvements to be constructed on the Property, and the reservation and dedication of land for public purposes, if

any, required in connection with the development of the Property shall be as set forth in and consistent with the Project Approvals, as they may be lawfully amended from time to time. Developer shall not cause or permit any use of the Property that is not permitted by the Project Approvals, and shall not cause or permit the construction of any building or improvement that exceeds the maximum density, building heights and/or building sizes set forth in or otherwise required by the Project Approvals, as they may be lawfully amended from time to time. In addition, Developer shall not permit the use of the Property for an Adult Entertainment Business or Sexual Encounter Center as defined in the zoning regulations of the City of Beverly Hills.

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

9. Changes in Applicable Rules.

(a) Non-Application of Changes in Applicable Rules. The adoption of any Subsequent Land Use Regulations after the Effective Date of this Agreement, or any change in, or addition to, the Applicable Rules (other than changes in Processing Fees as provided in this Agreement), including, without limitation, any changes in the General Plan or the Zoning Regulations (including any regulation relating to the timing, sequencing, or phasing of the Project or construction of all or any part of the Project), adopted after the Effective Date of this Agreement, including, without limitation, any such change by means of ordinance, initiative, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by any board, agency, commission or department of the City, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict in any way with or be more restrictive than the Applicable Rules or Developer's entitlements under the Project Approvals, shall not be applied to the Project during the term of this Agreement unless such changes represent an exercise of the City's Reserved Powers.

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

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

and conclusive. However, nothing in this Agreement shall deprive Developer of the rights possessed by any other property owner, absent vested rights, to challenge the appropriateness of the application to the Project of the change or addition.

(d) Changes in Processing Fees Under Applicable Rules. The Project shall be subject to any increase in Processing Fees imposed by the City, provided that such a change is applied on a Citywide basis.

#### 10. Developer's Obligations.

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

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

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

(d) Public Benefit Contribution. Developer shall pay to the City a Public Benefit Contribution of thirty million dollars (\$30,000,000).

(i) Timing of Payment. Developer shall pay to the City thirteen million dollars (\$13,000,000) of the Public Benefit Contribution no later than ninety (90) days after issuance of the first Building Permit for the Project. Developer shall pay to the City an additional six million five hundred thousand dollars (\$6,500,000) of the Public Benefit Contribution no later than four hundred fifty five (455) days after issuance of the first Building Permit for the Project. Developer shall pay to the City the remaining ten million five hundred thousand dollars (\$10,500,000) of the Public Benefit Contribution prior to issuance of the first certificate of occupancy (or temporary certificate of occupancy) for any portion of the Project.

(ii) Security for Payment. Developer shall secure the payment of the Public Benefit Contribution by arranging for an irrevocable standby letter of credit to be issued to the City, as beneficiary, for thirty million dollars (\$30,000,000) guaranteeing payment of the Public Benefit Contribution in form and content satisfactory to the city attorney. The standby letter of credit shall be issued to the City before the City issues a Building Permit for the Project. The letter of credit shall be issued by a financial institution acceptable to the City with a presence in California at which the letter of credit may be presented for payment. The City acknowledges that the following prospective issuers are acceptable to the City: Bank of America, Wells Fargo Bank, Citibank, City National Bank, and J.P. Morgan Chase Bank. The letter of credit shall provide that the City may fully draw upon such letter of credit in the event that: (x) the

City issues a written statement that, after all applicable notice and cure periods have expired, Developer has failed to make any payment on or before the deadlines set forth in subsection (i) above or (y) the letter of credit has not been renewed or replaced at least thirty (30) days prior to its expiry date and all payments have not been made pursuant to subsection (i) above. The City shall permit adjustment of the amount of the letter of credit upon receipt of payments under subsection (i). The adjustment shall reduce the amount secured by the letter of credit to reflect the payments paid to the City and those payments still owed to the City.

(iii) *Affordable Housing Contribution.* The City Council shall place a portion of the Public Benefit Contribution into an affordable housing fund that shall be used by the City for the purpose of promoting the provision of affordable housing in the City of Beverly Hills, or as otherwise may be permitted by State law. The amount to be placed in the affordable housing fund shall be three million dollars (\$3,000,000).

(e) Environmental Mitigation and Sustainability Fee

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

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

(f) Lien for EMS Fee Payable Upon Sale. Developer hereby grants to the City, with power of sale, a lien on the Property, each lot or parcel created by the tentative tract map for the Project, including without limitation, following the creation thereof, each condominium unit in the Project, to secure the payment of the EMS Fee payable upon each Sales

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

(g) Public Open Space Easement. Prior to issuance of a Building Permit for the Project, Developer shall execute an open space easement in favor of the City for the public gardens as shown in the Specific Plan, and as shown in Exhibit B attached hereto and incorporated herein by reference. The open space easement shall ensure that the public gardens are maintained as public open space for the life of the Project (which maintenance, once the Project's property owners association (the "Association") becomes operational, shall be the responsibility of the Association). The open space easement shall be in form and substance satisfactory to the City Attorney and substantially in the form set forth in Exhibit C.

(h) Gateways. Prior to issuance of a certificate of occupancy (or temporary certificate of occupancy) for the first of the Project's condominium units, Developer shall construct or install two significant "gateway statements" to enhance the significance of the entry to Beverly Hills. One gateway statement shall be located along Wilshire Boulevard and the other gateway statement shall be located along Santa Monica Boulevard. Both gateway statements shall be provided on the Project site in an area that is clearly visible to the general public entering Beverly Hills. The gateway statements may take the form of public art, landscaping, architectural features such as fountains, or other features satisfactory to the City of Beverly Hills.

(i) Design. Prior to issuance of a Building Permit for the Project, Developer shall provide conceptual drawings depicting the gateway statements and their location. Prior to issuance of a certificate of occupancy (or temporary certificate of occupancy)

for the first of the Project's condominium units, the proposed gateway statements shall be reviewed and approved by the City's Architectural Commission. The aggregate cost of constructing, or purchasing and installing, the gateway statements shall not be required to exceed two hundred fifty thousand dollars (\$250,000). If the gateway statements include public art, the City's Fine Arts Commission shall review and approve the public art prior to its installation. Decisions of the Architectural Commission and Fine Arts Commission shall be appealable to the Planning Commission, and decisions of the Planning Commission shall be appealable to the City Council, provided that all applicable appeal fees shall be paid. Any appeals shall be filed within ten (10) days of the final decision that is the subject of the appeal. The gateway statements shall be constructed or installed in substantial compliance with the approved drawings.

