FINDINGS

DEVELOPMENT AGREEMENT FINDINGS

1. Pursuant to California Government Code Sections 65864-65869.5, a Development Agreement be entered into by mutual consent of the parties. An application for a Development Agreement was filed on April 23, 2001, establishing the applicant's consent to enter into a Development Agreement.

2. State Government Code Section 65865.1 authorizes the amendment and termination of previously approved development agreements.

3. The City of Los Angeles ("City") has adopted rules and regulations establishing procedures and requirements for consideration of development agreements under Citywide Development Agreement Procedures (CF 85-2313-S3). In addition, on November 19, 1992, the City Planning Commission adopted new guidelines for the processing of development agreement applications (CPC No. 86-404 MSC).

4. That pursuant to Government Code Section 65865.1, the City Planning Commission hereby recommends termination of the Development Agreement contract and makes the following findings of fact regarding the Development Agreement:

    a. The Development Agreement by and between the City of Los Angeles and Trizechahn Hollywood, LLC, was entered into on November 5, 2002. The current owner of the site purports to be the successor Developer of the Development Agreement, although no documentation exists in the record acknowledging them as such.

    b. The purpose of the Development Agreement was to provide reasonable assurances to the Developer, Trizechahn Hollywood, LLC, that it could implement the Project in accordance with the Applicable Rules, subject to the terms of the Development Agreement and the City's Reserved Powers (as these terms are defined in the Development Agreement). The Development Agreement was necessary to assure the Developer that it would not be subjected to different rules, regulations, ordinances, or official policies or delays not permitted by the Development Agreement, the Applicable Rules, or the Reserved Powers during the term of the Development Agreement.

    c. The Development Agreement did not grant density, intensity or uses in excess of what was otherwise established in the Applicable Rules, eliminate future Discretionary Actions otherwise required, or amend the City's General Plan or nullify the City's Reserved Powers.

    d. That the Developer had the vested right to develop the Project in accordance with the Existing Development Approvals, subject to the terms and conditions of this Agreement, the Applicable Rules, and the Reserved Powers.

    e. Per Sections 3.2 and 3.2.1 of the Development Agreement, the Developer agreed to ensure that all signs erected on the Project comply with the requirements set forth in the Applicable Rules, and that changes to the design, configuration,

elements, and contents of the signage plan that was approved by the CRA and the City in conjunction with the adoption of the Signage Ordinance, are only permitted with the written consent of the City.

f. The purported successor Developer requested alterations to the Project signage that were not consistent with the Applicable Rules or the Environmental Analysis conducted as part of EIR State Clearinghouse Number 1997091061 or with the exercise of the City's Reserved Powers. As such, the City did not consent to the changes to the Sign Plan.

g. Per Section 5.1.1 of the DA, in the event the Developer does not perform its obligations under the Agreement in a timely manner, the City shall have all rights and remedies provided for in the Agreement, including compelling the specific performance of the obligations of the Developer under this Agreement, or terminating the Agreement, provided the City has first complied with the procedure in Section 5.1.2.

h. Per Section 5.3. of the DA, it was acknowledged by both the parties that the City would not have entered the DA if it were liable in monetary damages under or with respect to this Agreement or the application thereof. Both parties agreed and recognized that, as a practical matter, it would not be possible to determine an amount of monetary damages which would adequately compensate Developer for its investment of time and financial resources in planning to arrive at the kind, location, intensity of use, and improvements for the Project, nor to calculate the consideration the City would have required to enter into the Agreement to justify such exposure. Therefore, the parties agreed that each of the parties may pursue any remedy at law or equity available for any breach of any provision of this Agreement, except that the City shall not be liable in monetary damages and, except as set forth in Section 5.1.1 above, the Parties covenant not to sue for or claim any monetary damages for the breach of any provision of the Development Agreement.

i. On or about January 30, 2024, the purported successor Developer filed its First Amended Compliant ("FAC") seeking monetary damages against the City for deprivation of alleged rights that arise under the Development Agreement. As such, the purported successor Developer defaulted on its obligations of the Agreement and its terms. The parties to the Agreement agreed that the City "shall not be liable for monetary damages" for alleged breaches of the Development Agreement.

j. In accordance with Section 5.1.2. of the DA, via certified mail with return receipt requested, on February 22, 2024, the City issued the purported successor Developer by mail a written notice of the default, consistent with the manner prescribed in Section 7.15 of the Agreement. In addition, the City's outside counsel emailed a courtesy copy of the Notice of Default to counsel for the purported successor Developer.

k. Upon receipt of the of the notice of default, the purported successor Developer was required to promptly commence to cure the identified default at the earliest reasonable time after the receipt of the notice of default and complete the cure of such default not later than sixty (60) days after receipt of the notice of default.

l. As of April 22, 2024, sixty days after receipt of the notice of default, the purported successor Developer had not dismissed the above-referenced claims seeking monetary damages during the cure period. As such, the Planning Director has found that the purported successor Developer remains in default and seeks to utilize the Failure to Cure Default procedures in Section 5.1.3. of the DA.

m. Staff delegated on behalf of the Director of Planning have made a report of the Planning Commission regarding the Failure to Cure Default, and the City Planning Commission held a public hearing in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868, and in accordance with the CPC Guidelines for Processing Development Agreements and California Government Code Section 65867, notification of the subject public hearing was mailed via United States Postal Service on April 10, 2024 to all property owners within a 300-foot radius of the project site, the owner of the subject site, the Council Office, and the Neighborhood Council. Further, notice of the public hearing was also published in the Daily Journal on April 11, 2024; verification of which is provided in the administrative record.

n. After the required public hearing, the City Planning Commission found and determined, on the basis of substantial evidence, that the purported successor Developer has not cured the default.

o. Although the Development Agreement had already expired and terminated as of November 5, 2022, City shall terminate any purported rights of the current owner under the Development Agreement, pursuant to Section 5.1.3. of the Development Agreement.

p. The purported successor Developer is entitled to appeal the finding of the City Planning Commission to the City Council in accordance with Sections 5.1.3 and 7.3. of the Development Agreement. If after twenty (20) days after the issuance of the City Planning Commission's determination, the purported successor Developer does not appeal the action of the City Planning Commission, the action shall be considered final and the Development Agreement contract terminated.

