



LEAD SHEET

01 0985737

RECORDED/FILED IN OFFICIAL RECORDS
RECORDER'S OFFICE
LOS ANGELES COUNTY
CALIFORNIA
JUN 07 2001
AT 8 A.M.

SPACE ABOVE THIS LINE FOR RECORDERS USE



TITLE(S)

FEE

D.T.T.

FREE U 70

CODE
20

CODE
19

CODE
9

Assessor's Identification Number (AIN)

To Be Completed By Examiner OR Title Company In Black Ink

Number of Parcels Shown



THIS FORM IS NOT TO BE DUPLICATED

ATTACHMENT 9

Recording Requested by and
When Recorded Mail To:

01 0985737

City Clerk
City of Malibu
23555 Civic Center Way
Malibu, CA 90265

**DEED OF CONSERVATION EASEMENT
FOR WILDLIFE HABITAT AND OPEN SPACE RESOURCES**

APN Nos.: 4456-034-021; 4457-002-016; 4457-002-026; 4457-004-011; 4457-004-015; 4457-004-016; 4457-004-037

This DEED OF CONSERVATION EASEMENT is made this 7th day of June, 2001, by **THE ADAMSON COMPANIES**, a California limited partnership ("LANDOWNER" or "GRANTOR"), in favor of the **CITY OF MALIBU**, a California municipal corporation ("CITY" or "GRANTEE"), for the purpose of granting in perpetuity the conservation easement and associated rights described below.

WHEREAS, LANDOWNER is the owner in fee simple of certain real property located in the unincorporated area of the County Los Angeles, State of California, identified as Assessor's Parcel Nos. 4456-034-021; 4457-002-016; 4457-002-026; 4457-004-011; 4457-004-015; 4457-004-016; 4457-004-037; and more particularly described in "**Exhibit A**" attached hereto and incorporated herein by this reference ("Francisco Property"); and

WHEREAS, LANDOWNER is the owner in fee simple of certain real property located in City of Malibu, State of California, identified as Assessor's Parcel Nos. 4458-028-015, 4458-028-019 and 4458-030-007 and more particularly described in "**Exhibit B**" attached hereto and incorporated herein by this reference ("Hotel Property"); and

WHEREAS, portions of the Hotel Property contains coastal sage scrub of biological importance to LANDOWNER, the people of the City of Malibu and the people of the State of California; and

WHEREAS, thirty (30) acres of the Francisco Property, more particularly described in "**Exhibit C**" attached hereto and incorporated herein by this reference and depicted in the map attached hereto as "**Exhibit D**" and incorporated herein by this reference ("Easement Area") possess outstanding conservation values and consist in part of unique, significant and undisturbed chaparral habitat ("Conservation Values") of great importance to LANDOWNER, the people of the City of Malibu and the people of the State of California, the preservation and management of which is consistent with the present and continued use of the Easement Area for habitat and open space purposes; and

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WHEREAS, on March 27, 1996 the ADAMSON COMPANIES, *dba* the Malibu Land Company, submitted an application for a conditional use permit, variance and site plan to construct a hotel and cultural heritage center on the Hotel Property ("Hotel Project"); and

WHEREAS, on November 3, 1997 the CITY'S Planning Commission held a duly noticed public hearing regarding applications for Conditional Use Permit No. 96-005, Variance No. 96-010, Site Plan Review No. 96-015 and certification of the Final Environmental Impact Report ("EIR") pertaining to the Hotel Project and adopted Resolution Nos. 97-042 and 97-043, certifying the EIR and denying the variance to construct with a Floor Area Ratio ("FAR") of 2.20, respectively; and

WHEREAS, on November 17, 1997 the CITY'S Planning Commission adopted Resolutions Nos. 97-044, 97-045 and 97-046 approving Conditional Use Permit No. 96-005, Variance No. 96-010 and Site Plan Review No. 96-015; and

WHEREAS, on November 26, 1997 the Malibu Road Owner's Association and the Malibu Township Council appealed the Planning Commission's adoption of Resolutions Nos. 97-044, 97-045 and 97-046; and

WHEREAS, the Malibu City Council held duly noticed public hearings regarding the appeal of said resolutions on January 12, 1998, February 3, 1998 and March 23, 1998; and

WHEREAS, on March 23, 1998 City Council adopted Resolution No. 98-001, a copy of which is attached hereto as "**Exhibit E**" and is incorporated herein as if fully set forth herein by this reference, approving, with conditions, Conditional Use Permit No. 96-005, Variance No. 96-010 and Site Plan Review No. 96-015 to construct a 146 room hotel on the Hotel Property; and

WHEREAS, Section 5 of Conditional Use Permit No. 96-005 adopts the mitigation monitoring program attached as Exhibits A and B to Conditional Use Permit 96-005 in its entirety; and

WHEREAS, Mitigation Measure 6.2 of the mitigation monitoring program attached as Exhibits A and B to Conditional Use Permit 96-005 require the preservation of thirty (30) acres on the Francisco Property as an off-site mitigation measure for the Hotel Project, in accordance with the conditions set forth in mitigation measure 6.2, in order to mitigate the impacts resulting from the loss of 8.04 acres of undisturbed coastal sage scrub habitat on the Hotel Property; and

WHEREAS, Section 12, condition "h" of Conditional Use Permit No. 96-005 requires the preservation of thirty (30) undisturbed acres of chaparral habitat on the Francisco Property in order to mitigate the loss of 8.04 acres of coastal sage scrub, a threatened plant community, on the Hotel Property; and

WHEREAS, Section 22.b. of the Site Plan Review finds that the Hotel Project complies with the City of Malibu's land use policies, goals and objectives because thirty (30) acres of off-site chaparral habitat on the Francisco Property shall be preserved as an off-site mitigation measure; and

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WHEREAS, LANDOWNER, THE ADAMSON COMPANIES, intends and desires to convey to the CITY the right to preserve and protect the Conservation Values of the Easement Area in perpetuity by granting the present Deed of Conservation Easement For Wildlife Habitat and Open Space Resources ("Easement"); and

WHEREAS, the CITY desires to accept said Easement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to the laws of the State of California, including but not limited to Sections 815-816 of the California Civil Code, LANDOWNER does hereby grant, convey, and dedicate to the CITY an easement in perpetuity over the Easement Area, of the nature and character and to the extent hereinafter set forth.

1. **PURPOSE.** It is the purpose of this Easement to assure that the Easement Area will be retained in perpetuity in its natural state, use and utility, and to prevent any use of the Easement Area that would significantly impair or interfere with its Conservation Values. GRANTOR intends that this Easement will confine the use of the Easement Area to such activities, including, without limitation, those relating to open space and habitat preservation, which are consistent with the purpose of this Easement.

2. **AFFIRMATIVE RIGHTS CONVEYED TO THE CITY.** To accomplish the purpose of this Easement, the following rights and interests are conveyed to the CITY by this Easement:

(a) **Identify Resources and Values.** To identify, preserve and protect in perpetuity the Conservation Values of the Easement Area.

(b) **Monitor Uses and Practices.** To enter upon, inspect, observe, and study the Easement Area for the purposes of identifying the current uses and practices thereon and the baseline condition thereof, to conduct research on and make scientific observations of the ecological systems, and to monitor the uses and practices regarding the Easement Area to determine whether they are consistent with this Easement. Such entry shall be permitted upon prior notice to LANDOWNER, and shall be made in a manner that will not unreasonably interfere with LANDOWNER'S use and quiet enjoyment of the Easement Area.

(c) **Prevent Inconsistent Uses.** To prevent any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.

(d) **Scientific, Restoration and Educational Access.** Subject to LANDOWNER'S approval, which shall not be unreasonably withheld, to encourage and allow access to the Easement Area for the purpose of identifying, studying and implementing ecological or natural resource management improvements. Any activities allowed pursuant to

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this section shall not impose involuntary costs on LANDOWNER, and shall not unduly interfere with the permitted uses in or adjacent to the Easement Area or with LANDOWNER'S quiet enjoyment of the Property.

3. **PERMITTED USES AND PRACTICES.** LANDOWNER and CITY intend that this Easement shall confine the uses of the Property to open space, habitat conservation and such other related uses as are described herein. The LANDOWNER shall give to the City at least fifteen calendar days' written notice, as set forth in paragraph 17(h) of this Easement, prior to undertaking any activity permitted by this Easement. The following uses and practices, if in accordance with federal, state and county laws and ordinances, and to the extent not inconsistent with the purpose of this Easement, are permitted:

(a) **Maintenance and Repair.** To maintain, repair and replace existing ditches, water lines, and other existing improvements on in the Easement Area.

(b) **Water Resources.** To develop and maintain such water resources and improvements in the Easement Area as are necessary or convenient for conservation in a manner consistent with the purpose of this Easement, provided such activities will ensure preservation and protection of the Conservation Values of the Easement Area.

4. **PROHIBITED USES.** Any activity on or use of the Easement Area that is inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are inconsistent with the Conservation Values of this Easement and are expressly prohibited:

(a) **Commercial or Industrial Uses.** The establishment of any commercial, residential or industrial uses, including the construction, placement or erection of any commercial signs or billboards.

(b) **Roads or Structures.** The grading, paving or construction of any road or structure.

(c) **Motorized Vehicles.** The use of motorized and/or off-road vehicles, except by LANDOWNER or emergency response personnel, when necessary for maintenance or for emergency purposes.

(d) **Dumping or Disposal.** The dumping or other disposal of wastes, refuse or debris in the Easement Area. Nothing in this paragraph shall prohibit the trimming of vegetation in the Easement Area and the leaving of those trimmings in the Easement Area.

(e) **Erosion.** Any use or activity which causes significant degradation of topsoil quality, significant pollution or a significant increase in the risk of erosion.

(f) **Alteration of Topography.** Any alteration of the general topography or natural drainage of the Easement Area, including, without limitation, the excavation or removal of soil, sand, gravel or rock, except as may be required for maintenance of existing roadways.

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(g) **Watercourses.** The alteration or manipulation of watercourses located on in the Easement Area, the creation of new water impoundments or watercourses for any purpose other than for enhancement of natural habitat values.

(h) **Other Incompatible Uses.** The use of the Easement Area for construction or operation of a golf course, commercial recreational facility, Christmas tree farm, or any other activity that is incompatible with the purpose of this Easement.

5. **RESERVED RIGHTS.** LANDOWNER reserves to itself, and to its representatives, heirs, successors and assigns, all rights accruing from the ownership of the Easement Area, including the right to engage in or permit or invite others to engage in all uses of the Easement Area that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) **Water Rights.** All right, title, and interest in and to all tributary and non-tributary water, water rights, and related interest in, on, under or appurtenant to the Easement Area; provided, however, that such water rights are used on the Easement Area in a manner consistent with the purpose of this Easement.

(b) **Mineral Rights.** All right, title, and interest in subsurface oil, gas, and minerals; provided, however, that the manner of exploration for, and extraction of any oil, gas or minerals shall be only by a subsurface method, shall not damage, impair or endanger the protected Conservation Values of the Property, and shall be limited to such activities as are permitted under Internal Revenue Code Section 170(h)(5) and applicable Treasury Regulations.

6. **NOTICE AND APPROVAL.** The purpose of requiring LANDOWNER to notify CITY prior to undertaking certain permitted activities is to afford the CITY an adequate opportunity to monitor the activities in question to ensure that they are designed and carried out in a manner that is not inconsistent with the purpose of this Easement. Whenever notice is required, LANDOWNER shall notify CITY in writing not less than fifteen (15) days prior to the date LANDOWNER intends to undertake the activity in question. The notice shall describe the nature, scope, design, location and any other material aspect of the proposed activity in sufficient detail to permit CITY to make an informed judgment as to its consistency with the purpose of this Easement. CITY shall respond in writing within twenty (20) days of receipt of LANDOWNER'S written request.

7. **ARBITRATION.** If a dispute arises between the parties concerning the consistency of any existing or proposed use or activity with the purpose of this Easement, the parties are encouraged to refer the dispute to arbitration as an alternative to judicial proceedings.

8. **CITY'S REMEDIES.**

(a) **Notice of Violation.** If the CITY determines that a violation of any of the terms, conditions, covenants or restrictions contained in this Easement has occurred or is threatened, CITY shall give written notice to LANDOWNER of such violation and demand

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corrective action sufficient to cure the violation and, where the violation involves damage to the Easement Area resulting from any use or activity inconsistent with the purpose of this Easement, to restore that portion of the Easement Area so damaged.

(b) Injunctive Relief. If LANDOWNER fails to cure the violation within a thirty (30) day period after receipt of notice thereof from the CITY, or fails to continue diligently to cure such violation until finally cured, the CITY may bring an action in the Los Angeles County Superior Court to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement or injury to any Conservation Values, including damages for any loss thereof, and to require the restoration of the Easement Area to the condition that existed prior to any such injury. Nothing in this paragraph shall be construed so as to limit the CITY'S right to seek any other relief it deems appropriate.

(c) Equitable Relief. The parties hereto expressly acknowledge, given the unique and irreplaceable nature of the Conservation Values, that equitable relief is particularly appropriate for any damage to the Conservation Values and Easement Area. If LANDOWNER fails to cure the violation as set forth hereinabove, the CITY may bring an action in equity in the Los Angeles County Superior Court to enforce the terms of this Easement, to enjoin the violation by temporary or permanent injunction, to require the full and complete restoration of injury to any Conservation Value to the condition that existed prior to any such injury. Nothing in this paragraph shall be construed so as to limit the CITY'S right to seek any other relief it deems appropriate.

(d) Damages. The CITY shall be entitled to recover damages for violation of the terms of this Easement or injury to any of the Conservation Values protected by this Easement, including, without limitation, damages for the loss of Conservation Values. Without limiting LANDOWNER'S liability therefor, CITY, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property.

(e) Emergency Enforcement. If the CITY, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant or irreparable damage to the Conservation Values, the CITY may pursue its remedies under this Paragraph without waiting for the cure period to expire. The CITY shall make a good faith effort to give twenty-four (24) hours' notice, by telephone, to the LANDOWNER before taking action pursuant to this paragraph. If, however, the CITY is unable to reach the LANDOWNER by telephone, the CITY may take whatever action it deems necessary to prevent or mitigate significant or irreparable damage to the Conservation Values without proving any notice to the LANDOWNER.

(f) Scope of Relief. The CITY'S rights under this Paragraph shall apply equally to threatened as well as actual violations of the terms of this Easement, and LANDOWNER agrees that the CITY'S remedies at law for any violation of the terms of this Easement are inadequate and that the CITY shall be entitled to the injunctive relief described in this Paragraph, both prohibitive and mandatory, in addition to such other relief to which the CITY may be entitled, including specific performance of the terms of this Easement, without the

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necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. The CITY'S remedies described in this Paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

(g) **Costs of Enforcement.** Any reasonable costs incurred by the CITY in enforcing the terms of this Easement against LANDOWNER, including, without limitation, except for costs and expenses of suit and attorneys' fees, and any costs of restoration necessitated by LANDOWNER's violation of the terms of this Easement shall be borne by LANDOWNER; provided, however, that LANDOWNER shall not be responsible for the costs of restoration necessary to remedy damage to the Easement Area caused by the conduct of third parties acting without permission or knowledge of LANDOWNER.

(h) **Enforcement Discretion.** Enforcement of the terms of this Easement shall be at the sole and exclusive discretion of the CITY and any forbearance by the CITY to exercise its rights under this Easement shall not be deemed or construed to be a waiver by the CITY of such rights or of any subsequent breach of the same or any other terms of this Easement, or of its rights under the Easement. No delay or omission by the CITY in the exercise of any right or remedy upon any breach by LANDOWNER shall impair such right or remedy or be construed as a waiver, and LANDOWNER hereby waives any defense of laches, estoppel or prescription.

9. **ACTS BEYOND LANDOWNER'S CONTROL.** Nothing contained in this Easement shall be construed to entitle the CITY to bring any action against LANDOWNER for any injury to or change in the Easement Area resulting from causes beyond LANDOWNER'S control, including, without limitation, fire, flood, storm and earth movement, or actions by persons outside the control and knowledge of LANDOWNER, or from any prudent action by LANDOWNER under emergency conditions, to prevent, abate or mitigate significant injury to the Easement Area resulting from such causes.