(ii) *Public Art Requirement.* The gateway statements, combined with a payment of two hundred fifty thousand dollars (\$250,000) into the fund established pursuant to Beverly Hills Municipal Code Section 3-1-808 shall satisfy Developer's obligations under the Beverly Hills Public Art Ordinance.

(iii) *Maintenance.* Until the Association becomes operational, Developer shall own the gateway statements and maintain the gateway statements in good condition and repair. Once the Association becomes operational the gateway statements shall be deemed part of the Project's common area and shall be maintained by the Association. Additionally, the Developer, initially, and thereafter the Association, shall maintain insurance satisfactory to the City's Risk Manager and City Attorney and in an amount equal to the value of the gateway statements, which insures the gateway statements against any loss or damage, including vandalism. Upon damage, the party tasked with maintaining the gateway statements shall timely repair or replace the gateway statements, as appropriate, to the reasonable satisfaction of the City's Director of Community Development. Prior to occupancy of the Project's first condominium unit, Developer shall record a covenant in favor of the City (or as part of the Project's recorded declaration of covenants, conditions and restrictions ("CC&Rs")) evidencing the obligation to maintain the gateway statements in accordance with this Section 10(h). The covenant shall be in form and substance reasonably satisfactory to the City Attorney and shall not be subject to amendment without the City's reasonable consent.

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

(j) Access for City Shuttle. Prior to issuance of a Building Permit for the Project, Developer shall dedicate to the City a non-exclusive easement to allow any City sponsored, financed or operated shuttle service vehicle to access the Project site for the purpose of picking up or dropping off residents and visitors to the site at the valet area for the commercial uses on the Project site (to the extent the Project includes valet parking, or otherwise at the commercial parking entrance area). The easement shall be in form and substance satisfactory to the City Attorney and substantially in the form set forth in Exhibit E.

(k) Beverly Hills Unified School District Benefit Fee. Prior to the issuance of a Building Permit for the Project, Developer shall pay to the Beverly Hills Unified School District a school benefit fee in the amount of one million dollars (\$1,000,000).

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

11. Issuance of Building Permit. The City shall be under no obligation to issue a Building Permit for the Project until: (i) all the fees and other obligations set forth in Section 10 and due before issuance of a Building Permit have been fully paid or otherwise fulfilled; and (ii) any lender whose lien is prior and superior to the lien created by this Agreement or any conveyance or covenant required by this Agreement shall have agreed to subordinate its lien to the lien, conveyances and covenants created and required by this Agreement.

12. Default. Failure by City or Developer to perform any term or provision of this Agreement for a period of thirty (30) days from the receipt of written notice thereof from the other shall constitute a default under this Agreement, subject to extensions of time by mutual consent in writing. Said notice shall specify in detail the nature of the alleged default and the manner in which said default may be satisfactorily cured. If the nature of the alleged default is such that it cannot reasonably be cured within such thirty (30) day period, the commencement of the cure within such time period and the diligent prosecution to completion of the cure shall be deemed a cure within such period. Notwithstanding the above, failure to make a Public Benefit Contribution payment shall not constitute a default by Developer if the City has presented the standby letter of credit provided pursuant to Section 10 and been paid the amount of the applicable portion of the Public Benefit Contribution by the issuer of the letter of credit.

Subject to the foregoing, after notice and expiration of the thirty (30) day period without cure, the notifying party, at its option, shall have all rights and remedies provided by law and/or may give notice of intent to terminate this Agreement pursuant to Government Code Section 65868. Following such notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) calendar days in the manner set forth in Government Code Sections 65867 and 65868. Following consideration of the evidence presented in said review before the City Council and a determination that a default exists, the Party alleging the default by the other Party may give written notice of termination of this

Agreement to the other Party. Upon any such termination, the respective rights, duties and obligations of the Parties hereto shall without further action cease as of the date of such termination (except as to duties and obligations that arose prior to the date of such termination). In no event shall monetary damages be available against the City for any alleged default or breach by the City. In no event shall consequential damages be available against Developer or any seller of any portion of the Property for any alleged default or breach of this Agreement.

13. Termination and Expiration. Upon the expiration of the term or termination of this Agreement, this Agreement shall terminate and be of no further force or effect; provided, however, such termination shall not affect Developer's obligations under Section 10, nor the obligation to pay any claim of any Party hereto arising out of the provisions of this Agreement prior to the effective date of such termination. The obligations under Section 10, and the obligation to pay any claim arising before the effective date of termination shall continue after termination in perpetuity or until completed.

14. Transfers of Interests in Property or Agreement. In the event of a proposed transfer of interest in the Property or in this Agreement by Developer to a transferee other than a retail purchaser of an individual residential condominium unit, Developer agrees to provide the City at least thirty (30) days written notice of such proposed transfer and shall provide satisfactory evidence that the transferee will assume in writing through an assignment and assumption agreement all remaining obligations of Developer under this Agreement. The assignment and assumption agreement shall be in a form satisfactory to the City Attorney. However, Developer has no obligation to obtain the consent of the City to assign this Agreement to a transferee. Notwithstanding the foregoing: (i) the terms, covenants and conditions of this Agreement shall be binding upon any transferee whether or not such an assignment and assumption agreement is signed by the assignee upon acquiring the Property; and (ii) no such transfer shall relieve Developer (transferor) of any obligations under this Agreement.

15. 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. Any Mortgagee shall be entitled to the rights and privileges set forth in this Section.

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

notification shall be provided to such Mortgagee at such time as such notification is delivered to Developer.

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

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

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

#### 17. Indemnification.

(a) Developer agrees to and shall indemnify, hold harmless, and defend, the City and its respective officers, officials, members, agents, employees, and representatives, from liability or claims for death or personal injury and claims for property damage which may arise from the acts, errors, and/or omissions of Developer or its contractors, subcontractors, agents, employees or other persons acting on its behalf in relation to the Project and/or in any manner arising from this Agreement. The foregoing indemnity applies to all deaths, injuries, and damages, and claims therefor, suffered or alleged to have been suffered by reason of the acts, errors, and/or omissions referred to in this Section 17, regardless of whether or not the City prepared, supplied, or approved plans or specifications, or both. In the event of litigation, the City agrees, at no cost to the City, to cooperate with Developer. This indemnification, hold harmless and defense requirement shall survive the termination or expiration of this Agreement. The City reserves the right, in cases subject to this indemnity, to reasonably approve the attorney selected by Developer to defend Developer and the City in any such action.