5. The termination of the Development Agreement contract will not be detrimental to the public health, safety, and general welfare.

6. The termination of the Development Agreement contract will promote the orderly development of the subject property in accordance with good land use practice.

7. The termination of the Development Agreement contract is consistent with conditions of previous discretionary approvals for the subject development.

8. The termination of the Development Agreement contract is administrative and technical in nature and will have no impact on the environment, as described in Environmental Case Number ENV-2024-2272-CE (Class 21).

9. The termination of the Development Agreement contract complies with all applicable City and State regulations governing development agreements.

10. That based upon the above findings, the termination of the Development Agreement contract is deemed consistent with the public necessity, convenience, general welfare and good zoning practice.

ADDITIONAL MANDATORY FINDINGS

11. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that this project is located outside of a flood zone.

12. It has been determined based on the whole of the administrative record that the project is exempt from CEQA pursuant to State CEQA Guidelines, Section 15321 (Class 21), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2, applies.

The proposed action qualifies for a Class 21 Categorical Exemption because it conforms to the definition of an enforcement action by a regulatory agency. Actions which are taken by regulatory agencies to 'enforce or revoke a lease, permit, license, certificate, or other entitlement for use issued, adopted, or prescribed by the regulatory agency or enforcement of a law, general rule, standard, or objective, administered or adopted by the regulatory agency' are considered exempt from CEQA, as long as the action is not barred by one of the exceptions set forth in Section 15300.2.

Types of actions which may be consistent with Class 21 include, but are not limited to the following:

- Judicial enforcements referred by an Attorney General, District Attorney, or City Attorney as a result of a violation of lease, permit, license, certificate, entitlement of use;
- Administrative decisions or orders enforcing or revoking the lease, permit, license, certificate, or entitlement for use or enforcing the general rule, standard, or objective; and
- Law enforcement activities by peace officers acting under any law that provides a criminal sanction.

As the project is the termination of a Development Agreement contract because the purported successor Developer has not fulfilled its obligations under the DA contract in a timely manner, the action qualifies for Class 21 as it is an administrative decision enforcing the requirements of the DA contract.

Moreover, the City has further considered whether the proposed project is subject to any of the six exceptions set forth in State CEQA Guidelines Section 15300.2 that would prohibit the use of any categorical exemption. None of the exceptions are triggered for the following reasons:

A. **Location.** *Classes 3, 4, 5, 6, and 11 are qualified by consideration of where the project is to be located. A project that is ordinarily insignificant in its effect on the environment may in a particularly sensitive environment be significant. Therefore, these classes*

may not be utilized where the project may impact on an environmental resource of hazardous or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies.

The proposed Categorical Exemption is Class 21; therefore this exception does not apply.

B. **Cumulative Impact.** *The exception applies when, although* a *particular project may not have a significant impact, the impact of successive projects, of the same type, in the same place, over time is significant.*

The proposed action is the termination of a Development Agreement contract. No construction is proposed as a result of this action, and therefore, there are no cumulative impacts to the environment, as there are no physical or operational changes proposed.

C. **Significant Effect Due To Unusual Circumstances.** *This exception applies when, although the project may otherwise be exempt, there is* a *reasonable possibility that the project will have* a *significant effect due to unusual circumstances.*

As previously stated, there are no physical or operational changes proposed. Since the operation will not change, there are no anticipated impacts.

D. **Scenic Highways.** *This exception applies when, although the project may otherwise be exempt, there may be damage to scenic resources, including but not limited to, trees, historic buildings, rock outcroppings, or similar resources, within* a *highway officially designated as* a *state scenic highway.*

Based on a review of the California Scenic Highway Mapping System, the subject site is not located along a State Scenic Highway, nor are there any designated State Scenic Highways located near the project site.

The proposed action is the termination of a Development Agreement contract. There are no physical or operational changes proposed, and as such, there will be no impacts to scenic resources such as trees, historic buildings, rock outcroppings, or similar resources, within a highway officially designated as a state scenic highway.

E. **Hazardous Waste Sites.** *Projects located on* a *site or facility listed pursuant to California Government Code 65962.5.*

Based on a review of the California Department of Toxic Substances Control "Envirostor Database" (http://www.envirostor.dtsc.ca.gov/public/), no known hazardous waste sites are located on or proximate to the project site. In addition, there is no evidence of historic or current use, or disposal of hazardous or toxic materials at this location. Based on this, the project will not result in a significant effect due hazardous waste and this exception does not apply.

F. **Historical Resources.** *Projects that may cause* a *substantial adverse change in the significance of an historical resource.*

The project site has not been identified as a historic resource by local or state agencies, and the project site has not been determined to be eligible for listing in the National Register of Historic Places, California Register of Historical Resources, or the Los Angeles Historic-Cultural Monuments Register. Based on this, the project will not result in a substantial adverse change to the significance of a historic resource and this exception does not apply.

In conclusion, since the proposed action meets all of the requirements of the categorical exemption set forth at CEQA Guidelines, Section 15321 and none of the applicable exceptions to the use of the exemption apply, it is appropriate to determine this action is categorically exempt from the requirements of CEQA.