10. **PUBLIC ACCESS.** No right of access by the general public to any portion of the Easement Area is conveyed by this Easement.

11. **COSTS AND LIABILITIES.** LANDOWNER retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep and maintenance of the Easement Area, including payment of property taxes and assessments of any kind, costs associated with fire management and maintenance of adequate comprehensive general liability insurance coverage. LANDOWNER remains solely responsible for obtaining any applicable governmental permits and approvals for any activity or use permitted by this Easement, and such activity or use shall be undertaken in accordance with all applicable federal, state and local laws, regulations and requirements.

12. **INDEMNIFICATION.** LANDOWNER shall release and hold harmless, indemnify, and defend the CITY and its officers, employees, agents and contractors and the heirs, personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against any and all liabilities, penalties, fines, charges, costs, losses, damages, expenses, causes of action, claims, demands, orders, judgments or administrative actions,

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including, without limitation, reasonable attorneys' fees, arising from or in any way connected with (a) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Easement Area, regardless of cause, except to the extent of the adjudicated proportionate fault of any of the Indemnified Parties; (b) the violation or alleged violation of, or other failure to comply with, any state, federal or local law, regulation or requirement, including, without limitation, environmental or hazardous waste provisions; and (c) the obligations and costs associated with the LANDOWNER responsibilities specified in Paragraph 11.

13. **ASSIGNMENT.** The CITY may assign its rights and obligations under this Easement to any public agency or to an organization which, at the time of transfer, is qualified under Section 170(h) of the Internal Revenue Code, as amended (or any successor provisions), and is authorized to acquire and hold conservation easements under California law. As a condition of such transfer, the CITY shall require that the conservation purpose set forth in this Easement continue to be carried out and enforced.

14. **SUBSEQUENT TRANSFERS.** LANDOWNER agrees to incorporate the terms of this Easement by reference in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property, including, without limitation, any leasehold interest. The failure of LANDOWNER to perform any act required by this Paragraph shall not affect the validity of such transfer nor shall it impair the validity of this Easement or limit its enforceability in any way.

15. **EXTINGUISHMENT.** If circumstances arise in the future which render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by a written agreement or by judicial proceedings in the Los Angeles County Superior Court. The proceeds, if any, from such extinguishment to which the CITY shall be entitled, as determined by a written agreement or by a court, shall be the stipulated fair market value of the Easement, or proportionate part thereof.

16. **SUBORDINATION.** If at the time of conveyance of this Easement, the Property is subject to any mortgage or deed or trust encumbering the Property, LANDOWNER shall obtain from the holder of any such mortgage or deed of trust an agreement to subordinate its rights in the Property to this Easement to the extent necessary for the CITY to enforce the purpose of this Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the mortgage or deed of trust holder.

17. **GENERAL PROVISIONS.**

(a) **Controlling Law.** The laws of the State of California shall govern the interpretation and performance of this Easement.

(b) **Venue.** Any legal actions brought as a result of any disputes origination from this Easement shall be brought in the Los Angeles County Superior Court.

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(c) **Liberal Construction.** Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement.

(d) **Severability.** If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(e) **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein.

(f) **No Forfeiture.** Nothing contained herein will result in a forfeiture or reversion of LANDOWNER's title in any respect.

(g) **Successors in Interest.** The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of the parties hereto and their respective beneficiaries, personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. Upon conveyance of fee title to the Property, The Adamson Companies shall be relieved of any further obligations and shall relinquish all rights it may have under this Agreement.

(h) **Notices.** Any notice, demand, request, consent, approval, or other communication that either party desires or is required to give to the other party shall be in writing and either delivered personally or sent by first class mail, postage prepaid, addressed to the appropriate party at the following addresses:

CITY: Malibu City Clerk
23555 Civic Center Way
Malibu, CA 90265
Telephone: (310) 456-2489
Facsimile: (310) 456-3356

LANDOWNER: Dean Dennis, Esq.
Hill, Farrer & Burrill LLP
1 California Plaza, 37th Floor
300 South Grand Ave.
Los Angeles, CA 90017-3147
Telephone: (213) 621-0809
Facsimile: (213) 624-4840

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And to:

Michael Vignieri & Associates
RMHG Capital, LLC
12381 Wilshire Blvd., Ste. 201
Los Angeles, CA 90025
Telephone: (310) 442-0076
Facsimile: (310) 207-4444

or at such address as either party or successor in interest shall from time to time designate by written notice to the other.

(i) Amendment. This easement may be amended only with the written consent of the CITY and the LANDOWNER. Any such amendment shall be consistent with the purposes of this deed and with the CITY'S easement amendment policies, and shall comply with Section 170(h) of the Internal Revenue Code and with Civil Code Section 815 *et seq.*, and any regulations promulgated thereunder.

(j) LANDOWNER'S Warranty of Title. The LANDOWNER warrants and represents that LANDOWNER has good fee simple title at the time of the conveyance of this easement area and hereby promises to defend the same against all claims that may be made against it. Any liens executed by LANDOWNER will be subject to the Subordination Clause of Section 17. LANDOWNER represents that the Easement Area is not subject to any other conservation easement whatsoever. LANDOWNER may grant such additional subsequent conservation easements on the Easement Area provided that such easements do not interfere with or reduce the Conservation Values of this easement. The CITY shall be notified in advance of any proposed conservation or other easement in or affecting the Easement Area.

(k) Perpetuation of Easement. Except as expressly otherwise provided for herein, this Easement shall be perpetual in nature and perpetual in duration, and no merger of estate or title or interest shall be deemed effected by any previous, contemporaneous or subsequent deed, grant or assignment of an interest or estate in the property, or any portion thereof to the CITY or any successor thereto, it being the express intent of the parties that this easement not be extinguished by, or merged into, any other interest or estate in the property now or hereafter held by grantee or successor in interest thereto.

(l) Hazardous Substance Warranty. The LANDOWNER warrants that it has no actual knowledge of a release or threatened release of any hazardous substances or wastes on the property and hereby promises to defend and indemnify grantee against all litigation claims, demands, penalties and damages, including reasonable attorneys fees, arising from or connected with any release of hazardous waste or violation of federal, state or environmental laws. Nothing in this Easement shall be construed as giving any right to grantee or ability to grantee to exercise physical or managerial control of the day to day operations of the property, or any of grantor's activities on the property, or otherwise become an operator with respect to the property within the meaning of the Comprehensive Environmental Response Compensation and

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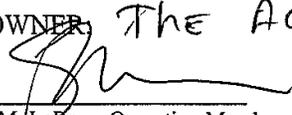
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Liability Act of 1980, as amended, or the Carpenter Presley Tanner Hazardous Substance Account Act, Health and Safety Code Sections 25300-25395 and any other federal, state or local law or regulation making operators of property responsible for the remediation of contamination.

IN WITNESS WHEREOF, the Grantor and Landowner has executed this DEED OF CONSERVATION EASEMENT on the date indicated above.

GRANTOR/LANDOWNER The ADAMSON COMPANIES

By: 
Scott M. LaRose, Operating Member,
Title: Red Rock Trilogy, LLC, Its Sole General Partner

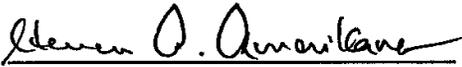
CITY:

By: _____

Title: _____

APPROVED AS TO FORM:

HATCH AND PARENT


Steven A. Amerikaner, City Attorney
City of Malibu

HILL, FARRER & BURRILL LLP


Dean Dennis, Esq.
Attorney for The Adamson Companies

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STATE OF CALIFORNIA

COUNTY OF ORANGE

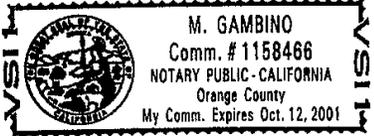
On JUNE 4, 2001, before me, M. GAMBINO, personally appeared

SCOTT M. LAROSE,

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

WITNESS my hand and official seal.

M. Gambino
(SIGNATURE OF NOTARY)



M. GAMBINO
Comm. # 1158466
NOTARY PUBLIC - CALIFORNIA
Orange County
My Comm. Expires Oct. 12, 2001

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EXHIBIT A

**DEED OF CONSERVATION EASEMENT FOR
WILDLIFE HABITAT AND OPEN SPACE**

Exhibit A consists of 1 page

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Francisco 1 of 1

EXHIBIT "A"

Those portions of Sections 19, 29, 30, 31, and 32 all in Township 1 South, Range 17 West, San Bernardino Meridian, in the County of Los Angeles, State of California, according to the official plat thereof, described as a whole as follows:

Beginning at the southwesterly corner of said Section 19, thence easterly along the southerly line thereof to the southeasterly corner of Lot 4 of said Section 19; thence northerly to the northeasterly corner of said Lot 4, said northeasterly corner being a point on the southerly line of Parcel 1 as described in deed from Merritt Adamson, et al, to The State of California recorded January 6, 1984, as document No. 84-19794 in Official Records of said county; thence easterly southeasterly and southerly along the southerly, southwesterly and westerly line of the lands conveyed to The State of California by above mentioned deed to the most northerly corner of the land described in Executors' deed to S.M.J. Properties, Ltd., recorded September 13, 1967, as Document No. 150 in Book D 3765, page 303 of Official Records of said county, being on the easterly line of the 80-foot wide easement for Malibu Canyon Road as described in deed to the County of Los Angeles recorded September 18, 1941, in Book 18752, page 205 of Official Records of said County; thence southerly along the easterly line of said Malibu Canyon Road to the southerly line of said Section 32; thence westerly along last mentioned southerly line to the westerly line of said Malibu Canyon Road; thence northerly along said westerly line to the northeasterly corner of the land described in deed to Potter Pharmaceutical, Inc. recorded in Book 53434, page 72 of said Official Records; thence westerly, northwesterly and southwesterly along the northerly and northwesterly lines of said Potter Pharmaceutical, Inc. lands to the northeasterly corner of the lands conveyed in deed to Pepperdine University recorded in Book D 5205 page 456 of Official Records of said county; thence northwesterly along the northeasterly line of said Pepperdine University lands to the westerly line of said Section 30; thence northerly along said last mentioned westerly line to the point of beginning.

EXCEPTING THEREFROM those portions included within the lines of Malibu Canyon Road as described in deeds to the County of Los Angeles recorded in Book 18752, page 205, Book 20758, page 187, Book 36759, page 321, Book 51280, page 209 and Book D 3790 page 346, all of Official Records of said county.

EXCEPTING AND EXCLUDING THEREFROM all mineral, oil, petroleum, asphaltum, gas coal, other mineral hydrocarbon substances and water lying in, on, within, under that may be produced or extracted from said property and every part thereof; provided however, that this exception shall neither reserve nor shall be construed as reserving unto Grantors, their successors and assigns the right to go upon the surface of said real property to take, recover or remove such substances, but there is expressly reserved unto Grantors, their successors and assigns the sole and exclusive right to drill into, under, across and through said property at depths below 500 feet from the surface for the purpose of prospecting for, developing and extracting such substances in, on, within, under and that may be produced from said land and every part thereof, and in, on within, under and that may be produced from any other land in the area, as granted to Tricornia Limited, a general partnership, in Deed recorded January 15, 1981, as Instrument No. 81-47443 Official Records of Los Angeles County.

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EXHIBIT B

DEED OF CONSERVATION EASEMENT FOR
WILDLIFE HABITAT AND OPEN SPACE

Exhibit B consists of 3 total pages

SB 267583 v 1:008357.0019

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PARCEL 1:

THAT PORTION OF RANCHO TOPANGA MALIBU SEQUIT, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGES 407 ET SEQ OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY LINE OF THE LAND AS DESCRIBED IN PARCEL 1 IN THE QUITCLAIM DEED TO THE ADAMSON COMPANIES RECORDED MARCH 20, 1970 AS INSTRUMENT NO. 440 OF OFFICIAL RECORDS OF SAID COUNTY, WITH THE EASTERLY LINE OF THE LAND AS DESCRIBED IN PART A IN THE DEED TO PEPPERDINE COLLEGE RECORDED AUGUST 17, 1970 AS INSTRUMENT NO. 1743 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE EASTERLY ALONG SAID NORTHERLY LINE TO AN ANGLE POINT IN THE WESTERLY LINE OF THE LAND AS DESCRIBED IN PARCEL 3 IN THE DEED TO RAYMON J. GAGNON ET AL RECORDED JULY 25, 1945 AS INSTRUMENT NO. 822 IN BOOK 22187 PAGE 271 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SAID WESTERLY LINE NORTH 04 DEGREES 52 MINUTES 20 SECONDS WEST 169.88 FEET TO THE SOUTHWESTERLY LINE OF THE 80.00 FOOT WIDE STRIP OF LAND AS DESCRIBED IN THE DEED TO THE COUNTY OF LOS ANGELES RECORDED SEPTEMBER 18, 1941 IN BOOK 18752 PAGE 205 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE TO THE MOST SOUTHERLY CORNER OF THE LAND AS DESCRIBED IN PARCEL 7 IN THE DEED TO RHODA R. ADAMSON RECORDED AUGUST 29, 1949 AS INSTRUMENT NO. 783 IN BOOK 30875 PAGE 17 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE ALONG SOUTHERLY BOUNDARY OF THE LAND AS DESCRIBED IN PARCEL 7 IN SAID DEED TO RHODA R. ADAMSON AS FOLLOWS, SOUTH 85 DEGREES 55 MINUTES 09 SECONDS WEST 127.59 FEET, NORTH 64 DEGREES 44 MINUTES 45 SECONDS WEST 306.89 FEET AND SOUTH 89 DEGREES 08 MINUTES 35 SECONDS WEST TO THE EASTERLY LINE OF THE LAND AS DESCRIBED IN PART A IN SAID HERESINA ABOVE MENTIONED DEED TO PEPPERDINE COLLEGE; THENCE SOUTHERLY ALONG SAID EASTERLY LINE TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, GAS AND OTHER HYDROCARBON SUBSTANCES BUT WITHOUT RIGHT OF SURFACE ENTRY.

PARCEL 2:

THAT PORTION OF RANCHO TOPANGA MALIBU SEQUIT, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGES 407 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHWESTERLY LINE OF MALIBU CANYON ROAD (80 FOOT WIDE) AS SHOWN ON COUNTY SURVEYOR'S MAP NO. B-1604 SHEET 1 ON FILE IN THE OFFICE OF THE COUNTY ENGINEER OF SAID COUNTY WHICH BEARS SOUTH 30 DEGREES 23 MINUTES 35 SECONDS WEST 40.00 FEET FROM ENGINEER'S CENTER LINE STATION 21 PLUS 60.21 AT THE NORTHWESTERLY TERMINUS OF THAT CERTAIN CENTER LINE COURSE AS SHOWN ON SAID MAP NO. B-1604 SHEET 1 AS HAVING BEARING AND LENGTH OF "NORTH 59 DEGREES 36 MINUTES 25 SECONDS WEST 1001.23 FEET"; THENCE SOUTH 85 DEGREES 55 MINUTES 09 SECONDS WEST 127.59 FEET; THENCE NORTH 64 DEGREES 44 MINUTES 45 SECONDS WEST 306.89 FEET; THENCE SOUTH 84 DEGREES 20 MINUTES 49 SECONDS WEST TO THE SOUTHEASTERLY LINE OF THE LAND DESCRIBED IN PART "A" IN THE DEED TO PEPPERDINE COLLEGE RECORDED AUGUST 17, 1970 AS INSTRUMENT NO. 1743 OF OFFICIAL RECORDS OF SAID COUNTY; THENCE NORTHEASTERLY ALONG SAID SOUTHEASTERLY LINE TO THE SOUTHWESTERLY CORNER OF THE LAND DESCRIBED IN PART "C" OF SAID DEED TO PEPPERDINE COLLEGE; THENCE EASTERLY ALONG THE SOUTHERLY LINE OF THE LAND DESCRIBED IN PART "C" OF

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SAID DEED TO PEPPERDINE COLLEGE TO THE SOUTHWESTERLY LINE OF THE LAND DESCRIBED IN PART "B" OF SAID DEED TO PEPPERDINE COLLEGE; THE SOUTHEASTERLY ALONG SAID SOUTHWESTERLY LINE TO AND ALONG SAID HEREINABOVE MENTIONED MALIBU CANYON ROAD TO THE POINT OF BEGINNING.