(b) In the event of any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the EIR prepared and certified for the Project, Developer shall defend, at its own expense, the action or proceeding. In addition, Developer shall reimburse the City for the City's costs in defending any court action or proceeding challenging the validity of this Agreement, any of the Project Approvals or the EIR and Developer shall also pay any award of costs, expenses and fees that the court having jurisdiction over such challenge makes in favor of any challenger and against the City. Developer shall cooperate with the City in any such defense as the City may reasonably request and may not resolve such challenge without the agreement of the City. In the event Developer fails or refuses to reimburse the City for its cost to defend any challenge to this Agreement, the Project Approvals or the EIR, the City shall have the right to terminate this Agreement, subject to the notice and cure requirements of Section 12 above. In all events, the City shall have the right to resolve any challenge in any manner, in its sole discretion, provided, however, Developer's consent shall be required if the resolution of the challenge shall require a payment by Developer or limit Developer's rights under this Agreement.

In order to ensure compliance with this Section 17(b), within twenty (20) days after notification by the City of the filing of any claim, action or proceeding to attack, set aside, void or annul this Agreement, any of the Project Approvals or the EIR prepared and adopted for the Project, Developer shall deposit with the City cash or other security in the amount of one hundred thousand dollars (\$100,000), satisfactory in form to the City Attorney, guaranteeing indemnification or reimbursement to the City of all costs related to any action triggering the obligations of this Section. If the City is required to draw on that cash or security to indemnify or reimburse itself for such costs, Developer shall restore the deposit to its original amount within fifteen (15) days after notice from the City. Additionally, if at any time the City Attorney determines that an additional deposit or additional security up to an additional fifty thousand dollars (\$50,000.00) is necessary to secure the obligations of this section, Developer shall provide such additional security within fifteen (15) days of notice from the City Attorney. The City shall promptly notify Developer of any claim, action or proceeding within the scope of this Section and the City shall cooperate fully in the defense of any such claim or action, but shall have the right to resolve any challenge, in any manner, in its sole discretion, provided, however, Developer's consent shall be required if the resolution of the challenge shall require a payment by Developer or limit Developer's rights under this Agreement.

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

**19. Recordation.** The City Clerk shall record a copy of this Agreement with the Registrar-Recorder of the County of Los Angeles no later than ten (10) days after the effective date of the ordinance approving this Agreement. Developer shall reimburse the City for all costs of such recording, if any.

**20. No Third Party Beneficiaries.** The only signatories to this Agreement are the City and Developer. There are no third party beneficiaries and this Agreement is not intended and

shall not be construed to benefit or be enforceable by any other person whatsoever other than the successors in interest of the signatories.

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

22. Certificate of Compliance. At any time during the term of this Agreement, any Mortgagee or other party may request any Party to this Agreement to confirm that (i) this Agreement is unmodified and in full force and effect (or if there have been modifications hereto, that this Agreement is in full force and effect as modified and stating the date and nature of such modifications) and that (ii) to the best of such Party's knowledge, no defaults exist under this Agreement or if defaults do exist, to describe the nature of such defaults and (iii) any other information reasonably requested. Each Party hereby agrees to provide a certificate to such lender or other party within ten (10) Business Days of receipt of the written request therefor.

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

24. Periodic Reviews.

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

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

(c) Procedure for Review. The City's Director of Community Development (the "Community Development Director") shall conduct the review contemplated by this Section 24 to ascertain whether Developer has complied in good faith with the terms and conditions of this Agreement during the period for which the review is conducted. The Community Development Director shall give Developer written notice that any such review has been commenced, and shall give Developer at least twenty (20) days after Developer's receipt of such notice to provide to the Community Development Director such information as Developer

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

(d) Result of Review. If, following such a review, the Community Development Director finds good faith compliance by Developer with the terms and conditions of this Agreement, the Community Development Director shall issue to Developer an executed certificate of compliance, certifying Developer's good faith compliance with the terms and conditions of this Agreement through the period of such review. Such certificate shall be in recordable form, and shall contain such information as may be necessary to impart constructive record notice of the finding of good faith compliance hereunder. Developer shall have the right to record such certificate of compliance in the Official Records of the County of Los Angeles.

If, following such a review, the Community Development Director finds that Developer has not complied in good faith with the terms and conditions of this Agreement, the Community Development Director shall specify in writing the respects in which Developer has failed to so comply. The Community Development Director shall provide Developer with written notice of such noncompliance as provided in Section 12 and the City may follow the default procedures as set forth in Section 12.

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

## 25. Future Litigation Expenses.

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

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

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

27. Amendment. This Agreement may be amended from time to time, in whole or in part, by mutual written consent of the Parties or their successors in interest, as follows:

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

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

28. Alterations. No alteration, amendment or modification of this Agreement shall be valid unless evidenced by a written instrument executed by the parties hereto with the same formality as this Agreement, and made in the manner required by the Development Agreement Act.

29. Waiver. The failure of either Party hereto to insist in any one or more instances upon the strict performance of any of the covenants, agreements, terms, provisions or conditions of this Agreement, or to exercise any election or option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenant, agreement, term, provision, condition, election or option, but the same shall continue and remain in full force and effect. No waiver by any Party hereto of any covenant, agreement, term, provision or condition of this Agreement shall be deemed to have been made unless expressed in writing and signed by an appropriate official or officer on behalf of such Party.

30. Severability. If any article, section, subsection, term or provision of this Agreement, or the application thereof to any party or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of the article, section, subsection, term or provision of this Agreement, or the application of the same to parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining article, section, subsection, term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law, except that if any provision of Section 10 is held invalid or unenforceable before approval of a tentative subdivision map for the Project, then this entire Agreement shall be void and unenforceable and of no further force and effect.

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

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

To Developer: Project Lotus LLC  
Attn: Manager  
Rodeo Collection  
424 North Rodeo Drive  
Third Floor  
Beverly Hills, CA 90210

With Copy to: Candy & Candy  
100 Brompton Road, Knightsbridge  
London  
SW3 1ER  
United Kingdom

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

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

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

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

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

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

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

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

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

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

CITY OF BEVERLY HILLS,  
A Municipal Corporation

\_\_\_\_\_  
BARRY BRUCKER  
Mayor of the City of  
Beverly Hills, California

ATTEST:

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

PROJECT LOTUS LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM:

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

APPROVED AS TO CONTENT:

\_\_\_\_\_  
RODERICK J. WOOD  
City Manager

**EXHIBIT A**  
**Legal Description**

**9900 WILSHIRE LEGAL DESCRIPTION**

That certain real property located in the State of California, County of Los Angeles described as follows:

**PARCEL 1:**

THAT PORTION OF BLOCK 33 OF BEVERLY, SHEET 2, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 13, PAGES 62 AND 63 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWESTERLY CORNER OF LOT 4 OF SAID BLOCK 33; THENCE ALONG THE NORTHERLY LINE OF LOT 4 AND A PORTION OF LOT 3 OF SAID BLOCK 33, NORTH 89° 55' 00" EAST 300.00 FEET TO A POINT ON THE NORTHERLY LINE OF LOT 3 OF SAID BLOCK 33; THENCE SOUTH 0° 05' 00" EAST 177.00 FEET; THENCE SOUTHEASTERLY SOUTH 38° 46' 45" EAST 583.79 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF LOT 7 OF SAID BLOCK 33, DISTANT 431.22 FEET FROM THE MOST SOUTHERLY CORNER OF LOT 6 OF SAID BLOCK 33; THENCE SOUTH 50° 19' 15" WEST 431.22 FEET TO THE MOST SOUTHERLY CORNER OF LOT 6 OF SAID BLOCK 33; THENCE ALONG THE SOUTHWESTERLY LINE OF LOTS 6 AND 4 OF SAID BLOCK 33, NORTH 30° 58' 05" WEST 798.43 FEET TO THE MOST SOUTHERLY CORNER OF LOT 5 OF SAID BLOCK 33; THENCE ALONG THE SOUTHEASTERLY LINE OF LOT 5 NORTH 19° 03' 30" EAST 235.27 FEET TO THE POINT OF BEGINNING.

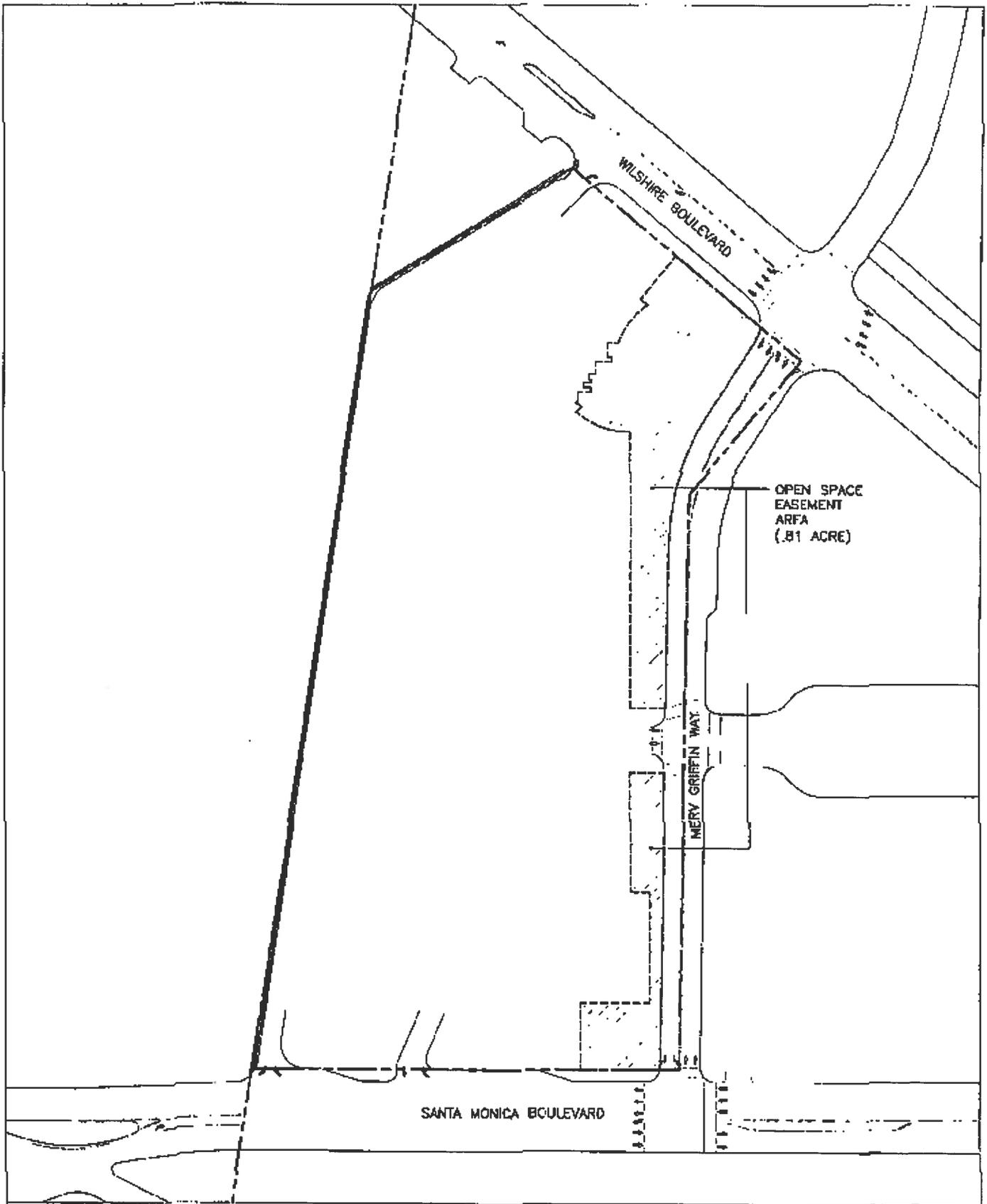
**PARCEL 2:**

AN EASEMENT FOR PRIVATE ROAD PURPOSES OVER THE EASTERLY 20 FEET OF THOSE PORTIONS OF LOTS 3 AND 7 IN BLOCK 33 OF BEVERLY, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 13 PAGES 62 AND 63 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, INCLUDED WITHIN A STRIP OF LAND, 40 FEET WIDE, THE CENTER LINE OF WHICH IS DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE NORTHERLY LINE OF SAID LOT 3, DISTANT NORTH 89° 55' 00" EAST 300 FEET MEASURED ALONG THE NORTHERLY LINE OF SAID BLOCK 33 FROM THE NORTHWEST CORNER OF LOT 4 OF SAID BLOCK 33; THENCE SOUTH 0° 05' 00" EAST 177.00 FEET; THENCE SOUTHEASTERLY SOUTH 38° 46' 45" EAST 583.79 FEET TO A POINT ON THE SOUTHEASTERLY LINE OF LOT 7 OF SAID BLOCK 33, DISTANT 431.22 FEET FROM THE MOST SOUTHERLY CORNER OF LOT 6 OF SAID BLOCK 33, AS GRANTED BY DEED AND AGREEMENT DATED DECEMBER 20, 1950, AND RECORDED DECEMBER 22, 1950, IN BOOK 35141, PAGE 331, OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY.