EXCEPT THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER HYDROCARBON SUBSTANCES IN, ON AND UNDER SAID LAND BUT WITHOUT THE RIGHT TO GO UPON OR UNDER SAID LAND FOR THE PURPOSE OF EXTRACTING ANY OF SAID SUBSTANCES, AS RESERVED BY MARBLEHEAD LAND COMPANY, A DELAWARE CORPORATION, IN DEED RECORDED AUGUST 29, 1949 AS INSTRUMENT NO. 783, IN BOOK 30875 PAGE 17, OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM ALL MINERALS, OIL, PETROLEUM, ASPHALTUM, GAS, COAL AND OTHER MINERAL AND HYDROCARBON SUBSTANCES AND WATER LYING IN, ON, WITHIN UNDER AND THAT MAY BE PRODUCED OR EXTRACTED FROM ANY REAL PROPERTY SITUATE, LYING AND BEING IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, TOGETHER WITH THE SOLE AND EXCLUSIVE RIGHT TO DRILL INTO, UNDER, ACROSS AND THROUGH SAID PROPERTY AT DEPTHS BELOW 500 FEET FROM THE SURFACE THEREOF FOR THE PURPOSE OF PROSPECTING FOR, DEVELOPING AND EXTRACTING SUCH SUBSTANCES IN, ON, WITHIN, UNDER AND THAT MAY BE PRODUCED FROM SAID LANDS AND EVERY PART THEREOF, AND IN, ON, WITHIN, UNDER AND THAT MAY BE PRODUCED FROM ANY OTHER LAND IN THE AREA;

PROVIDED, HOWEVER, THAT THIS DEED SHALL NEITHER GRANT NOR SHALL IT BE CONSTRUED AS GRANTING UNTO GRANTEE THE RIGHT TO GO UPON THE SURFACE OF SAID REAL PROPERTY TO TAKE, RECOVER OR REMOVE SUCH SUBSTANCES, AS GRANTED TO TRICORNIA LIMITED, A GENERAL PARTNERSHIP, BY DEED RECORDED JANUARY 15, 1981 AS DOCUMENT NO. 81-47443 OFFICIAL RECORDS.

PARCEL 3:

THOSE PORTIONS OF THE RANCHO TOPANGA MALIBU SEQUIT, IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS CONFIRMED TO MATTHEW KELLER BY PATENT RECORDED IN BOOK 1 PAGES 407 ET SEQ. OF PATENTS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE CENTER LINE OF THE 100 FOOT RIGHT-OF-WAY TO THE STATE OF CALIFORNIA, AS PER DOCUMENT RECORDED IN BOOK 20743 PAGE 271 OF OFFICIAL RECORDS OF SAID COUNTY, SAID CENTER LINE HAVING A BEARING OF SOUTH 84 DEGREES 57 MINUTES 07 SECONDS WEST, AND SAID POINT BEING SOUTH 84 DEGREES 57 MINUTES 07 SECONDS WEST 117.98 FEET ALONG SAID CENTER LINE FROM LOS ANGELES COUNTY ENGINEERS TRAVERSE STATION "SOLSTICE CANYON L-8" AS SAID TRAVERSE STATION IS SHOWN ON FIELD BOOK 1652, PAGES 67 AND 68 OF LOS ANGELES COUNTY; THENCE ALONG SAID CENTERLINE SOUTH 84 DEGREES 57 MINUTES 07 SECONDS WEST 650 FEET TO A POINT HEREINAFTER REFERRED TO AS POINT "A"; THENCE NORTH 05 DEGREES 02 MINUTES 53 SECONDS WEST 50 FEET TO A POINT ON THE NORTH LINE OF SAID 100 FOOT RIGHT-OF-WAY, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 05 DEGREES 02 MINUTES 53 SECONDS WEST 40 FEET; THENCE NORTHEASTERLY IN A DIRECT LINE TO THE NORTHERLY TERMINUS OF THAT CERTAIN COURSE IN THE WESTERLY BOUNDARY OF THE LAND DESCRIBED AS PARCEL NO. 3 IN THE DEED TO RAYMON J. CAGNON, ET AL., RECORDED ON JULY 25, 1945 IN BOOK 22187 PAGE 124 OF OFFICIAL RECORDS OF SAID COUNTY SHOWN AS HAVING A BEARING AND LENGTH OF NORTH 29 DEGREES 36 MINUTES 27 SECONDS WEST 465.53 FEET; THENCE ALONG SAID CERTAIN COURSE AND ITS PROLONGATION, SOUTH 29 DEGREES 36 MINUTES 27 SECONDS EAST 472.96 FEET TO THE NORTH LINE OF SAID 100 FOOT RIGHT-OF-WAY; THENCE SOUTH 84 DEGREES 57 MINUTES 07 SECONDS WEST ALONG SAID NORTH LINE TO THE TRUE POINT OF BEGINNING.

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EXCEPT THEREFROM THAT PORTION OF SAID LAND LYING WEST OF THE WEST LINE OF MALIBU CANYON ROAD AS DESCRIBED IN DEED RECORDED AS INSTRUMENT NO. 2896 ON DECEMBER 8, 1970, IN BOOK D-4910 PAGE 516, OFFICIAL RECORDS.

ALSO EXCEPT THEREFROM ALL MINERAL, OIL, PETROLEUM, ASPHALTUM, GAS, COAL, OTHER MINERAL AND HYDROCARBON SUBSTANCES AND WATER LYING IN, ON, WITHIN, UNDER AND THAT MAY BE PRODUCED OR EXTRACTED FROM SAID PROPERTY AND EVERY PART THEREOF; PROVIDED, HOWEVER, THAT THIS EXCEPTION SHALL NEITHER RESERVE NOR SHALL BE CONSTRUED AS RESERVING UNTO GRANTOR AND GRANTOR SHALL NOT HAVE, THE RIGHT TO GO UPON THE SURFACE OR WITHIN THE UPPER 500 FEET MEASURED VERTICALLY DOWNWARD FROM THE SURFACE OF SAID PROPERTY TO EXTRACT SAID SUBSTANCES, BUT THERE IS EXPRESSLY RESERVED UNTO GRANTOR, ITS SUCCESSORS AND ASSIGNS THE SOLE AND EXCLUSIVE RIGHT TO DRILL INTO, UNDER ACROSS AND THROUGH SAID PROPERTY AT DEPTHS BELOW 500 FEET FROM THE SURFACE FOR THE PURPOSE OF TAKING, RECOVERING AND REMOVING SAID SUBSTANCES IN, ON, WITHIN, UNDER AND THAT MAY BE PRODUCED OR EXTRACTED FROM SAID PROPERTY, EVERY PART THEREOF, AS RESERVED BY MARBLEHEAD LAND COMPANY, A CORPORATION, IN DEED RECORDED MARCH 20, 1970 AS INSTRUMENT NO. 434, AND THE ADAMSON COMPANIES, A PARTNERSHIP, IN DEED RECORDED MARCH 20, 1970 AS INSTRUMENT NO. 447, OFFICIAL RECORDS.

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EXHIBIT C

**DEED OF CONSERVATION EASEMENT FOR
WILDLIFE HABITAT AND OPEN SPACE**

Exhibit C consists of 2 total pages

SB 267583 v 1:008357.0019

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EXHIBIT A

THAT PORTION OF THE SOUTHEAST ONE-QUARTER OF SECTION 19, T. 1 S., R.17 W., SAN BERNARDINO MERIDIAN IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA ACCORDING TO THE OFFICIAL PLAT THEREOF DESCRIBED AS FOLLOWS:

PARCEL 1

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 19; THENCE ALONG THE SOUTHERLY LINE OF SAID SECTION 19 SOUTH 89°53'25" WEST 193.62 FEET TO A POINT IN THE CENTERLINE OF MALIBU CANYON ROAD, 80.00 FEET WIDE, PER EASEMENT DEED TO THE COUNTY OF LOS ANGELES RECORDED SEPTEMBER 18, 1941, IN BOOK 18752 PAGE 205, OF OFFICIAL RECORDS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY; THENCE ALONG SAID CENTERLINE THE FOLLOWING COURSES NORTH 05°20'05" EAST 254.86 FEET TO THE BEGINNING OF A CURVE, CONCAVE WESTERLY, HAVING A RADIUS OF 600.00 FEET AND NORTHERLY 384.85 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 36°45'00" TO A POINT BEING THE SOUTHERLY TERMINUS OF THAT CERTAIN CURVE IN THE CENTERLINE OF MALIBU CANYON ROAD, 80.00 FEET WIDE, DESCRIBED IN THE JUDGMENT FOR ROAD EASEMENT RECORDED OCTOBER 5, 1967 AS INSTRUMENT NO. 3416, IN THE OFFICE OF SAID COUNTY RECORDER HAVING A RADIUS OF 600.00 FEET AND AN ARC LENGTH OF 51.40 FEET, SAID CURVE BEING THE NORTHWESTERLY CONTINUATION OF FIRST MENTIONED 600.00 FOOT RADIUS CURVE; THENCE LEAVING SAID CENTERLINE ALONG A RADIAL LINE FROM SAID CURVE SOUTH 58°35'05" WEST 40.00 FEET TO THE WESTERLY LINE OF SAID ROAD EASEMENT AND THE **TRUE POINT OF BEGINNING** FOR THIS DESCRIPTION SAID POINT BEING A POINT ON A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 560.00 FEET, A RADIAL LINE TO SAID POINT BEARS NORTH 58°35'05" EAST; THENCE PARALLEL WITH AND 40.00 FEET SOUTHWESTERLY AND SOUTHERLY OF THE CENTERLINE DESCRIBED IN SAID

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INSTRUMENT NO. 3416 THE FOLLOWING COURSES, NORTHWESTERLY 47.97 FEET ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 04°54'30", NORTH 36°19'25" WEST 241.52 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 740.00 FEET, NORTHWESTERLY 242.65 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 18°47'15", NORTH 55°06'40" WEST 238.77 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHERLY, HAVING A RADIUS OF 440.00 FEET, WESTERLY 412.49 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 53°42'50", SOUTH 71°10'30" WEST 484.87 FEET TO THE BEGINNING OF A CURVE, CONCAVE NORTHERLY, HAVING A RADIUS OF 340.00 FEET, WESTERLY 303.28 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 51°06'30", NORTH 57°43'00" WEST 126.34 FEET TO THE BEGINNING OF A CURVE, CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 310.00 FEET, NORTHWESTERLY 155.55 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 28°45'00", AND NORTH 86°28'00" WEST 109.20 FEET; THENCE LEAVING SAID PARALLEL LINE SOUTH 03°32'00" WEST 540.00 FEET; THENCE SOUTH 49°36'36" EAST 414.81 FEET; THENCE SOUTH 89°34'26" EAST 993.10 FEET; THENCE NORTH 74°00'00" EAST 800.00 FEET TO SAID **TRUE POINT OF BEGINNING**.

CONTAINING 1,306,801 SQUARE FEET OR, 30.00 ACRES MORE OR LESS.

AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF.

DATED THIS 23rd DAY OF May, 2001.


 JERRY L. USELTON, L.S. 5347, EXP. 12/31/03



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EXHIBIT D

DEED OF CONSERVATION EASEMENT FOR
WILDLIFE HABITAT AND OPEN SPACE

Exhibit D consists of 1 page

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EXHIBIT E

**DEED OF CONSERVATION EASEMENT FOR
WILDLIFE HABITAT AND OPEN SPACE**

Exhibit E consists of 47 total pages

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FILE

**CONDITIONAL USE PERMIT
Rancho Malibu**

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City of Malibu

23555 Civic Center Way, Malibu, California 90265
(310) 456-CITY FAX (310) 456-3356

Planning Department

FILE

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PLANNING DEPT.

AFFIDAVIT OF ACCEPTANCE OF CONDITIONS

CONDITIONAL USE PERMIT NO. 96-005
VARIANCE 96-010 AND SITE PLAN REVIEW NO. 96-015
CITY COUNCIL RESOLUTION NO. 98-001

The undersigned property owner (or agent of the property owner) acknowledges receipt of the City of Malibu City Council Resolution No. 98-001 and agrees to abide by all terms and conditions thereof. The permit and rights conferred by this approval shall not be effective until the signed acknowledgment has been returned to the City of Malibu, no later than April 23, 1998.

April 20, 1998
Date

[Signature]
Signature of Property Owner or Agent

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RESOLUTION NO. 98-001

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MALIBU APPROVING, WITH CONDITIONS, CONDITIONAL USE PERMIT NO 96-005, VARIANCE NO. 96-010 AND SITE PLAN REVIEW NO. 96-015 TO CONSTRUCT A 146 ROOM HOTEL (106 ROOMS INITIALLY AND 40 ROOMS SUBSEQUENTLY) ON PROPERTY LOCATED AT THE NORTHEAST CORNER OF PACIFIC COAST HIGHWAY AND MALIBU CANYON ROAD.

The City Council of the City of Malibu does hereby Find, Order, and Resolve as follows:

Section 1. Application. On March 27, 1996, conditional use permit, variance and site plan review applications were duly filed by the Malibu Land Company requesting approval to construct a hotel and cultural heritage center on property located at the northeast corner of Pacific Coast Highway and Malibu Canyon Road (APNs: 4458-028-015, 4458-028-019, and 4458-030-007.) The requests are as follows:

Conditional Use Permit

- a. allow hotel use on the subject site
- b. allow lighting of two tennis courts

Variance

- a. allow a FAR of 0.20 where the maximum permitted is 0.15
- b. setbacks
 1. a 25 foot front yard setback in lieu of 259 feet,
 2. a 25 foot side yard setback in lieu of 97 feet,
 3. a 110 foot cumulative side yard setback in lieu of 241 feet, and
 4. a 145 foot rear yard setback in lieu of 194 feet.
- c. Grading
 1. 119,000 cubic yards of grading where 1,000 cubic yards are allowed,
 2. manufactured slopes up to 30 feet in height where 6 feet are allowed.
- d. Parking
 1. 492 parking spaces where 1,207 are required
 2. parking spaces to be located more than 300 feet from the use they serve

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City Council Resolution No. 98-001
CUP 96-005, VAR 96-010 and SPR 96-015-Rancho Malibu Hotel
March 23, 1998

e. Height

1. a rotunda tower to be 35 feet in height where 28 feet is the maximum height allowed.

Site Plan Review

- a. allow construction over the base height of 18 feet up to 28 feet
- b. permit construction on slopes between 2.5:1 and 3:1.

Section 2. Planning Commission Public Hearing. - On November 3, 1997, the Planning Commission held a duly noticed public hearing regarding Conditional Use Permit No. 96-005, Variance No. 96-010, Site Plan Review No. 96-015 and Certification of the EIR pertaining to the subject hotel and after considering all testimony, written and oral, relative to consideration of the proposed hotel, on November 3, 1997 the Commission adopted Resolution Nos. 97-042 and 97-043 certifying the EIR and denying the variance to construct with a FAR of 0.20, respectively. Subsequently, on November 17, 1997 the Planning Commission adopted Resolution Nos. 97-044, 97-045 and 97-046 approving, with conditions, the subject applications.

Section 3. Appeals. - On November 26, 1997 the Malibu Road Property Owners' Association in conjunction with the Malibu Township Council appealed Resolution Nos. 97-044, 97-045 and 97-046. On December 1, 1997, the project applicant also filed an appeal of said resolutions.

Section 4. City Council Public Hearings. On January 12, 1998, February 3, 1998, March 9, 1998, and March 23, 1998 the City Council held a duly noticed public hearing regarding said appeals.

Mitigation Monitoring Program.