**EXHIBIT B**

**Map Exhibit of Public Open Space Area**



**ATTACHMENT B**  
9900 WILSHIRE  
PUBLIC OPEN SPACE

**EXHIBIT C**

**Form of Open Space Easement**

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:  City Clerk City of Beverly Hills 455 N. Rexford Drive Beverly Hills, California 90210	
---	--

THE AREA ABOVE IS RESERVED FOR RECORDER'S USE

A.P.N.: \_\_\_\_\_

Exempt from recording fees pursuant to Government Code § 27383.

Exempt from documentary transfer taxes pursuant to Revenue Taxation Code § 11922.

**OPEN SPACE EASEMENT AGREEMENT**

This OPEN SPACE EASEMENT AGREEMENT (the "Agreement") is entered into as of \_\_\_\_\_, 2008 (the "Effective Date"), by and between PROJECT LOTUS, LLC, a Delaware limited liability company ("Grantor") and THE CITY OF BEVERLY HILLS, a municipal corporation ("Grantee").

**RECITALS**

A. Grantor is the owner of the land described on Exhibit "A" and the improvements thereon (collectively "Grantor Parcel").

B. Grantor and Grantee have entered into a Development Agreement dated \_\_\_\_\_, 2008 (the "Development Agreement") in connection with a proposed development ("Development") on the Grantor Parcel.

C. The Development Agreement requires that Grantor enter into this Agreement with Grantee prior to the issuance of any building permit for the proposed development.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee, a perpetual easement (the "Easement") in and over the portion of the Grantor Parcel described on Exhibit "B" (the "Easement Area").

2. Purpose of Easement. The purpose of the easement shall be for access to and use by the public of the Public Gardens identified on Exhibit "B." The Public Gardens shall be open to the public pursuant to the easement from 8:00 am to dusk (or as otherwise established by the property owner and reasonably approved by the City's Director of Community Development),

provided that the Public Gardens may be closed to the public from time to time for maintenance and repairs, improvement work, and emergencies, as reasonably required.

3. Maintenance. Grantor shall be and remain responsible for the maintenance of the Easement Areas as public open space. Once the Development's property owner's association (the "Association") becomes operational, Grantor may transfer and assign the maintenance obligations to the Association, provided title to the Easement Area is also conveyed the Association. The maintenance obligations may not be otherwise transferred or assigned to any other third-party without the prior written approval and consent of the City Manager, in the exercise of the City's sole, absolute and unfettered discretion.

4. Property Taxes; Liens. Grantor shall pay, prior to delinquency, all property taxes, special taxes and assessments assessed against the Easement Area, and shall keep the Easement Area free of all liens except for liens securing financing for the Development, which must be subordinate or subordinated to this Agreement and the Easement.

5. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Agreement or the Easement, Grantee shall give written notice to Grantor of such violation. If Grantor fails to cure the violation within fifteen (15) days after said written notice is given, or said cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin to cure within the fifteen (15) day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Grantor with the terms of this Agreement or the Easement, to recover any damages to which Grantee may be entitled for violation by Grantor of the terms of this Agreement or the Easement, or may cure the violation in which event Grantor shall reimburse Grantee for the costs incurred by Grantee in connection with violation within ten (10) days after written demand with evidence of such costs. Additionally, without notice or the expiration of any cure period, Grantee may enjoin the violation, ex parte, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief.

6. Miscellaneous.

(a) Notices. Any notice to be given under or in connection with this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (iii) two (2) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to Grantor:                      Project Lotus LLC  
  Attn: Manager  
  Rodeo Collection  
  424 North Rodeo Drive  
  Third Floor  
  Beverly Hills, CA 90210

With a copy to: Candy & Candy  
100 Brompton Road, Knightsbridge  
London  
SW3 1ER  
United Kingdom

If to Grantee: City of Beverly Hills  
Beverly Hills City Hall  
455 North Rexford Drive, Third Floor  
Beverly Hills, California 90210  
Attn: City Manager

With a copy to: City of Beverly Hills  
455 North Rexford Drive, Suite 220  
Beverly Hills, California 90210  
Attn: City Attorney

(b) Assignment; Successors and Assigns. Upon prior written notice to Grantee, the Grantor may assign its obligations hereunder to the property owners' association for the Development provided title to the Easement Area is also conveyed to such association, but this Agreement may not be assigned to any other person or entity (except as collateral to a lender providing financing for the development) without the prior written consent of the City Manager.

(c) Runs With Land. The covenants and agreements contained herein and the rights, privileges and easements herein granted shall run with, burden and shall be appurtenant to the properties described herein.

(d) Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

(e) Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the validity of the other provisions of this Agreement shall in no way be affected thereby.

(f) Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(g) Further Acts. Each of the parties shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Agreement (including, without limitation, obtaining and delivering to Grantee prior to the recordation of this Agreement reasonable subordination agreements from the holders of any liens encumbering the Easement Area that are or might be senior to this Agreement or the Easement as of the date of the recordation of this Agreement).

(h) Attorneys' Fees. If any action shall be commenced to enforce the terms of this Agreement or to declare the rights of the parties hereunder, the prevailing party shall be entitled to recover all of its costs and expenses (including, but not limited to, its actual attorneys'

fees) from the nonprevailing party. In addition to the foregoing award of attorneys' fees and other litigation costs to the prevailing party, the prevailing party in any lawsuit on this Agreement shall be entitled to its attorneys' fees and other litigation costs 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. This provision shall survive the termination of this Agreement.