Section 5 The City Council hereby adopts the mitigation monitoring programs attached hereto as Exhibits A and B to monitor the changes to the project which have been adopted or made a condition of project approval in order to mitigate or avoid significant effects on the environment. Exhibits A and B is incorporated herein by this reference as though set forth in full:

Section 6 Based upon the initial study and other information contained in the EIR, and the record of the hearing, including comments and responses to comments, the City Council finds that the Rancho Malibu Hotel project, as conditioned herein, will not cause significant environmental impacts with respect to land use, seismic hazards, groundwater, adequacy of wastewater treatment, consistency with the Air Quality Management Plan, the Congestion Management Plan, parking, stormwater runoff, obstruction of scenic views or vistas, and terrain modification.

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CUP 96-005, VAR 96-010 and SPR 96-015-Rancho Malibu Hotel
March 23, 1998

Section 7 The City Council finds that the mere certification of the proposed EIR would not and did not result in any adverse impacts. However, the EIR identifies potentially significant environmental impacts with respect to rural character, slope stability, soils, drainage, grading and erosion control, zero balance, zero runoff, groundwater monitoring, dust emissions from grading, traffic and circulation, biological resources, and cultural resources which will likely result from the implementation of the proposed Rancho Malibu Hotel. The EIR identifies feasible mitigation measures that reduce the impacts described above to levels of insignificance.

Section 8 The City Council finds, in accordance with Public Resources Code Section 21081(a), that changes or alterations have been incorporated into the proposed Rancho Malibu Hotel which avoid or substantially lessen the potential for environmental impacts with respect to seismic hazards, slope stability, water/wastewater, biological resources, and cultural resources. The nature of the impacts under each of these topics and the changes or alterations proposed to mitigate those impacts are summarized in the EIR. Brief rationales for the conclusions that each of these impacts will be avoided or substantially lessened follow; a more comprehensive rationale with respect to each impact is set forth in Chapter 2 of the EIR, which has been incorporated into this Resolution by reference:

a) Seismic hazards. A building setback zone ranging from 70 to 95 feet wide has been established by the property owner along the branch of the Malibu coast fault zone crossing the southern portion of the site. All of the habitable structures are located outside the delineated zone.

b) Slope stability. Certain existing slopes in the eastern portion of the site do not meet current safety standards. The grading plan includes remedial grading to re-engineer the slopes to meet safety standards.

c) Water/Wastewater. The Rancho Malibu Hotel project has been designed in order to achieve zero balance and zero runoff. The hotel includes an on-site wastewater treatment facility. The hotel project has been sized and the landscape plan has been designed so that all of the project's treated wastewater can be disposed of on-site through landscape irrigation. The wastewater system includes monitoring devices to ensure zero runoff of the treated wastewater.

d) Biological resources. The Rancho Malibu Hotel project includes use of the 30 acre Francisco property as off-site mitigation for biological resource impacts.

e) Cultural Resources. The Rancho Malibu Hotel project includes in-situ preservation of prehistoric cultural resources by capping or covering the deepest and most sensitive portion of the CA-LAN-266 site, including the CA-LAN-1715 area. About 90 percent of the site will be capped. In addition, the city will require the developer to implement a cultural resource management plan (CRMP) covering 100 percent of the site. The CRMP's conditions will be incorporated into deed restrictions for the property to ensure the protection of this archaeological site

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March 23, 1998

in perpetuity for future generations. The implementation of the CRMP will preserve 90 percent of the CA-LAN-266 site, including the CA-LAN-1715 area, and protect the remaining ten percent of the undisturbed site area.

Section 9 The EIR describes eight alternatives to the project. These constitute a reasonable range of alternatives to the proposed Rancho Malibu Hotel. Five of the alternatives might fulfill the basic objectives of the project; three of the alternatives would not. The objectives of the project sponsor include: developing the site in a manner consistent with the land use designation for the site contained in the City's General Plan, which is compatible with surrounding uses, and that will provide an economic return through room and service charges. The City's objectives include development of the site consistent with the Malibu General Plan and Interim Zoning Ordinance and ensuring the site's development does not harm the natural resources and aesthetic values of the area and preserving the rural residential character of Malibu.

Of the alternatives consistent with these objectives, one alternative would have greater environmental impacts than would the proposed Rancho Malibu Hotel: Alternative B - Luxury Hotel and Theme Restaurant/0.20 FAR.

Four alternatives have lesser environmental impacts than would the proposed Rancho Malibu Hotel: Alternative D - 250 Room Business Suites Hotel/0.15 FAR; Alternative E - Luxury Hotel and Cultural Center with Restricted Spa Use /0.20 FAR; Alternative F - Luxury Hotel and Cultural Center /0.15 FAR; and Alternative G - Largest Hotel With On-Site Water Balance and On-Site Habitat Preservation.

The EIR contains two alternatives which would have greater impacts than the proposed Rancho Malibu Hotel and would not fulfill the project objectives: Alternative A - No Project (Visitor Serving Commercial Use / 0.15 FAR) and Alternative C - Condominium Complex / 0.15 FAR. Rejection of these alternative is justified on both environmental grounds and because they fail to meet project objectives.

In addition, the EIR contains one alternative which would have lesser impacts than the proposed Rancho Malibu Hotel but would not fulfill the project objectives: Alternative H - No Development. However, this alternative is infeasible because the project site is private property that can be developed in accordance with the City of Malibu Land Use Plan.

Section 10. Following review of the project and alternatives the City Council approved a modified version of Alternative F - Luxury Hotel/0.15 FAR. The approved project provides for a luxury hotel with 106 rooms and ultimately no more than 146 rooms, no more than a 0.15 FAR, and a reduction in the combined size of the ballroom and meeting rooms (6,000 square feet). This alternative has less impacts than the project originally proposed by the applicant. In addition, the City Council required the hotel to be constructed first with 106 rooms and made issuance of the

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City Council Resolution No. 98-001
CUP 96-005, VAR 96-010 and SPR 96-015-Rancho Malibu Hotel
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construction permits for 40 additional rooms by the Planning Commission contingent on demonstration through mitigation monitoring that 106 rooms can be successfully mitigated and does not result in any significant impacts after mitigation.

The mitigation monitoring program provides the project sponsor with the option of preparing a new traffic report for the approved project and for the potential alteration of traffic mitigation measures should the new traffic study show that a lesser level of traffic impact would result from the project as approved. Revised traffic mitigation measures may be substituted for the measures contained in the mitigation monitoring plan at the discretion of the Director of Public Works as long as the measures mitigate all project traffic impacts to a less than significant level.

Section 11. The City Council finds in accordance with Public Resources Code Section 21081 (a)(3) that specific social and economic considerations make infeasible that portion of mitigation measure 1.1, as contained in the EIR, which prohibits the morning (7:30 - 11:00 a.m.) operation of the hotel's public uses. Mitigation measure 1.1 has been modified in the mitigation monitoring program in accordance with the finding to limit public use of the meeting and ballrooms from 7:30 a.m. to 12:00 a.m.

Conditional Use Permit - Hotel Use

Section 12. The City Council, having heard all oral and written testimony and considered all relevant evidence and argument in accordance with Section 9423(D) of the Municipal Code, finds as follows:

- a) The proposed use is one conditionally permitted within the subject zone (Commercial Visitor - 2) and, as conditioned, complies with the intent of all of the applicable provisions of the IZO in that the hotel use, subject to the imposed conditions, will satisfy the IZO's general requirements.
- b) As conditioned, the proposed use would not impair the integrity and character of the zone in which it is to be located in that all of the development is not concentrated in one large monolithic structure but is divided into smaller, separate, one and two story, structures in a campus setting that is compatible with the scale of surrounding development. Furthermore, the site is isolated from surrounding properties by three major roads and ingress and egress from the site is from Malibu Canyon Road, across from an expansive lawn on the Pepperdine University property and away from the residential uses fronting Civic Center Way.

In addition to the physical characteristic of the site, there are operational characteristics and restrictions that will cause the proposed use to be consistent with the zone in which it is located. Specifically, the project is conditioned to prohibit outdoor amplified

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music; the spa is restricted to use by hotel guests and residents of Malibu only; and there will be an annual review, paid for by the applicant and conducted by an independent consultant, of the on-site drainage and wastewater system.

- c) The subject site is physically suitable for the type of land use being proposed in that the topography and size of the site is adequate to accommodate the proposed hotel, the ancillary uses and the necessary on-site support facilities and infrastructure without creating significant environmental impacts that cannot be mitigated.
- d) As conditioned, the proposed use is compatible with the land uses, if any, presently on the subject property and in the surrounding neighborhood in that there is a diverse mix of uses and development type in the surrounding neighborhood. There are institutional uses (Pepperdine University, Our Lady of Malibu Church, and Malibu City Hall and County Library and Municipal Court); commercial uses (Malibu Colony Plaza and Malibu Country Mart); recreational uses (Bluffs Park and Community Center); residential uses (Maison de Ville, Malibu Canyon, and Malibu Pacifica condominium complexes and Malibu County Estates); light industrial uses (Los Angeles County maintenance and storage yard) and vacant land (south and east of the site) within the immediate vicinity of the project site. Furthermore, the design and layout of the proposed hotel is compatible with existing surrounding development in that it is of similar, or smaller bulk, size and height and has similar or greater setbacks. Therefore, the proposed hotel project would be a complementary addition to the uses in the neighborhood.
- e) As conditioned, the proposed use would be compatible with existing and future land uses within the zone and the general area in which the proposed use is to be located in that hotels are conditionally permitted within the subject Commercial Visitor - 2 (CV-2) zoning district designation and the proposed hotel is located in an area consisting of a mix of allowed and existing land uses.
- f) There would be adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety and the project does not affect solar access or adversely impact existing public and private views, as defined by the Staff. An on-site waste water disposal system will be utilized. Wastewater will receive tertiary treatment and last stage sterilization (as described in the conditions of approval) on-site and be used for all landscaping irrigation needs on the site. The applicant is required to demonstrate that the project plumbing does not exceed the water use budget established in the mitigation monitoring program. Solar access will not be affected by the proposed project in that the maximum structure height proposed is 28 feet, the smallest setback is 25 feet (most

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structures are setback 85 feet, or more, from the property lines) and the site does not adjoin any other parcel since it is surrounded by public roads.

- g) There would be adequate provisions for public access to serve the subject proposal in that access will be from Malibu Canyon Road, an existing arterial roadway with adequate carrying capacity. All traffic impacts of the project can be mitigated.
- h) As conditioned, the proposed use is consistent with the goals, objectives, policies, and general land uses of the Malibu General Plan in that the proposed hotel is consistent with the General Plan land use designation for the subject site which is Commercial-Visitor - Two (CV-2) and is consistent with the following policies of the General Plan:

LU Policy *LU Policy 2.2.1*: "The City shall require adequate infrastructure, including but not limited to roads, water, and wastewater disposal capacity, as a condition of proposed development."

The conditions of approval of this project require that infrastructure improvements, including roadway improvements, and an on-site wastewater treatment system be provided to service the hotel.

LU Policy 2.2.8: "The City shall require adequate wastewater management for development."

An on-site wastewater treatment system is provided for the project.

LU Policy 4.4.3: "The City shall regulate design of new bed and breakfast inns to foster 'country-inn type' establishments and regulate the size and design of other hotel development to ensure development compatible with a rural residential community and discourage convention hotel developments by limiting on the same site ancillary uses such as banquet and meeting rooms and limiting restaurants to a capacity necessary to serve guests of the hotel only."

The size and design of the project is subject to conditions which assure that the project is residential in scale and compatible with the natural environment as required by the General Plan. As a condition of approval, the combined size of the ballroom and all meeting rooms is limited to 6,000 square feet.

Conservation Policy 1.2.3: "The City shall mitigate net loss of very

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threatened plant communities."

In order to mitigate the loss of the coastal sage scrub, a threatened plant community located on the project site, 30 acres of undisturbed chaparral located on an alternate site shall be preserved.

In addition to being consistent with the goals, objectives, policies, and general land uses of the Malibu General Plan, the hotel use is also consistent with the Interim Zoning Ordinance in that the site is zoned Commercial-Visitor-Two (CV-2) and hotels are permitted in the CV-2 zoning district subject to approval of a conditional use permit. Furthermore, the applicant has demonstrated compliance with Section 9442 of the Malibu Municipal Code which requires a market analysis that indicates a "clear and compelling economic and social need in the City for the proposed development, and demonstrates its economic viability, and impact on City services" be submitted. The applicant has submitted a report, prepared by PKF Consulting, that indicates that there is a "clear and compelling economic and social need in the City for the proposed development" and the Final EIR indicates that they are adequate City services for the proposed hotel.

- i) As conditioned, the proposed project complies with all applicable requirements of state and local law in that the use will be inspected by the City Building Department to ensure compliance with local building codes and will be subject to a mitigation monitoring program.
- j) As conditioned, the proposed use would not be detrimental to the public interest, health, safety, convenience or welfare in that the proposed hotel use will be subject to the conditions of approval which incorporate the mitigation monitoring program of the Final Environmental Impact Report, as modified by the Planning Commission and the City Council.
- k) The project is not located in an area known to be at risk from flooding or liquefaction, and although the project is located in an area known to be at risk from earth movement and wildfires it is subject to the seismic safety standards of the State and local building codes.

Section 13. On the basis of the foregoing findings, the City Council hereby approves Conditional Use Permit Application No. 96-005 to allow the construction of a hotel on a 27.8 acre property located at the northeast corner of Pacific Coast Highway and Malibu Canyon Road, subject to the conditions set forth in Section 14, below.

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Section 14. In order to assure that the project is constructed according to all applicable State and local laws and will mitigate impacts to surrounding properties it shall be subject to the conditions of the Mitigation Monitoring Program which is a part of the Environmental Impact Report prepared for the Rancho Malibu Hotel and attached hereto as Exhibits A and B and the following conditions:

a) General Conditions

1. The proposed development shall be constructed in substantial conformance with the plans, including the architectural design and materials as presented at the hearing and submitted to the Planning Department on October 7, 1997, and the plans as modified by the City Council at the January 12, 1998 and February 3, 1998 meetings.
2. Every 2 years, the Planning Director must report to the Planning Commission on the applicant's compliance with the terms and conditions of the conditional use permit. If the project is not in compliance, the City may initiate proceedings to revoke or modify the conditional use permit unless compliance is achieved.
3. Prior to approval-in-concept, the applicant shall obtain approval in the planning phase from the City Geologist and the City Environmental Health Specialist.
4. Prior to final Planning Department approval, the applicant shall obtain California Coastal Commission approval for the project as modified and approved by the City Council.
5. Prior to issuance of a building permit, the applicant shall record a Lot Merger with the County Clerk to combine the three parcels that the project is proposed on into one parcel.
6. The permit and rights conferred in this approval shall not be effective until the applicant first files with the City Clerk an executed affidavit accepting the conditions set forth in this Resolution. The applicant shall file such an affidavit within 30 days of adoption of the approval of this Resolution.

b) Plan Conditions

1. The appropriate Mitigation Monitoring Program shall be printed verbatim on any and all plan sets and included in the construction plan set submitted for all

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Building and Safety reviews and approvals.

2. The plans shall be revised so that the hotel is constructed with 106 guest rooms. An additional 40 guest rooms may be constructed if the applicant demonstrates to the satisfaction of the Planning Commission compliance with all of the performance criteria established in the mitigation monitoring program attached hereto as Exhibit "A" for a period of 5 years or for any two year period for which the average occupancy is at least 72 percent. Upon issuance of the construction permit for the additional 40 rooms, the mitigation monitoring program attached hereto as Exhibit "B" shall replace the monitoring program developed for the first 106 guest rooms.
3. A villa complex shall not contain more than three structures and each structure shall not exceed 6,000 square feet for a total of 18,000 square feet per villa complex. Villa structures may be connected by breezeways.
4. The size of the ballrooms and meeting rooms shall not exceed a combined total of 6,000 square feet of net floor area.
5. The cultural resource center proposed as a stand alone structure at the corner of Pacific Coast Highway and Malibu Canyon Road shall be no more than 9,000 square feet in net floor area and shall be setback no less than 180 feet from Malibu Canyon Road and no less than 97 feet from Pacific Coast Highway. The structure shall not be greater than one story and shall not exceed 18 feet in height.
6. A storm water management plan shall be prepared by the applicant, approved by the City Engineer, and implemented in accordance with the City's Storm Water Ordinance (Ordinance 157) and shall set forth the actions the applicant shall take to assure that no storm water is generated from the site.
7. A plan which demonstrates compliance with the transportation demand and trip reduction measures required by IZO Section 9342 shall be submitted to the Planning Director prior to issuance of any permits.
8. A complete landscape and irrigation plan shall be submitted for review and approval by the City Biologist and the Planning Director prior to final Planning Department approval. Treated water from the on-site treatment facility shall be used for irrigation needs.