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

**GRANTOR:**

PROJECT LOTUS, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANTEE:**

THE CITY OF BEVERLY HILLS,  
a municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

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

Approved as to form:

\_\_\_\_\_  
LAURENCE WIENER  
City Attorney

Approved as to content:

\_\_\_\_\_  
RODERICK J. WOOD  
City Manager

**ACKNOWLEDGMENT**

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

**ACKNOWLEDGMENT**

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

EXHIBIT "A"

LEGAL DESCRIPTION OF THE GRANTOR PARCEL

**EXHIBIT "B"**

**DESCRIPTION OF EASEMENT AREA**



**EXHIBIT D**

**Form of Bus Turnout Easement Agreement**

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:  City Clerk City of Beverly Hills 455 N. Rexford Drive Beverly Hills, California 90210	THE AREA ABOVE IS RESERVED FOR RECORDER'S USE
---	---

A.P.N.: \_\_\_\_\_

Exempt from recording fees pursuant to Government Code § 27383.

Exempt from documentary transfer taxes pursuant to Revenue Taxation Code § 11922.

**BUS TURNOUT EASEMENT AGREEMENT**

This BUS TURNOUT EASEMENT AGREEMENT (the "Agreement") is entered into as of \_\_\_\_\_, 2008 (the "Effective Date"), by and between PROJECT LOTUS, LLC, a Delaware limited liability company ("Grantor") and THE CITY OF BEVERLY HILLS, a municipal corporation ("Grantee").

**RECITALS**

A. Grantor is the owner of the land described on Exhibit "A" and the improvements thereon ("Grantor Parcel").

B. Grantor and Grantee have entered into a Development Agreement dated \_\_\_\_\_, 2008 (the "Development Agreement") in connection with a proposed development ("Development") on the Grantor Parcel.

C. The Development Agreement requires that Grantor enter into this Agreement prior to the issuance of a building permit with Grantee to provide right of way easements for bus turnouts along the Development's Wilshire Boulevard and Santa Monica Boulevard frontages that are assignable to the Metropolitan Transportation Authority (the "MTA") or any other governmental entity responsible for operating public bus service along those roadways.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee two perpetual easements in and over the Grantor Parcel described on Exhibit B (the "Easements") as follows: (i) one easement sufficient to provide a sidewalk area, behind bus turnout along the Development's Wilshire Boulevard frontage, and (ii) one easement sufficient to provide a sidewalk area, behind bus turnout along the Development's Santa Monica Boulevard frontage.

2. Purpose of Easement. The purpose of the Easements shall be for the construction, installation, operation, access to (including access by the public), maintenance, improvement and repair/replacement (as necessary) of sidewalk area, behind bus turnouts.

3. Property Taxes; Liens. Grantor shall pay, prior to delinquency, all property taxes, special taxes and assessments assessed against the easement areas, and shall keep the easement areas free of all liens except for liens securing financing for the Development, which must be subordinate or subordinated to this Agreement and the Easement.

4. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Agreement or the Easement, Grantee shall give written notice to Grantor of such violation. If Grantor fails to cure the violation within fifteen (15) days after said written notice is given, or said cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin to cure within the fifteen (15) day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Grantor with the terms of this Agreement or the Easement, to recover any damages to which Grantee may be entitled for violation by Grantor of the terms of this Agreement or the Easement, or may cure the violation in which event Grantor shall reimburse Grantee for the costs incurred by Grantee in connection with violation within ten (10) days after written demand with evidence of such costs. Additionally, without notice or the expiration of any cure period, Grantee may enjoin the violation, ex parte, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief.

5. Miscellaneous.

(a) Notices. Any notice to be given under or in connection with this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (iii) two (2) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to Grantor:           Project Lotus LLC  
                                  Attn: Manager  
                                  Rodeo Collection  
                                  424 North Rodeo Drive  
                                  Third Floor  
                                  Beverly Hills, CA 90210

With a copy to:         Candy & Candy  
                                  100 Brompton Road, Knightsbridge  
                                  London  
                                  SW3 1ER  
                                  United Kingdom

If to Grantee: City of Beverly Hills  
Beverly Hills City Hall  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attn: City Manager

With a copy to: City of Beverly Hills  
455 North Rexford Drive, Suite 220  
Beverly Hills, California 90210  
Attn: City Attorney

(b) Assignment; Successors and Assigns. The Grantee may assign its rights and obligations hereunder to the MTA or to or any other governmental entity responsible for operating public bus service along Wilshire Boulevard or Santa Monica Boulevard and, upon a written assumption by such assignee of the obligations hereunder, Grantee shall be released from all obligations and liabilities arising after the date of the assumption. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, each party, its successors, assigns and successors-in-interest.

(c) Running With Land. The covenants and agreements contained herein and the rights, privileges and easements herein granted shall run with, burden and shall be appurtenant to the properties described herein.

(d) Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

(e) Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the validity of the other provisions of this Agreement shall in no way be affected thereby.

(f) Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(g) Further Acts. Each of the parties shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Agreement (including, without limitation, obtaining and delivering to Grantee prior to the recordation of this Agreement reasonable subordination agreements from the holders of any liens encumbering the easement areas that are or might be senior to this Agreement as of the date of the recordation of this Agreement).

(h) Attorneys' Fees. If any action shall be commenced to enforce the terms of this Agreement or to declare the rights of the parties hereunder, the prevailing party shall be entitled to recover all of its costs and expenses (including, but not limited to, its actual attorneys' fees) from the nonprevailing party. In addition to the foregoing award of attorneys' fees and

other litigation costs to the prevailing party, the prevailing party in any lawsuit on this Agreement shall be entitled to its attorneys' fees and other litigation costs 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. This provision shall survive the termination of this Agreement.

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

**GRANTOR:**

PROJECT LOTUS, LLC,  
a Delaware limited liability company

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

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

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

**GRANTEE:**

THE CITY OF BEVERLY HILLS

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

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

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

**ATTEST:**

\_\_\_\_\_(SEAL)

BYRON POPE  
City Clerk

Approved as to form:

Approved as to content:

\_\_\_\_\_  
LAURENCE WIENER  
City Attorney

\_\_\_\_\_  
RODERICK J. WOOD  
City Manager

**ACKNOWLEDGMENT**

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

**ACKNOWLEDGMENT**

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE GRANTOR PARCEL**

**EXHIBIT "B"**

**DESCRIPTION OF EASEMENTS**



EXHIBIT E

Form of Non-exclusive Easement to Allow Shuttle Service Vehicle Access to Project

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:  City Clerk City of Beverly Hills 455 N. Rexford Drive Beverly Hills, California 90210	           THE AREA ABOVE IS RESERVED FOR RECORDER'S USE
--	---

A.P.N.: \_\_\_\_\_

Exempt from recording fees pursuant to Government Code § 27383.