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9. Mature and native plants shall be incorporated in the landscaping plan.
 10. An alternate emergency evacuation route that provides egress from the eastern portions of the site to Pacific Coast Highway or Civic Center Way shall be provided.
 11. Parking stalls visible from residences in Malibu Country Estates shall be screened with the use of vine covered arbors, or other open beam construction and landscaping materials.
 12. The City's traffic engineer shall analyze the effectiveness of a "V" lane south of the entrance to the hotel site along the east side of Malibu Canyon Road and, if determined necessary by the City Engineer, a "V" lane shall be required.
 13. The Building Official shall review the grading plans and determine the minimal amount of remedial grading which is necessary to achieve a safety factor of 1.5. No more than the minimal amount of necessary remedial grading shall be performed.
 14. Graded slopes shall be undulated and contoured to match as closely as possible the existing natural contours.
 15. In order to determine the required number of parking spaces for the subject project, a parking demand study shall be prepared by an engineering firm selected by the Planning Director and paid for by the applicant.
 16. Prior to receipt of Planning Department approval-in-concept, the applicant shall submit a site plan to the City Council to ensure that the site plan is consistent with the Council's approval.
 17. The property owner shall mitigate in a manner approved by the City the impact of the project on the demand for affordable housing in the City as established by a study prepared by the City and paid for by the property owner.
- c) Operational Conditions
1. The spa shall be limited to use by guests of the hotel and residents of Malibu.
 2. Use of the meeting rooms shall be limited to the hours of 7:30 a.m. until midnight.

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3. A consultant shall perform an annual review of the drainage and wastewater system to ensure performance in compliance with the Mitigation Monitoring Program. The consultant shall be approved by the Planning Director and all consultant costs shall be paid for by the applicant.
4. At least one year prior to construction, appropriate water level measurement equipment shall be installed and data collected to establish a baseline ground water level. Data collection and reporting shall be prepared by a consultant selected by the City and paid for by the applicant.
5. An emergency preparedness and evacuation plan acceptable to the City, that addresses earthquake, fire and flood hazards, shall be prepared.
6. An emergency potable water supply shall be provided for the guests and employees of the hotel.
7. No outdoor amplified sound shall be permitted.
8. All reclaimed water, that is sprayed, shall receive last stage sterilization which eliminates fecal coliform (no more than 0.0 parts per mL) and viruses by ozonization, ultraviolet treatment or any other sterilization process which achieves the same standard (0.0 parts per mL).

Conditional Use Permit - Lighted Tennis Courts

Section 15 The City Council having heard all oral and written testimony and considered all relevant evidence and argument in accordance with Section 9423(D) of the Municipal code finds as follows:

The proposed use would not impair the integrity and character of the zone in which it is to be located in that the tennis courts are adjacent to a major arterial that is lighted. Furthermore the surface of the courts will be painted in a dark matte finish, the light fixtures will be shielded to prevent light and glare from spilling beyond the court and a dark screen will be attached to the fencing around the perimeter of the courts.

Section 16. On the basis of the foregoing findings, the City Council hereby approves Conditional Use Permit Application No. 96-005 to install tennis court lights on a 27.8 acre property located at the northeast corner of Pacific Coast Highway and Malibu Canyon Road subject to the following conditions:

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1. The surface of the courts shall be painted in a dark matte finish in order to reduce reflection from the surface of the court into the air above the court.
2. All of the light fixtures for the tennis courts shall be shielded to prevent light from spilling beyond the boundaries of the courts.
3. A dark screen shall be attached to the fencing around the perimeter of the courts.
4. The tennis courts shall not be used after 10:00 p.m.

Setbacks, and Grading Variances

Section 17. Findings. - The City Council having heard all oral and written testimony and considered all relevant evidence and argument in accordance with Section 9423(D) of the Municipal code finds as follows:

- a. There are special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance would deprive such property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification. The large size of the project site results in unusually large setback requirements. In addition, the combination of the triangular shape of the parcel, the steep slopes along Civic Center Way and Pacific Coast Highway, the earthquake fault, and the archaeological site create additional constraints, as described in detail below, which justify the setback, parking and grading variance requests.

- The large parcel size. Strict application of the zoning ordinance's development standards would result in setback requirements, parking standards, grading limitations and retaining wall height limitations in excess of what is required to meet the City's land use goals and policies.

Setback requirements are based on the average parcel dimensions. The subject site has an average depth of 1,300 linear feet and an average width of 965 linear feet. MMC Section 9307 (A) (2) requires a minimum front yard setback of 20 percent of the parcel depth (260 feet); minimum and cumulative side yard setbacks of 10 percent (97 feet) and 25 percent (241 feet), respectively; and minimum rear yard setbacks of 15 percent (195). In addition, MMC Section 9334 (A) (2) prohibits parking within the required front yard setback area.

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Earthwork is limited by MMC Section 9307 (A) (5) to 1000 cubic yards of grading and 6 feet in height, which are standards appropriate to construct single family homes or residential scale commercial buildings. Without approval of a variance, the subject 27.8 acre site is limited to the same quantity and height of grading as a small 1/4 acre parcel. Lastly, MMC Section 9334 (A) (1) requires parking spaces to be within 300 feet of the use they serve. As a result of the large size of the parcel and the large number of spaces required, approximately 50 percent of the required parking spaces are more than 300 feet from the structures they are intended to serve. However, the hotel operators will provide a shuttle /jitney service, (using electric vehicles) to transport visitors from the parking area to their rooms.

The triangular shape. When combined with other unique features of the property, the triangular shape of the parcel creates site design and layout constraints. As the parcel tapers and eventually ends in the rear yard at a point, structures nearest the side property lines encroach into the required side and rear yard setbacks. Shifting the development west and north, toward the intersection of Malibu Canyon Road and Civic Center Way would move the structures out of the required side and rear yard setbacks. However this is not possible because an archaeologically sensitive area, located near the northern corner of the property, and an earthquake fault, located just north of the Villas along Pacific Coast Highway, further restrict placement of structures on the property. Furthermore, with the exception of the Cultural Heritage Center, which is located near the intersection of Pacific Coast Highway and Malibu Canyon Road, all of the other structures that encroach into the required rear and side yards are still a significant distance from the property lines. For example, the proposed site for Villa No. 2 is the closest structure to Pacific Coast Highway yet it is still setback 75 feet from the side property line. The proposed site for Villa No. 6 encroaches into the rear yard; however, it is 145 feet from the rear property line.

The site boundary is defined by three major roads. Since the property is surrounded by three major roads, portions of any development on the site will be visible. If the development is setback further from one road, then it will become more visible from the road on the opposite side and vis-versa. Therefore, the unique surroundings have been given consideration in the variance requests.

Its elevation above its residential neighbors. The subject site is at an elevation significantly higher than the residential neighbors north of the site. Given the

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30 to 50 foot difference in elevation, the impacts of allowing a reduction in the setbacks are lessened. Furthermore, the closest structure on the project site will be approximately 250 feet from the nearest residential structure to the northeast.

- The presence of an archeological site on the property. As discussed above, the archeological site on the property significantly constrains the developable portions of the site and presses development into setbacks.
 - The presence of a branch of the Malibu Coast Fault on the site. The site for Villas I, II, III, and IV, and the spa, are located between the earthquake fault and the side yard setback. As a result of the proximity of the fault to the setback area, portions of these structures are located in the side yard setback. Placing these structures on the north side of the fault results in further encroachment into the side yard setbacks on the opposite (northeast) side of the property and the loss of land otherwise suitable for development.
 - The steep slopes along two edges of the property. In addition to all the other physical constraints of the site, steep slopes make up a significant portion of the property. The slopes along the north property line at Civic Center Way and the south property line at Pacific Coast Highway are steeper than 3:1.
 - Development of unique project. Many aspects of the proposed hotel project are unique for Malibu and the Interim Zoning Ordinance does not contain provisions that adequately address this type and scale of development. In addition to the aforementioned unique physical characteristics of the site, there are no other vacant parcels in the City with the same zoning designation. Standards which are better suited for the type of development allowed by this property's zoning are being created through the Civic Center Specific Plan process.
- b. The granting of the variance will not be detrimental to the public interest, safety, health or welfare, and will not be detrimental or injurious to the property or improvements in the same vicinity and zone in which the property is located in that while the setbacks, parking, and grading proposed do not comply with the IZO standards, all proposed structures will still maintain significant setbacks from the property lines, and the amount of grading is not excessive in relation to the size of the parcel. In addition, three major roads surround the site and provide an additional buffer between the subject site and surrounding properties.

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- c. The granting of the variance will not constitute a grant of special privilege to the applicant or property owner in that the setbacks, parking and grading would be equitable given the size, shape, and topography on the project site.
- d. The granting of such variance will not be contrary to or conflict with the general purposes and intent of this Chapter, nor to the goals, objectives and policies of the General Plan in that the subject project is consistent with the General Plan Land Use Map designation for hotel use on the site.
- e. The variance request is consistent with the purpose and intent of the zone in which the site is located in that the site is zoned Commercial Visitor-2 (CV-2) and hotels are permitted in the CV-2 district.
- f. The subject site is physically suitable for the proposed variance in that the topography and size of the site are adequate to accommodate the proposed hotel, the ancillary uses, the necessary on-site support facilities and the infrastructure without creating significant environmental impacts which cannot be mitigated.
- g. The variance complies with all requirements of state and local law in that the use will be inspected by the City Building Department to ensure compliance with local building codes.
- h. All or any necessary conditions have been imposed on the variance as are reasonable to assure that the variance will not be detrimental to the health, safety and welfare of the City.

Section 18. Setback, Parking and Grading Variance Approval. - On the basis of the foregoing findings, and subject to the condition set forth below in Section 19, the City Council hereby approves Variance No. 96-010 to allow the construction of a two-story hotel with a reduction in the minimum setbacks required, an increase in the maximum volume of grading permitted, an increase in the maximum manufactured slope height, an increase in the maximum distance parking spaces may be from the uses they serve and parking standards based on a parking demand study as follows:

- a. Setbacks
 - 1. minimum 55 foot front yard setback for tennis court fences and 180 feet or the cultural resource center (all other structures shall comply with the front yard setback requirement.
 - 2. minimum 75 foot side yard setbacks along Pacific Coast Highway,
 - 3. minimum 130 foot cumulative side yard setbacks, and
 - 4. minimum 145 foot rear yard setback .

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- b. Grading
 - 1. up to 119,000 cubic yards of grading
 - 2. manufactured slopes up to 30 feet in height
- c. Parking
 - 1. parking spaces to be located more than 300 feet from the use they serve, as indicated on the plans presented to the City Council.
 - 2. parking standards based on a demand study as conditioned in the conditional use permit.

Section 19. Conditions of Approval. - In order to assure that the project is constructed according to all applicable State and local laws and will mitigate impacts to surrounding properties it shall be subject to the conditions of the Mitigation Monitoring Program adopted pursuant to Conditional Use Permit No. 96-005.

Height Variance

Section 20. Findings. - The City Council having heard all oral and written testimony and considered all relevant evidence and argument in accordance with Section 9423(D) of the Municipal code finds as follows:

There are no special circumstances or exceptional characteristics applicable to the subject property, including size, shape, topography, location, or surroundings such that strict application of the zoning ordinance would deprive such property of privileges enjoyed by other properties in the vicinity and under the identical zoning classification. While there are special circumstances and exceptional characteristics applicable to the subject property, such circumstances and characteristics do not make it impractical nor impossible to construct within the maximum allowed height on the subject site.

Section 21. Height Variance Denial. - On the basis of the foregoing findings, the City Council hereby denies Variance No. 96-010 requesting approval to allow the construction of a 35-foot high rotunda tower.

Site Plan Review - Height

Section 22. Findings. - The City Council having heard all oral and written testimony and considered all relevant evidence and argument in accordance with Section 9423(D) of the Municipal Code finds as follows:

- a. That the project does not adversely affect the neighborhood character in that the hotel is designed in a campus-like design, which includes a number of smaller structures, rather than a single large structure. In addition, construction of the project is on three separate levels, joined by stairways, multiple-level buildings, meandering walks and

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ramps; uses extensive landscaping, and incorporates landscaping of parking areas.

- b. That the project, as conditioned, protects the natural resources and complies with the City's land use policies, goals and objectives, as defined by staff in that as a result of the project approximately 30 acres of undisturbed habitat will be preserved off-site. The area selected for preservation is an area that has been designated as a high priority acquisition by the Santa Monica Mountains Conservancy. In addition, all waste water generated by the project will receive tertiary treatment on-site and will be used for on-site irrigation needs.
- c. That the project provides maximum feasible protection to significant public and private views, as defined in Section 9303 (A) (17).
1. Northwest: Properties to the northwest will retain primary views due to the elevational height differences between these properties and the subject property. The nearest structures to the northwest are a part of the Pepperdine University and are approximately 800 - 900 feet away from the subject property and approximately 100 feet higher. A large expansive lawn in front of Pepperdine University is located directly west of the site.
 2. North: There is a large Los Angeles County storage and maintenance yard located directly north of the project site. Northeast of the site, there are three condominium complexes. Views from the condominiums are primarily to the south and southeast. However, a few of the condominium units are oriented toward the project site. The units closest to the proposed hotel will be approximately 550 to 600 feet away.
 3. South: Properties to the south are primarily vacant with the exception of Malibu Bluffs Park which is located to the south and southwest. These properties will retain their ocean views to the south.
 4. East: Properties to the east are located at a lower elevation and remain vacant. Other properties to the east, in the Civic Center Overlay area are at least 800 to 1000 feet away. Portions of the development on the subject site will be visible from these properties, however, no protected views will be impaired by the project.
- d. That the project does not affect solar access, as defined by staff in that there are large setbacks and there are no developed properties immediately adjacent to the proposed project. The project site is bounded by three major roadways. All shade and shadow effect of the project are confined to the project site.

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- e. That the project is consistent with the General Plan in that it is consistent with Land Use Policy 2.1.5 which states that "the City shall protect and preserve public and private ocean and mountain views by striking an equitable balance between the right to reasonable use of one's property, including the maintenance of privacy, and the right to protection against unreasonable loss of views." The proposed hotel project does not result in an unreasonable loss of mountain nor ocean views.
- f. The proposed project complies with all applicable requirements of state and local law in that building permits and inspections will ultimately be required to assure the project's compliance with State law and local law.

Section 23. Site Plan Review Approval. - On the basis of the foregoing findings, the City Council hereby approves Site Plan Review Application No. 97-015 to allow the construction of a two-story hotel, cultural resource center and ancillary structures up to 28 feet in height, subject to the conditions set forth in Section 24 of this Resolution.

Section 24. Conditions of Approval. - In order to assure that the project is constructed according to all applicable State and local laws (including the City's General Plan) and will mitigate impacts to surrounding properties it shall be subject to the conditions of the Mitigation Monitoring Program which is a part of the Environmental Impact Report prepared for the Rancho Malibu Hotel and the following conditions:

- a. The second story area of all Villas shall be limited to two-thirds of the size of the first floor area.
- b. The Villas and structures visible from Civic Center Way and Pacific Coast Highway shall be set back at least 20 feet from the top of the existing 3:1 slopes and be limited to 18 feet in height in order to reduce visual impacts. In no case shall the Villas along Pacific Coast Highway be closer than 75 feet to the property line.
- c. The final design of the project shall be subject to review and approval of the Planning Director.
- d. No structures may be erected on slopes steeper than 3:1.

Site Plan Review - Slopes

Section 25. Findings. - The City Council having heard all oral and written testimony and considered all relevant evidence and argument in accordance with Section 9423(D) of the Municipal code finds as follows:

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That the project adversely affects the neighborhood character in that construction on the slopes steeper than 3:1 creates negative visual impacts because of the prominence of the slopes on the site and such construction would be inconsistent with the General Plan.

Section 26. Site Plan Review Denial. - On the basis of the foregoing findings, the City Council hereby denies Site Plan Review Application No. 96-015 to construct portions of a two-story hotel on slopes steeper than 3:1

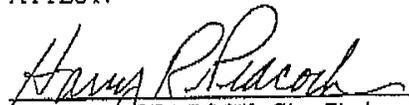
Section 27. Certification of Adoption. The Deputy City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 23rd day of March, 1998.



JEFFREY D. JENNINGS, Mayor

ATTEST:



HARRY R. PEACOCK, City Clerk

I CERTIFY THAT THE FOREGOING RESOLUTION No. 98-001 was passed and adopted by the City Council of the City of Malibu at the regular meeting thereof held on the 23rd day of March, 1998, by the following vote:

- AYES: 4 Councilmembers: Jennings, Van Horn, Keller, Harlow
- NOES: 1 Councilmember: House
- ABSENT: 0
- ABSTAIN: 0



HARRY R. PEACOCK, City Clerk

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City Council Resolution No. 98-001
CUP 96-005, VAR 96-010 and SPR 96-015-Rancho Malibu Hotel
March 23, 1998

Interested parties may petition the court for judicial review of this decision. Pursuant to Code of Civic Procedure Section 1094.6 and Malibu Municipal Code Section 1500, any such petition must be filed no later than 90 days from the 23rd of March, 1998, the date in which this decision became final.

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE 1/1	DATE DONE
1.1	The project's conditions of approval shall include limitations on the hours of operations of the hotel's public uses. Public use of the meeting and ballrooms shall be limited to 7:30 a.m. to 12:00 a.m.	Planning Department	Planning Director	1	
2.1	The project shall undergo the City development review process, which includes review and approval of all project grading and development plans, design review, and completion of any additional geotechnical analysis as required by the City. The City requirements include implementation of soil engineering measures prepared by certified engineers, construction in accordance with the Uniform Building Code and measures prepared by a registered engineer, having an independent observer on the site to observe compliance with grading measures and plans, and other similar measures.	Project Applicant	Director of Public Works and City Building Official	1	
2.2	The applicant shall submit a revised hydrology report which accounts for the specific site plan and landscaping plan to be developed and which provides for the on-site retention of stormwaters, for review and approval of the Public Works Director prior to issuance of a grading permit.	Project Applicant	Director of Public Works	1	
2.3	The final plan for the proposed wastewater treatment and disposal system shall be reviewed and approved by a geotechnical consultant approved by the City, in order to ensure that the final design will not adversely impact local slope stability and off-site landslides. The findings of the geotechnical consultant shall be submitted to and approved by the City Geologist, prior to issuance of the building permit.	Project Applicant	City Geologist	1	
2.4	The project shall develop and implement a State Storm Water Pollution Prevention Plan and City Storm Water Management Plan in accordance with requirements of the County of Los Angeles NPDES permit and of the City of Malibu's Ordinance 157 in order to comply with the Federal Water Pollution Control Act.	Project Applicant	Director of Public Works	1	
3.1	Prior to the issuance of the building permit for the hotel, the applicant shall submit to the City a Plumbing and Appliance Plan and shall demonstrate to the City, using the WAVE software or other software deemed acceptable by the City, that the final design of the hotel shall not exceed a water budget of 10,571,000 gallons per year (equivalent to wastewater generation of 9,810,000 gallons per year). The Plumbing and Appliance Plan submitted shall specify the specific plumbing fixtures and water-using appliances to be incorporated in the hotel design and shall contain a copy of the model runs demonstrating that use of the planned fixtures will not exceed the water budget. The project applicant shall not deviate from the fixtures and appliances specified in the plumbing and appliance plan without the prior written approval of the City.	Project Applicant	City Building Official	1	

1/1 MONITORING PHASE KEY:

- 1 = Plan Check - Demonstration that the required elements have been included in the project plans or the appropriate in lieu fees have been paid prior to issuance of any construction permits.
- 2 = Construction - Monitoring of described construction related activities.
- 3 = Pre-occupancy - Demonstration of mitigation compliance must be demonstrated prior to issuance of occupancy permit.
- 4 = Mitigation requiring periodic compliance demonstration throughout project operation.

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE/1/	DATE DONE
3.2	The applicant shall comply with the minimum standards of the City of Malibu Uniform Plumbing Code.	Project Applicant	City Building Official	1, 2	
3.3	Prior to occupancy of the hotel, the applicant shall prepare a plan for disposing of any excess reclaimed water prior to reaching storage capacity. The plan can include any combination of measures to meet the performance criteria of zero wastewater balance and zero runoff and address any potential wastewater excess. These measures may include measures to dispose of excess wastewater such as specifications of and commitments to other users for the project's reclaimed water, use of dual plumbing, provisions to hook-up to the Civic Center Wastewater Treatment Facility when available, procuring a permit to dispose of excess reclaimed water in Las Virgenes or other regional facilities, using off-site laundry service for the hotel, or methods to reduce wastewater generation such as plumbing retrofits. If Bluffs Park is used as a disposal site for the wastewater, the project applicant shall be responsible for the full cost of the installation of the delivery system and associated permitting costs. The Plan shall include appropriate penalties for failure to meet the performance objectives, to the satisfaction of the City Attorney. The Plan shall be reviewed and approved by the Public Works and Planning Director prior to issuance of the Building Permit.	Project Applicant	City Attorney, Public Works Director, Planning Director	3	
3.4	The project shall include an integrated wastewater management and irrigation system, which shall, at a minimum, meet the standards of the system proposed by the applicant and described in this EIR. The system shall be reviewed and approved by the Public Works Director prior to issuance of the building permit for the hotel.	Project Applicant	Director of Public Works and City Building Official	1	
3.5	The project applicant shall provide the City Building Official with data about wastewater flows, irrigation usage of reclaimed water, storage capacity, and any other information required to determine that the on-site wastewater system is meeting its performance objective of "zero balance" and "zero runoff". This information shall be submitted on a schedule established by the City, but no less than every 12 months.	Project Applicant/Hotel Operator	City Building Official	4	
3.6	The project's groundwater monitoring system design shall be subject to review and approval by the Public Works Director prior to issuance of the Building Permit. The Public Works Director shall have the authority to require additional wells or monitoring devices, if deemed necessary after system design review. The groundwater monitoring plan submitted shall include: 1) an evaluation of any identified water bearing unit for potential inclusion in the groundwater monitoring system, 2) relocation of Well 4 to the downgradient portion of the Winkler Canyon aquifer, 3) a technical program for the groundwater monitoring, including data collection and data interpretation and, 4) guidelines for corrective measures as needed.	Project Applicant	Director of Public Works and City Building Official	1	

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE #/	DATE DONE
3.7	The final plan for the proposed wastewater treatment and disposal system shall be reviewed and approved by a geotechnical consultant approved by the City, in order to ensure that the final design complies with the requirements of these mitigation measures and the design proposed by the applicant and analyzed in the EIR. The findings of the geotechnical consultant shall be submitted to and approved by the City Geologist prior to issuance of the building permit.	Project Applicant	City Geologist	1	
3.8	In order to establish the natural ground water level, piezometer shall be installed at the applicants expense and to the satisfaction of the Director of Public Works at least one year before construction of the hotel starts. The groundwater level shall be monitored on a schedule established or deemed acceptable by the Director of Public Works in order to establish data on the seasonal fluctuation in groundwater levels. Prior to issuance of the construction permit a report shall be submitted documenting the pre-construction ground water levels. The report shall include an analysis of the correlation between fluctuations in groundwater levels and precipitation, as well as any other factors requested by the Director of Public Works.				
4.1	In the event that substantial accumulation of dust in the air over the grading operations is observed and a combination of low wind speed and high stability results in substantial dust concentrations at the schools or condominium complexes for a continuous period of more than one hour, one or more of the following additional mitigation measures shall be put in place as appropriate until the wind conditions change to make these measures unnecessary: grading shall be halted, or grading shall be moved to a location on the site more distant or such that substantial dust is no longer carried toward the schools or condominium complexes, or water trucks shall spray continuously behind or into grading vehicles to substantially reduce the amount of dust raised into the air.	Project Applicant	Public Works Director	2	

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE 1/1	DATE DONE
4.2	<p>The proposed project, in conformance with the City of Malibu General Plan policies, will implement the following measures consistent with the SCAQMD CEQA Air Quality Handbook, to reduce short-term construction impacts as determined appropriate by the City:</p> <ol style="list-style-type: none"> (1) configure construction parking to minimize traffic interference; (2) provide temporary traffic control during all phases of construction activities to improve traffic flow (e.g., flag person); (3) schedule construction activities that affect traffic flow to off-peak hours (e.g., between 7:00 p.m. and 6:00 a.m. and between 10:30 a.m. and 3:30 p.m.); (4) develop a construction traffic management plan that includes but is not limited to: rerouting construction trucks off congested streets; consolidating truck deliveries; providing dedicated turn lanes for movement of construction truck and equipment on- and off-site; use electricity from power poles rather than temporary diesel or gasoline powered generators; (5) reduce traffic speeds on all unpaved roads to 15 miles per hour or less; (6) pave construction roads that have a traffic volume of more than 50 daily trips by construction equipment or 150 total daily trips for all vehicles; (7) apply approved chemical soil stabilizers according to manufacturers' specifications to all inactive construction areas (e.g., previously graded areas inactive for four days or more); (8) replace ground cover in disturbed areas as quickly as possible; (9) enclose, cover, water twice daily, or apply approved soil binders according to manufacturers' specifications, to exposed piles (e.g., gravel, sand, dirt); (10) water active sites at least twice daily; (11) cover all trucks hauling dirt, sand, soil, or other loose materials, and maintain at least two feet of freeboard (i.e., minimum vertical distance between top of the load and top of the trailer); (12) sweep streets at the end of the day if visible soil material is carried over to adjacent roads (recommend water sweepers with reclaimed water); (13) install wheel washers where vehicles enter and exit unpaved roads onto paved roads, or wash off trucks and any equipment leaving the site. 	Project Applicant	Director of Public Works	2	

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE /1/	DATE DONE
4.3	To reduce long-term impacts, consistent with the City of Malibu General Plan policies the applicant will implement the following measures as determined feasible by the City: (1) provide preferential parking spaces for carpools and vanpools; (2) implement an on-site circulation plan in parking lots to reduce vehicle queuing; (3) use solar or low-emission water heaters; (4) use central water heating systems; (5) use built-in energy-efficient appliances; (6) provide shade trees to reduce building heating/cooling needs; (7) use energy-efficient and automated controls for air conditioning; (8) use double-glass paneled windows; (9) use energy-efficient low-pressure sodium parking lot lights; (10) use lighting controls and energy-efficient lighting; (11) substitute materials where feasible (e.g., use water-based paints and other materials which have low life-cycle emissions); (12) synchronize traffic lights on streets impacted by development; (13) reschedule truck deliveries and pickups to off-peak hours; (14) provide on-site truck loading zones; (15) provide shuttle service for guests and visitors.	Project Applicant	Planning Director	3	
5.0	Mitigation measures 5.2 to 5.8 below are based on the traffic analysis for the proposed 250 room hotel. The project sponsor may submit a revised traffic analysis for the approved project prior to issuance of the building permits for the approved project. If following review and approval of the traffic analysis by the Public Works Director, the Public Works Director determines the project as approved will have fewer traffic impacts than the 250 room hotel, that all impacts can be mitigated to a level which is less than significant through implementation of revised mitigation measures, and that a modification in the traffic mitigation measures required to be constructed by the project applicant is appropriate, the Public Works Director shall notify the Planning Director and the Planning Director shall modify the Mitigation Monitoring Program accordingly. The project sponsor shall be responsible for the level of mitigation approved by the Public Works Director.	Project Applicant	Public Works Director and Planning Director	1	
5.1	Project Entry Drive and Internal Circulation: The primary project entry drive on Malibu Canyon Road shall be located approximately 800 feet north of PCH to the satisfaction of the City's Traffic Engineer. The project's internal circulation shall be reoriented to ensure that the northerly driveway functions as the primary egress from the site. The entry shall provide full left turn access in and out of the project site. The main access driveway should be striped to allow for two lanes entering the site, which may narrow to a single lane on site, and two lanes, one left and one right-turn lane, for exiting the site. The left-turn lane must be a minimum of 75 feet in length. This intersection shall be designed and signalized at the developer's full expense to the satisfaction of the City's Traffic Engineer.	Project Applicant	City Traffic Engineer	3	

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE 1/1	DATE DONE
5.2	<p>To ensure that the applicant pays an equitable share of the cost of mitigating future transportation improvements and programs made necessary by cumulative impacts of the project combined with other projects, including those improvements that may be constructed at the intersection of PCH and Malibu Canyon Road, PCH and Webb Way, Malibu Canyon Road and Civic Center Way, Malibu Canyon Road/Las Virgenes Road at Mulholland Drive, PCH at Cross Creek, PCH at Las Flores Canyon Road, and any other traffic mitigation measures at intersections or along roadways where the project can be reasonably expected to contribute traffic, and traffic mitigation is included in a transportation facilities development fee or equivalent requirement, the applicant shall pay any transportation facilities development fee or participate in any similar financing mechanism that is adopted by the City as part of, or in conjunction with, or in response to, the Civic Center Specific Plan.</p> <p>Furthermore, if the amount of such fee has not been established at the time that the fee would otherwise be due and payable, the applicant shall pay such fee within thirty days after the amount of the fee has been established by the City Council. If the amount of the fee has not been established before occupancy of the project, then prior to occupancy of the project, the applicant shall enter into an agreement with the City to pay the fee within thirty days after the amount of the fee is established by the City Council or such longer period as is established by ordinance. Additionally, the agreement shall provide that if the City determines that the Civic Center Specific Plan has been indefinitely delayed or if the transportation development fee appears unlikely to be adopted then the applicant shall construct (or shall reimburse the City for constructing) the improvements identified in this EIR as mitigation for the project's impacts. The proposed project shall contribute its fair share to any such program adopted for the entire Civic Center area to mitigate summer weekend midday peak traffic impacts of development, unless the City determines that the impacts are not significant.</p>	Project Applicant	Planning Director and City Attorney	3	

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE /I/	DATE DONE
5.3	<p>PCH at Malibu Canyon Road: Under the full access scenario, the project would add two percentage points to the intersection capacity utilization in the p.m. peak hour (0.73 to 0.75, LOS C). This impact can be fully mitigated by converting the existing right-turn lane from Malibu Canyon Road to PCH to a free right turn lane (which allows continuous right turns regardless of the signal cycle without stopping so that right turns do not interfere with through and left-turning traffic) and restriping the southbound lanes to a left-turn and a left-through combination lane. This measure may require acquisition of right-of-way from Pepperdine University. The free right turn would require a satisfactory acceleration lane along PCH, so that right-turning movements could merge with westbound traffic. If Kanan Road is reopened to through traffic, the number of vehicles making the right turn from Malibu Canyon Road to PCH might be reduced and this measure may no longer be required. However, because the intersection would continue to operate at an acceptable LOS C with the proposed project, and because other improvements may be needed to this intersection to meet long-term cumulative travel demands, the project should be required to contribute its fair share to improvements needed at this intersection based on development identified in the Civic Center Specific Plan. Under the no-left-turn-egress scenario, the project does not have a potentially significant effect at this intersection on weekdays and no improvement would be necessary. However, the improvement would be necessary for Saturday summer traffic under the no-left-turn-egress scenario. If the City determines that the Civic Center Specific Plan has been indefinitely delayed or if the transportation development fee appears unlikely to be adopted then the applicant shall construct (or shall reimburse the City for constructing) the described improvement.</p>	Project Applicant	Director of Public Works	3	
5.4	<p>Malibu Canyon Road at Civic Center Way: The project will result in a two percentage point increase in the ICU value at this intersection in the p.m. peak hour (0.81 to 0.83, LOS D) under either the full access option or the no-left-turn-egress option. To mitigate the impact, the northbound free right turn lane shall be eliminated and a second northbound through lane provided. Major signal modifications would be required, and the traffic signal would need to be moved to provide the additional space for the northbound through lane. This mitigation measure would provide sufficient capacity to improve the level of service to compensate for the two percentage point reduction in intersection capacity utilization resulting from project traffic. If the City determines that the Civic Center Specific Plan has been indefinitely delayed or if the transportation development fee appears unlikely to be adopted then the applicant shall construct (or shall reimburse the City for constructing) the described improvement.</p>	Project Applicant	Director of Public Works	3	