Exempt from documentary transfer taxes pursuant to Revenue Taxation Code § 11922.

**SHUTTLE ACCESS EASEMENT AGREEMENT**

This SHUTTLE ACCESS EASEMENT AGREEMENT (the "Agreement") is entered into as of \_\_\_\_\_, 2008 (the "Effective Date"), by and between PROJECT LOTUS, LLC, a Delaware limited liability company ("Grantor") and THE CITY OF BEVERLY HILLS, a municipal corporation ("Grantee").

**RECITALS**

- A. Grantor is the owner of the land described on Exhibit "A" and the improvements thereon (collectively "Grantor Parcel").
- B. Grantor and Grantee have entered into a Development Agreement dated \_\_\_\_\_, 2008 (the "Development Agreement") in connection with a proposed development ("Development") on the Grantor Parcel.
- C. The Development Agreement requires that Grantor enter into this Agreement with Grantee prior to the issuance of any building permit for the proposed development.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. Grant of Easement. Grantor hereby grants to Grantee, a non-exclusive perpetual easement ("Easement") in and over the portion of the Grantor Parcel described on Exhibit "B" (the "Easement Area").
- 2. Purpose of Easement. The purpose of the easement shall be for the ingress, egress and the loading and unloading of members of the public by any shuttle vehicle operated by a shuttle vehicle service designated in writing to Grantor from time to time by the City Manager.
- 3. Property Taxes; Liens. Grantor shall pay, prior to delinquency, all property taxes, special taxes and assessments assessed against the Easement Area, and shall keep the Easement

Area free of all liens except for liens securing financing for the Development, which must be subordinate or subordinated to this Agreement and the Easement.

4. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Agreement or the Easement, Grantee shall give written notice to Grantor of such violation. If Grantor fails to cure the violation within fifteen (15) days after said written notice is given, or said cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin to cure within the fifteen (15) day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Grantor with the terms of this Agreement or the Easement, to recover any damages to which Grantee may be entitled for violation by Grantor of the terms of this Agreement or the Easement, or may cure the violation in which event Grantor shall reimburse Grantee for the costs incurred by Grantee in connection with violation within ten (10) days after written demand with evidence of such costs. Additionally, without notice or the expiration of any cure period, Grantee may enjoin the violation, ex parte, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief.

5. Miscellaneous.

(a) Notices. Any notice to be given under or in connection with this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable overnight courier service for next day delivery, or (iii) two (2) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to Grantor:           Project Lotus LLC  
                                  Attn: Manager  
                                  Rodeo Collection  
                                  424 North Rodeo Drive  
                                  Third Floor  
                                  Beverly Hills, CA 90210

With a copy to:         Candy & Candy  
                                  100 Brompton Road, Knightsbridge  
                                  London  
                                  SW3 1ER  
                                  United Kingdom

If to Grantee:           City of Beverly Hills  
                                  Beverly Hills City Hall  
                                  455 North Rexford Drive, Third Floor  
                                  Beverly Hills, California 90210  
                                  Attn: City Manager

With a copy to: City of Beverly Hills  
155 North Rexford Drive, Suite 220  
Beverly Hills, California 90210  
Attn: City Attorney

(b) Assignment; Successors and Assigns. Upon prior written notice to Grantee, the Grantor may assign its obligations hereunder to the property owners' association for the Development provided title to the Easement Area is also conveyed to such association, but this Agreement may not be assigned to any other person or entity (except as collateral to a lender providing financing for the development) without the prior written consent of the City Manager.

(c) Runs With Land. The covenants and agreements contained herein and the rights, privileges and easements herein granted shall run with, burden and shall be appurtenant to the properties described herein.

(d) Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

(e) Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the validity of the other provisions of this Agreement shall in no way be affected thereby.

(f) Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(g) Further Acts. Each of the parties shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Agreement (including, without limitation, obtaining and delivering to Grantee prior to the recordation of this Agreement reasonable subordination agreements from the holders of any liens encumbering the Easement Area that are or might be senior to this Agreement or the Easement as of the date of the recordation of this Agreement).

(h) Attorneys' Fees. If any action shall be commenced to enforce the terms of this Agreement or to declare the rights of the parties hereunder, the prevailing party shall be entitled to recover all of its costs and expenses (including, but not limited to, its actual attorneys' fees) from the nonprevailing party. In addition to the foregoing award of attorneys' fees and other litigation costs to the prevailing party, the prevailing party in any lawsuit on this Agreement shall be entitled to its attorneys' fees and other litigation costs 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. This provision shall survive the termination of this Agreement.

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

**GRANTOR:**

**PROJECT LOTUS, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANTEE:**

**THE CITY OF BEVERLY HILLS,**  
a municipal corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

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

Approved as to form:

Approved as to content:

\_\_\_\_\_  
**LAURENCE WIENER**  
City Attorney

\_\_\_\_\_  
**RODERICK J. WOOD**  
City Manager

**ACKNOWLEDGMENT**

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

**ACKNOWLEDGMENT**

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE GRANTOR PARCEL**

**EXHIBIT "B"**

**DESCRIPTION OF EASEMENT AREA**



**EXHIBIT F**

**Form of Subway Portal Easement**

RECORDING REQUESTED BY AND WHEN RECORDED RETURN TO:  City Clerk City of Beverly Hills 455 N. Rexford Drive Beverly Hills, California 90210	
THE AREA ABOVE IS RESERVED FOR RECORDER'S USE	

A.P.N.: \_\_\_\_\_

Exempt from recording fees pursuant to Government Code § 27383.

Exempt from documentary transfer taxes pursuant to Revenue Taxation Code § 11922.

### SUBWAY PORTAL EASEMENT AGREEMENT

This SUBWAY PORTAL EASEMENT AGREEMENT (the "Agreement") is entered into as of \_\_\_\_\_, 2008 (the "Effective Date"), by and between PROJECT LOTUS, LLC, a Delaware limited liability company ("Grantor") and THE CITY OF BEVERLY HILLS, a municipal corporation ("Grantee").