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE 1/	DATE DONE
5.5	<p>PCH at Web Way: Under either access scenario, the project will also result in a two percentage point increase in the ICU value at the intersection of PCH and Webb way in the p.m. peak hour. This impact can be fully mitigated by providing a third westbound through lane on PCH and deleting the westbound right turn lane. If the City determines that the Civic Center Specific Plan has been indefinitely delayed or if the transportation development fee appears unlikely to be adopted then the applicant shall construct (or shall reimburse the City for constructing) the described improvement.</p>	Project Applicant	Director of Public Works	3	
5.6	<p>The following measure would mitigate the project's summer traffic impacts. The City has not yet adopted thresholds of significance for summer traffic impacts, made a policy decision that existing thresholds apply to summer midday traffic, or made a policy of requiring mitigation of summer traffic impacts. For these reasons, the Planning Commission and/or City Council may choose to reject this mitigation measure. The amount of the Civic Center transportation facilities development fee assigned to the project shall include a fair share contribution for mitigation project impacts at PCH and Cross Creek Road</p>	Planning Commission and/or City Council, Project Applicant	Director of Public Works	3	
5.7	<p>The following measure would mitigate the project's summer traffic impacts. The City has not yet adopted thresholds of significance for summer traffic impacts, made a policy decision that existing thresholds apply to summer midday traffic, or made a policy of requiring mitigation a summer traffic impacts. For these reasons, the Planning Commission and/or City Council may choose to reject this mitigation measure: PCH/Las Flores Canyon: An additional westbound through lane is needed to mitigate impacts at this intersection under either of the traffic distribution alternatives. This lane can be provided by converting the westbound right-turn-only lane to a through/right-turn lane. The departure side of the intersection would need to be widened to provide the third westbound lane until this traffic can merge into two lanes. This mitigation measure would provide an ICU value of 0.73 and Level of Service C.</p>	Planning Commission and/or City Council, Project Applicant	Director of Public Works	3	
5.8	<p>The following measure would mitigate the project's summer traffic impacts. The City has not yet adopted thresholds of significance for summer traffic impacts, made a policy decision that existing thresholds apply to summer midday traffic, or made a policy of requiring mitigation a summer traffic impacts. For these reasons, the Planning Commission and/or City Council may choose to reject this mitigation measure: PCH/Cross Creek Road: An additional lane to provide a third westbound through lane will be required to mitigate impacts at this intersection under either of the two traffic distribution alternatives. This mitigation measure would provide an ICU value of 0.80 and Level of Service C.</p>	Planning Commission and/or City Council, Project Applicant	Director of Public Works	3	

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE #/	DATE DONE
7.1 Cont.	<p>c. Lighting. Lighting shall be used as necessary for internal circulation and circulation to and from the site as necessary only, and not to draw attention to the site or its features. Limited low-level decorative lighting of internal landscaped areas shall be permitted within this limitation. All exterior lighting shall be directed downward and inward to the site, and shielded to prevent visibility of the sources of light from a distance or pollution of the night sky by unnecessary upward-directed illumination. All exterior lighting fixtures of greater than 150 watts shall use low-pressure sodium lighting to conserve energy and limit pollution of the night sky.</p> <p>d. Signs. Signs shall be limited to those necessary to identify the site and its location, and to provide for safe circulation by people and vehicles. Internally illuminated signs shall be limited to signs necessary to point out emergency routes. Signs shall be compatible with the restrictions on materials and finishes outlined above.</p> <p>e. Building Facades. Large blank areas of building facades visible to the public shall not be permitted. Such facades shall be broken by architectural features such as decorative sculptural panels, setbacks, windows, columns, textured surfaces or other architectural details as appropriate. Building facades should reflect a common theme throughout the project, and should show common patterns and rhythms of fenestration, structural details, etc.</p>				
7.2	<p>Scrub Garden Component of Landscape Plan. The landscape plan shall provide an area for native scrub landscaping to preserve the natural visual appearance of the site to the extent feasible within the limitations of site development and onsite disposal of treated effluent. A minimum of one acre of scrub habitat shall be included within the landscape plan. For maximum visual effect, scrub landscaping is encouraged along the margins of the site, along the public pathway along the slope on the north side of the site, and along steep slopes below structures on the north, east and southeast slopes of the site. The landscape maintenance plan shall provide for regular thinning of scrub landscaping to minimize fuel supply and resulting fire danger.</p>	Project Applicant	Planning Director	1,4	
8.1	<p>The applicant shall implement a Cultural Resource Management Plan (CRMP) as approved by the City's archaeologist. The CRMP shall include detailed instructions for removal of vegetation, capping, and surface collection/mapping of each specific sub-area of the site, monitoring, curation of any recovered archaeological materials, documentation, and utilization of these materials for displays and interpretive programs about prehistoric Native Americans who lived in this area. The CRMP shall be implemented under the City's supervision. No construction activity in any affected area shall be permitted until the City determines that the CRMP for that area is fully completed. A representative of the area's Native American peoples shall be consulted, present, and/or otherwise appropriately involved in the implementation of this CRMP.</p>	Project Applicant	City Archaeologist, Planning Director	2	

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NO.	MEASURE	FUND	OFFICER		
8.2	In the event that a major new archaeological discovery is made, construction activity in that area shall be terminated and the City shall be notified of such findings. The Planning Director, in consultation with the City Archaeologist, shall determine CRMP procedures to be implemented at the affected location, including any modifications to the CRMP as appropriate.	Project Applicant	City Archaeologist, Planning Director	2	
8.3	The project shall include Chumash cultural motifs in lobby art and other interior decoration as appropriate to provide a means to recognize the cultural origins of the project site.	Project Applicant	Planning Director	3	

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EXHIBIT "B"
MITIGATION MONITORING PROGRAM
(40 ADDITIONAL GUEST ROOMS) RANCHO MALIBU HOTEL

MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE / I	DATE DONE
1.1	The project's conditions of approval shall include limitations on the hours of operations of the hotel's public uses. Public use of the meeting and ballrooms shall be limited to 7:30 a.m. to 12:00 a.m.	Planning Department	Planning Director	1	
2.1	The project shall undergo the City development review process, which includes review and approval of all project grading and development plans, design review, and completion of any additional geotechnical analysis as required by the City. The City requirements include implementation of soil engineering measures prepared by certified engineers, construction in accordance with the Uniform Building Code and measures prepared by a registered engineer, having an independent observer on the site to observe compliance with grading measures and plans, and other similar measures.	Project Applicant	Director of Public Works and City Building Official	1	
2.2	The applicant shall submit a revised hydrology report which accounts for the specific site plan and landscaping plan to be developed and which provides for the on-site retention of stormwaters, for review and approval of the Public Works Director prior to issuance of a grading permit.	Project Applicant	Director of Public Works	1	
2.3	The final plan for the proposed wastewater treatment and disposal system shall be reviewed and approved by a geotechnical consultant approved by the City, in order to ensure that the final design will not adversely impact local slope stability and off-site landslides. The findings of the geotechnical consultant shall be submitted to and approved by the City Geologist, prior to issuance of the building permit.	Project Applicant	City Geologist	1	
2.4	The project shall develop and implement a State Storm Water Pollution Prevention Plan and City Storm Water Management Plan in accordance with requirements of the County of Los Angeles NPDES permit and of the City of Malibu's Ordinance 157 in order to comply with the Federal Water Pollution Control Act.	Project Applicant	Director of Public Works	1	
3.1	Prior to the issuance of the building permit for the hotel, the applicant shall submit to the City a Plumbing and Appliances Plan and shall demonstrate to the City, using the WAVE software or other software deemed acceptable by the City, that the final design of the hotel shall not exceed a water budget of 10,571,000 gallons per year (equivalent to wastewater generation of 9,610,000 gallons per year). The Plumbing and Appliances Plan submitted shall specify the specific plumbing fixtures and water-using appliances to be incorporated in the hotel design and shall contain a copy of the model runs demonstrating that use of the planned fixtures will not exceed the water budget. The project applicant shall not deviate from the fixtures and appliances specified in the plumbing and appliances plan without the prior written approval of the City.	Project Applicant	City Building Official	1	

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EXHIBIT "B"
MITIGATION MONITORING PROGRAM
(40 ADDITIONAL GUEST ROOMS) RANCHO MALIBU HOTEL

MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE/1/	DATE DONE
3.2	The applicant shall comply with the minimum standards of the City of Malibu Uniform Plumbing Code.	Project Applicant	City Building Official	1,2	
3.3	Prior to occupancy of the hotel, the applicant shall prepare a plan for disposing of any excess reclaimed water prior to reaching storage capacity. The plan can include any combination of measures to meet the performance criteria of zero wastewater balance and zero runoff and address any potential wastewater excess. These measures may include measures to dispose of excess wastewater such as specification of dual plumbing, commitment to other users for the project's reclaimed water, use of dual plumbing, provisions to hook-up to the Civic Center Wastewater Treatment Facility when available, procuring a permit to dispose of excess reclaimed water in Las Virgenes or other regional facilities, using off-site laundry service for the hotel, or methods to reduce wastewater generation such as plumbing retrofits. If Bluffs Park is used as a disposal site for the wastewater, the project applicant shall be responsible for the full cost of the installation of the delivery system and associated permitting costs. The Plan shall include appropriate penalties for failure to meet the performance objectives, to the satisfaction of the City Attorney. The Plan shall be reviewed and approved by the Public Works and Planning Director prior to issuance of the Building Permit.	Project Applicant	City Attorney, Public Works Director, Planning Director	3	
3.4	The project shall include an integrated wastewater management and irrigation system, which shall, at a minimum, meet the standards of the system proposed by the applicant and described in this EIR. The system shall be reviewed and approved by the Public Works Director prior to issuance of the building permit for the hotel.	Project Applicant	Director of Public Works and City Building Official	1	
3.5	The project applicant shall provide the City Building Official with data about wastewater flows, irrigation usage of reclaimed water, storage capacity, and any other information required to determine that the on-site wastewater system is meeting its performance objective of "zero balance" and "zero runoff". This information shall be submitted on a schedule established by the City, but no less than every 12 months.	Project Applicant/Hotel Operator	City Building Official	4	
3.6	The project's groundwater monitoring system design shall be subject to review and approval by the Public Works Director prior to issuance of the Building Permit. The Public Works Director shall have the authority to require additional wells or monitoring devices, if deemed necessary after system design review. The groundwater monitoring plan submitted shall include: 1) an evaluation of any identified water bearing unit for potential inclusion in the groundwater monitoring system, 2) relocation of Well 4 to the downgradient portion of the Winter Canyon aquifer, 3) a technical program for the groundwater monitoring, including data collection and data interpretation and, 4) guidelines for corrective measures as needed.	Project Applicant	Director of Public Works and City Building Official	1	

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EXHIBIT "B"
MITIGATION MONITORING PROGRAM
(40 ADDITIONAL GUEST ROOMS) RANCHO MALIBU HOTEL

MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE #/1	DATE DONE
3.7	The final plan for the proposed wastewater treatment and disposal system shall be reviewed and approved by a geotechnical consultant approved by the City. In order to ensure that the final design complies with the requirements of these mitigation measures and the design proposed by the applicant and analyzed in the EIR. The findings of the geotechnical consultant shall be submitted to and approved by the City Geologist prior to issuance of the building permit.	Project Applicant	City Geologist	1	
3.8	In order to establish the natural ground water level, piezometer shall be installed at the applicant's expense and to the satisfaction of the Director of Public Works at least one year before construction of the hotel starts. The groundwater level shall be monitored on a schedule established or deemed acceptable by the Director of Public Works in order to establish data on the seasonal fluctuation in groundwater levels. Prior to issuance of the construction permit a report shall be submitted documenting the pre-construction ground water levels. The report shall include an analysis of the correlation between fluctuations in groundwater levels and precipitation, as well as any other factors requested by the Director of Public Works.				
4.1	In the event that substantial accumulation of dust in the air over the grading operations is observed and a combination of low wind speed and high stability results in substantial dust concentrations at the schools or condominium complexes for a continuous period of more than one hour, one or more of the following additional mitigation measures shall be put in place as appropriate until the wind conditions change to make these measures unnecessary: Grading shall be halted, or grading shall be moved to a location on the site more distant or such that substantial dust is no longer carried toward the schools or condominium complexes, or water trucks shall spray continuously behind or into grading vehicles to substantially reduce the amount of dust raised into the air.	Project Applicant	Public Works Director	2	

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(40 ADDITIONAL GUEST ROOMS) RANCHO MALIBU HOTEL

MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE #/	DATE DONE
4.2	<p>The proposed project, in conformance with the City of Malibu General Plan policies, will implement the following measures consistent with the SCAQMD CEQA Air Quality Handbook, to reduce short-term construction impacts as determined appropriate by the City:</p> <ol style="list-style-type: none"> (1) configure construction parking to minimize traffic interference; (2) provide temporary traffic control during all phases of construction activities to improve traffic flow (e.g., flag person); (3) schedule construction activities that affect traffic flow to off-peak hours (e.g., between 7:00 p.m. and 6:00 a.m. and between 10:30 a.m. and 3:30 p.m.); (4) develop a construction traffic management plan that includes but is not limited to: rerouting construction trucks off congested streets; consolidating truck deliveries; providing dedicated turn lanes for movement of construction truck and equipment on- and off-site; use electricity from power poles rather than temporary diesel or gasoline powered generators; (5) reduce traffic speeds on all unpaved roads to 15 miles per hour or less; (6) pave construction roads that have a traffic volume of more than 50 daily trips by construction equipment or 150 total daily trips for all vehicles; (7) apply approved chemical soil stabilizers according to manufacturers' specifications to all inactive construction areas (e.g., previously graded areas inactive for four days or more); (8) replace ground cover in disturbed areas as quickly as possible; (9) enclose, cover, water twice daily, or apply approved soil binders according to manufacturers' specifications, to exposed piles (e.g., gravel, sand, dirt); (10) water active sites at least twice daily; (11) cover all trucks hauling dirt, sand, soil, or other loose materials, and maintain at least two feet of freeboard (i.e., minimum vertical distance between top of the load and top of the trailer); (12) sweep streets at the end of the day if visible soil material is carried over to adjacent roads (recommend water sweepers with reclaimed water); (13) install wheel washers where vehicles enter and exit unpaved roads onto paved roads, or wash off trucks and any equipment leaving the site. 	Project Applicant	Director of Public Works	2	

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4.3	To reduce long-term impacts, consistent with the City of Malibu General Plan policies the applicant will implement the following measures as determined feasible by the City: (1) provide preferential parking spaces for carpools and vanpools; (2) implement an on-site Circulation Plan in parking lots to reduce vehicle queuing; (3) use solar or low-emission water heaters; (4) use central water heating systems; (5) use built-in energy-efficient appliances; (6) provide shade trees to reduce building heating/cooling needs; (7) use energy-efficient and automated controls for air conditioning; (8) use double-glass paneled windows; (9) use energy-efficient low-pressure sodium parking lot lights; (10) use lighting controls and energy-efficient lighting; (11) substitute materials where feasible (e.g., use water-based paints and other materials which have low life-cycle emissions); (12) synchronize traffic lights on streets impacted by development; (13) reschedule truck deliveries and pickups to off-peak hours; (14) provide on-site truck loading zones; (15) provide shuttle service for guests and visitors.	Project Applicant	Planning Director	3	
5.0	Mitigation measures 5.2 to 5.8 below are based on the traffic analysis for the proposed 250 room hotel. In the event that the project sponsor submitted a revised traffic analysis for the first 106 rooms of the hotel project which was reviewed and approved by the Public Works Director and constructed traffic mitigations for the hotel consistent with the mitigation measures specified in a revised traffic study for a 106 room hotel, the project sponsor may either submit a traffic analysis for development of the project at 148 rooms for review and approval by the Public Works Director, or construct mitigation measures 5.2 to 5.8, inclusive, prior to issuance of the building permits for the approved project. If following review and approval of the traffic analysis by the Public Works Director, the Public Works Director determines the project as approved will have fewer traffic impacts than the 250 room hotel, that all impacts can be mitigated to a level which is less than significant through implementation of revised mitigation measures, and that a modification in the traffic mitigation measures required to be constructed by the project applicant is appropriate, the Public Works Director shall notify the Planning Director and the Planning Director shall modify the Mitigation Monitoring Program accordingly. The project sponsor shall be responsible for the level of mitigation approved by the Public Works Director.	Project Applicant	Public Works Director and Planning Director	1	