#### RECITALS

A. Grantor is the owner of the land described on Exhibit "A" and the improvements thereon ("Grantor Parcel").

B. Grantor and Grantee have entered into a Development Agreement dated \_\_\_\_\_, 2008 ("Development Agreement") in connection with a proposed development ("Development") on the Grantor Parcel.

C. The Development Agreement requires that Grantor enter into this Agreement prior to issuance of a building permit with Grantee to provide an entranceway or "portal" for a subway station under Wilshire Boulevard or Santa Monica Boulevard that is assignable to the Metropolitan Transportation Authority (the "MTA") (or any other governmental entity responsible for constructing or maintaining a subway station) for the benefit of a future subway line.

NOW, THEREFORE, in consideration of the mutual promises contained herein and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Grant of Easement. Grantor hereby grants to Grantee, a perpetual subway portal easement ("Easement") in, over and under the Grantor Parcel provided, however, that the surface area at ground level of such portal shall not exceed three hundred (300) square feet.

2. Purpose of Easement. The purpose of the Easement shall be for the construction, installation, operation, access to (including access by the public), maintenance, improvement and repair/replacement (as necessary) of an entrance or "portal" (and related improvements) to a subway station to be constructed under Witshire Boulevard or Santa Monica Boulevard in the City of Beverly Hills, California.

3. Special Restrictions on Use of Easement. The Easement may not be used in a manner that materially interferes with or limits access to the Development, materially interferes with the structural integrity of the Grantor Parcel or buildings or structures on the Grantor Parcel, or materially interfere with the operations of the Grantor Parcel or the businesses located on the Grantor Parcel.

4. Expiration. The Easement will expire in the event that: (i) the Grantee does not accept the Easement in writing on or before the twentieth (20th) anniversary of the date of this Easement; or (ii) neither the MTA nor any other appropriate governmental entity involved with the subway has secured financing for the construction of the subway station on or before the twentieth (20th) anniversary of the date of this Easement.

5. Property Taxes; Liens. Grantor shall pay, prior to delinquency, all property taxes, special taxes and assessments assessed against the easement area, and shall keep the Easement area free of all liens except for liens securing financing for the Development, which must be subordinate or subordinated to this Agreement and the Easement.

6. Grantee's Remedies. If Grantee determines that Grantor is in violation of the terms of this Agreement or the Easement, Grantee shall give written notice to Grantor of such violation. If Grantor fails to cure the violation within fifteen (15) days after said written notice is given, or said cure reasonably requires more than fifteen (15) days to complete and Grantor fails to begin to cure within the fifteen (15) day period or fails to continue diligently to complete the cure, Grantee may bring an action at law or in equity in a court of competent jurisdiction to enforce compliance by Grantor with the terms of this Agreement or the Easement, to recover any damages to which Grantee may be entitled for violation by Grantor of the terms of this Agreement or the Easement, or may cure the violation in which event Grantor shall reimburse Grantee for the costs incurred by Grantee in connection with violation within ten (10) days after written demand with evidence of such costs. Additionally, without notice or the expiration of any cure period, Grantee may enjoin the violation, ex parte, by temporary or permanent injunction without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies, or for other equitable relief.

7. Miscellaneous.

(a) Notices. Any notice to be given under or in connection with this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) one (1) business day after being deposited with Federal Express or another reliable

overnight courier service for next day delivery, or (iii) two (2) business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required, and addressed as follows:

If to Grantor: Project Lotus LLC  
Attn: Manager  
Rodeo Collection  
424 North Rodeo Drive  
Third Floor  
Beverly Hills, CA 90210

With a copy to: Candy & Candy  
100 Brompton Road, Knightsbridge  
London  
SW3 1ER  
United Kingdom

If to Grantee: City of Beverly Hills  
Beverly Hills City Hall  
455 North Rexford Drive  
Beverly Hills, California 90210  
Attn: City Manager

With a copy to: City of Beverly Hills  
455 North Rexford Drive, Suite 220  
Beverly Hills, California 90210  
Attn: City Attorney

(b) Assignment; Successors and Assigns. The Grantee may assign its rights and obligations hereunder to the MTA or to any other governmental entity responsible for constructing or maintaining the subway station and, upon a written assumption by such assignee of the obligations hereunder, Grantee shall be released from all obligations and liabilities arising after the date of the assumption. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, each party, its successors, assigns and successors-in-interest.

(c) Running With Land. The covenants and agreements contained herein and the rights, privileges and easements herein granted shall run with, burden and shall be appurtenant to the properties described herein.

(d) Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

(e) Severability. If any provision of this Agreement shall for any reason be held to be invalid, illegal or unenforceable by any court of competent jurisdiction, the validity of the other provisions of this Agreement shall in no way be affected thereby.

(f) Counterparts. This Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(g) Further Acts. Each of the parties shall execute such other and further documents and do such further acts as may be reasonably required to effectuate the intent of the parties and carry out the terms of this Agreement (including, without limitation, obtaining and delivering to Grantee prior to the recordation of this Agreement reasonable subordination agreements from the holders of any liens encumbering the Easement area that are or might be senior to this Agreement as of the date of the recordation of this Agreement).

(h) Attorneys' Fees. If any action shall be commenced to enforce the terms of this Agreement or to declare the rights of the parties hereunder, the prevailing party shall be entitled to recover all of its costs and expenses (including, but not limited to, its actual attorneys' fees) from the nonprevailing party. In addition to the foregoing award of attorneys' fees and other litigation costs to the prevailing party, the prevailing party in any lawsuit on this Agreement shall be entitled to its attorneys' fees and other litigation costs 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. This provision shall survive the termination of this Agreement.

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

**GRANTOR:**

PROJECT LOTUS, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GRANTEE:**

THE CITY OF BEVERLY HILLS

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**ATTEST:**

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

Approved as to form:

Approved as to content:

\_\_\_\_\_  
LAURENCE WIENER  
City Attorney

\_\_\_\_\_  
RODERICK J. WOOD  
City Manager

**ACKNOWLEDGMENT**

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

**ACKNOWLEDGMENT**

State of California )  
 )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(Insert name and title of the officer)

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.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

**ACKNOWLEDGMENT**

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_ before me, \_\_\_\_\_  
(insert name and title of the officer)

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.

Signature \_\_\_\_\_ (Seal)  
Signature of Notary Public

**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE GRANTOR PARCEL**