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EXHIBIT "B"
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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE / I	DATE DONE
5.1	<p>Project Entry Drive and Internal Circulation: The primary project entry drive on Malibu Canyon Road shall be located approximately 800 feet north of PCH to the satisfaction of the City's Traffic Engineer. The project's internal circulation shall be reoriented to ensure that the northerly driveway functions as the primary egress from the site. The entry shall provide full left turn access in and out of the project site. The main access driveway should be signed to allow for two lanes entering the site, which may narrow to a single lane on site, and two lanes, one left and one right-turn lane, for exiting the site. The left-turn lane must be a minimum of 75 feet in length. This intersection shall be designed and signalized at the developer's full expense to the satisfaction of the City's Traffic Engineer.</p>	Project Applicant	City Traffic Engineer	3	
5.2	<p>To ensure that the applicant pays an equitable share of the cost of mitigating future transportation improvements and programs made necessary by cumulative impacts of the additional 40 rooms combined with other projects, including those improvements that may be constructed at the intersection of PCH and Malibu Canyon Road, PCH and Webb Way, Malibu Canyon Road and Civic Center Way, Malibu Canyon Road/Las Virgenes Road at Mulholland Drive, PCH at Cross Creek, PCH at Las Flores Canyon Road, and any other traffic mitigation measures at intersections or along roadways where the project can be reasonably expected to contribute traffic, and traffic mitigation is included in a transportation facilities development fee or equivalent requirement, the applicant shall pay any transportation facilities development fee or participate in any similar financing mechanism that is adopted by the City as part of, or in conjunction with, or in response to, the Civic Center Specific Plan.</p> <p>Furthermore, if the amount of such fee has not been established at the time that the fee would otherwise be due and payable, the applicant shall pay such fee within thirty days after the amount of the fee has been established by the City Council. If the amount of the fee has not been established before occupancy of the project, then prior to occupancy of the project, the applicant shall enter into an agreement with the City to pay the fee within thirty days after the amount of the fee is established by the City Council or such longer period as is established by ordinance. Additionally, the agreement shall provide that if the City determines that the Civic Center Specific Plan has been indefinitely delayed or if the transportation development fee appears unlikely to be adopted then the applicant shall construct for, shall reimburse the City for (constructing) the improvements identified in this EIR as mitigation for the project's impacts. The proposed project shall contribute its fair share to any such program adopted for the entire Civic Center area to mitigate summer weekend midday peak traffic impacts of development, unless the City determines that the impacts are not significant.</p>	Project Applicant	Planning Director and City Attorney	3	

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE /I/	DATE DONE
5.3	<p>PCH at Malibu Canyon Road: Under the full access scenario, the project would add two percentage points to the intersection capacity utilization in the p.m. peak hour (0.73 to 0.75, LOS C). This impact can be fully mitigated by converting the existing right-turn lane from Malibu Canyon Road to PCH to a free right turn lane (which allows continuous right turns regardless of the signal cycle without stopping so that right turns do not interfere with through and left-turning traffic) and restriping the southbound lanes to a left-turn and a left-through combination lane. This measure may require acquisition of sight-of-way from Pepperdine University. The free right turn would require a satisfactory acceleration lane along PCH so that right-turning movements could merge with westbound traffic. If Kanan Road is reopened to through traffic, the number of vehicles making the right turn from Malibu Canyon Road to PCH might be reduced and this measure may no longer be required. However, because the intersection would continue to operate at an acceptable LOS C with the proposed project, and because other improvements may be needed to this intersection to meet long-term cumulative travel demands, the project should be required to contribute its fair share to improvements needed at this intersection based on development identified in the Civic Center Specific Plan. Under the no-left-turn-egress scenario, the project does not have a potentially significant effect at this intersection on weekdays and no improvement would be necessary. However, the improvement would be necessary for Saturday summer traffic under the no-left-turn-egress scenario. If the City determines that the Civic Center Specific Plan has been indefinitely delayed or if the transportation development fee appears unlikely to be adopted then the applicant shall construct (or shall reimburse the City for constructing) the described improvement.</p>	Project Applicant	Director of Public Works	3	
5.4	<p>Malibu Canyon Road at Civic Center Way: The project will result in a two percentage point increase in the ICU value at this intersection in the p.m. peak hour (0.81 to 0.83, LOS D) under either the full access option or the no-left-turn-egress option. To mitigate the impact, the northbound free right turn lane shall be eliminated and a second northbound through lane provided. Major signal modifications would be required, and the traffic signal would need to be moved to provide the additional space for the northbound through lane. This mitigation measure would provide sufficient capacity to improve the level of service to compensate for the two percentage point reduction in intersection capacity utilization resulting from project traffic. If the City determines that the Civic Center Specific Plan has been indefinitely delayed or if the transportation development fee appears unlikely to be adopted then the applicant shall construct (or shall reimburse the City for constructing) the described improvement.</p>	Project Applicant	Director of Public Works	3	

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE /I/	DATE DONE
5.5	<p>PCH at Web Way: Under either access scenario, the project will also result in a two percentage point increase in the ICU value at the intersection of PCH and Webb way in the p.m. peak hour. This impact can be fully mitigated by providing a third westbound through lane on PCH and deleting the westbound right turn lane. If the City determines that the Civic Center Specific Plan has been indefinitely delayed or if the transportation development fee appears unlikely to be adopted then the applicant shall construct (or shall reimburse the City for constructing) the described improvement.</p>	Project Applicant	Director of Public Works	3	
5.6	<p>The following measure would mitigate the project's summer traffic impacts. The City has not yet adopted thresholds of significance for summer traffic impacts, made a policy decision that existing thresholds apply to summer midday traffic, or made a policy of requiring mitigation of summer traffic impacts. For these reasons, the Planning Commission and/or City Council may choose to reject this mitigation measure. The amount of the Civic Center transportation facilities development fee assigned to the project shall include a fair share contribution for mitigation project impacts at PCH and Cross Creek Road</p>	Planning Commission and/or City Council, Project Applicant	Director of Public Works	3	
5.7	<p>The following measure would mitigate the project's summer traffic impacts. The City has not yet adopted thresholds of significance for summer traffic impacts, made a policy decision that existing thresholds apply to summer midday traffic, or made a policy of requiring mitigation a summer traffic impacts. For these reasons, the Planning Commission and/or City Council may choose to reject this mitigation measure. PCH at Flores Canyon: An additional westbound through lane is needed to mitigate impacts at this intersection under either of the traffic distribution alternatives. This lane can be provided by converting the westbound right-turn-only lane to a through-right-turn lane. The departure side of the intersection would need to be widened to provide the third westbound lane until this traffic can merge into two lanes. This mitigation measure would provide an ICU value of 0.73 and Level of Service C.</p>	Planning Commission and/or City Council, Project Applicant	Director of Public Works	3	

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE #/	DATE DONE
5.8	The following measure would mitigate the project's summer traffic impacts. The City has not yet adopted thresholds of significance for summer traffic impacts, made a policy decision that existing thresholds apply to summer midday traffic, or made a policy of requiring mitigation a summer traffic impacts. For these reasons, the Planning Commission and/or City Council may choose to reject this mitigation measure; PEH/Cross Creek Road: An additional lane to provide a third westbound through lane will be required to mitigate impacts at this intersection under either of the two traffic distribution alternatives. This mitigation measure would provide an ICU value of 0.80 and Level of Service C.	Planning Commission and/or City Council, Project Applicant	Director of Public Works	3	
6.1	The landscaping shall incorporate California black walnut (Juglans californica) trees in the southeast corner of the site into the landscape design to the satisfaction of the City Biologist. The existing black walnut trees are expected to resprout after being burned by the October 1995 fire. If the existing trees are shown to be killed by the fire, an additional 2:1 replacement California black walnut trees shall be incorporated into the landscape design to the satisfaction of the City Biologist.	Project Applicant	City Biologist, Planning Director	1	
6.2	Mitigation for impacts resulting from the loss of 8.04 acres of undisturbed coastal sage scrub habitat shall be accomplished by providing 30-acres on the "Francisco Property" or an alternative location that better meets the following criteria as off-site replacement habitat: (1) similar vegetation type (in this case, coastal sage scrub dominated by California encelia, coyote brush, California sagebrush and sawtooth goldenbush), wildlife habitat characteristics, habitat connectivity, amount of habitat area, topography and accessibility, proximity to the project site and the likelihood of future habitat loss due to development potential; (2) acreage shall not be less than a replacement ratio of 2:1. Off-site mitigation shall be subject to review and approval by the City Biologist prior to issuance of the building permit for the project. Development on the mitigation site shall be restricted through a conservation easement, deed restriction or other mechanism deemed appropriate by the City Attorney. Preservation shall be ensured to the satisfaction of the City Attorney prior to the issuance of the occupancy permit for the project. To the degree feasible, any coastal sage scrub caused to be removed by any grading or building requirements shall be salvaged in consultation with the City Biologist, and shall be removed in such a manner as to retain the root structures intact. Salvaged coastal sage scrub shall be used for on-site coastal sage scrub restoration. If unable to be accommodated on site, salvaged coastal sage scrub may be located to another appropriate restoration site.	Project Applicant	City Biologist, Planning Director	1,3	

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE #1	DATE DONE
6.3	The applicant shall submit grading, stormwater management, wastewater disposal and landscaping plans consistent with grading, coastal sage mitigation and stormwater management requirements and a plant list for approval by the City prior to construction. The plant list shall emphasize native drought-tolerant species to the extent feasible considering the need for on-site disposal of treated effluent. The plant list shall avoid invasive non-native species including olive and acacia.	Project Applicant	City Biologist, Planning Director, Director of Public Works	1	
6.4	To minimize night lighting impacts on the surrounding habitat area, the outdoor lighting system shall be low intensity and focused into hotel facilities. It shall be subject to review and approval by the City Building Official prior to issuance of the building permit.	Project Applicant	City Building Official	1	
7.1	Design Review. The developer shall submit the following for review and approval prior to development. The general conditions to be met and criteria for this review as they relate to visual impact are outlined below. Exceptions to these conditions where necessary to provide for unique and demonstrated excellence and creativity in design may be granted at the discretion of the City. a. Materials and finishes - Materials and finishes used on all exposed surfaces within the project shall be specified in architectural drawings which are provided to the City for review and approval prior to installation. The City's review shall ensure that the following general design standards are met: The project shall have a predominant design theme with a specific limited palette of colors, materials and finishes which are used throughout the project. Such materials and finishes shall have the following general characteristics: Major building surfaces and accents. Major building surfaces shall be light colors and matte finishes which reflect the character of the natural environment in the vicinity of the project. Accent colors used for decorative panels, window and door frames, roof trim, and roof ties or other roof materials may include darker, more saturated colors as appropriate. The colors of natural sand, sea, sky, earth, leaves and bark found in the natural environment surrounding the site, or unique to natural materials used in construction, shall be used predominately. Garish, bright and unnatural colors or color combinations shall not be used where they would be visible from a distance outside the project site. The intent of this guideline is that the buildings and other constructed features of the project should not draw attention to themselves by contrast in color to the natural landscape. Quality of Construction Materials. Building materials which reflect a character of quality and permanence shall be used.	Project Applicant	Planning Director	1	

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE / I	DATE DONE
7.1 Cont.	<p>b. Landscaping - Landscaping shall be used to soften the appearance of buildings. Trees which at maturity are as tall as the roofs of buildings shall be used throughout the periphery of the developed areas of the site to break up the visual appearance of the site and hide structures so that the landscaping within 20 years is designed to conceal a minimum of 50% of each major building surface that would otherwise be visible from off-site locations. Species which minimize fire risk shall be used, as approved by the Fire Department. Shrubs around the base of structures shall be used to soften the line of the building along the ground. Where basement levels of structures are visible from surrounding areas because of the position of structures on the slope, giving the building an appearance of three-story height, shrubbery shall be used to substantially conceal the lower level. A landscape maintenance plan shall be submitted for approval by the Planning Director and Fire Department. The landscape maintenance plan shall provide for the regular pruning and thinning of vegetation to minimize fuel supply and fire danger. In undeveloped areas of the site, natural, low-scale vegetation shall be preserved and restored to the extent feasible while providing for sufficient on-site disposal of treated effluent.</p> <p>c. Lighting. Lighting shall be used as necessary for internal circulation and circulation to and from the site as necessary only, and not to draw attention to the site or its features. Limited low-level decorative lighting of internal landscaped areas shall be permitted within this limitation. All exterior lighting shall be directed downward and inward to the site, and shielded to prevent visibility of the sources of light from a distance or pollution of the night sky by unnecessary upward-directed illumination. All exterior lighting fixtures of greater than 150 watts shall use low-pressure sodium lighting to conserve energy and limit pollution of the night sky.</p> <p>d. Signs. Signs shall be limited to those necessary to identify the site and its location, and to provide for safe circulation by people and vehicles. Internally illuminated signs shall be limited to signs necessary to point out emergency routes. Signs shall be compatible with the restrictions on materials and finishes outlined above.</p> <p>e. Building Facades. Large blank areas of building facades visible to the public shall not be permitted. Such facades shall be broken by architectural features such as decorative sculptural panels, setbacks, windows, columns, textured surfaces or other architectural details as appropriate. Building facades should reflect a common theme throughout the project, and should show common patterns and rhythms of fenestration, structural details, etc.</p>				

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MEASURE NO.	MEASURE	RESPONSIBLE PARTY	MONITORING AGENCY	MONITORING PHASE #	DATE DONE
7.2	Scrub Garden Component of Landscape Plan. The landscape plan shall provide an area for native scrub landscaping to preserve the natural visual appearance of the site to the extent feasible within the limitations of site development and onsite disposal of treated effluent. A minimum of one acre of scrub habitat shall be included within the landscape plan. For maximum visual effect, scrub landscaping is encouraged along the margins of the site, along the public pathway along the slope on the north side of the site, and along steep slopes below structures on the north, east and southeast slopes of the site. The landscape maintenance plan shall provide for regular thinning of scrub landscaping to minimize fuel supply and resulting fire danger.	Project Applicant	Planning Director	1,4	
8.1	The applicant shall implement a Cultural Resource Management Plan (CRMP) as approved by the City's archaeologist. The CRMP shall include detailed instructions for removal of vegetation, capping, and surface collection/mapping of each specific sub-area of the site, monitoring, curation of any recovered archaeological materials, documentation, and utilization of these materials for displays and interpretive programs about prehistoric Native Americans who lived in this area. The CRMP shall be implemented under the City's supervision. No construction activity in any affected area shall be permitted until the City determines that the CRMP for that area is fully completed. A representative of the area's Native American peoples shall be consulted, present, and/or otherwise appropriately involved in the implementation of the CRMP.	Project Applicant	City Archaeologist, Planning Director	2	
8.2	In the event that a major new archaeological discovery is made, construction activity in that area shall be terminated and the City shall be notified of such findings. The Planning Director, in consultation with the City Archaeologist, shall determine CRMP procedures to be implemented at the affected location, including any modifications to the CRMP as appropriate.	Project Applicant	City Archaeologist, Planning Director	2	
8.3	The project shall include Chumash cultural motifs in lobby art and other interior decoration as appropriate to provide a means to recognize the cultural origins of the project site.	Project Applicant	Planning Director	3	

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