**DEPARTMENT OF CITY PLANNING**

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September 20, 2024

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

**APPEAL RESPONSE; Council File No. 24-0828**
**6801 West Hollywood Boulevard (6801 – 6909 West Hollywood Boulevard; 1755 – 1767 North Highland Avenue; 1722 North Orange Drive)**
**Case: CPC-2001-1940-DA-ZV-1A**

At its meeting on May 9, 2024, the Los Angeles City Planning Commission found and determined, on the basis of substantial evidence, that (a) the purported successor Developer had not cured a default under Section 5.1 of the Development Agreement (DA) and therefore terminated the DA; and (b) the termination of the DA, in accordance with the terms of the DA, was exempt from CEQA pursuant to CEQA Guidelines, Section 15321 (Class 21), as there was no substantial evidence that any exceptions contained in Section 15300.2 of the State CEQA Guidelines applied.

On June 10, 2024, the City Planning Commission's action was appealed by the owner of the site who purports to be the successor Developer under the DA, H&H Retail Owner, LLC. The following is background on the history of the DA, a summary of the appellant's complaints, a response to those appeal points, as well as a response to their complaint letter dated July 23, 2024 regarding the appeal fee.

## Background on the Development Agreement

The DA was a contract by and between the City of Los Angeles and TrizecHahn Hollywood, LLC, executed November 5, 2002. The current owner of the site purports to be the successor Developer under the DA, although no documentation exists in the record acknowledging them as such. The purpose of the DA was to provide reasonable assurances to the Developer, TrizecHahn Hollywood, LLC, that it could implement the Project in accordance with the Existing Development

Approvals, subject to the terms and conditions of the DA, the Applicable Rules, and the Reserved Powers (as these terms are defined in the DA).

Per Sections 3.2 and 3.2.1 of the DA, the Developer agreed to ensure that all signs erected on the Project would 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 were only permitted with the written consent of the City.

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 signage plan. On or about January 30, 2024, the purported successor Developer filed its First Amended Complaint ("FAC") seeking monetary damages against the City for alleged deprivation of rights that arise under the DA.

However, according to Section 5.3. of the DA, both parties acknowledged that the City would not have entered the DA if it were liable in monetary damages under or with respect to the DA 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 DA 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 the DA, except that the City shall not be liable in monetary damages and, except as set forth in Section 5.1.1 of the DA, the Parties covenanted not to sue for or claim any monetary damages for the breach of any provision of the DA. The purported successor Developer defaulted on its obligations of the DA and its terms by suing the City for monetary damages. The parties to the Agreement agreed that the City "shall not be liable for monetary damages" for alleged breaches of the DA.

In accordance with Section 5.1.2. of the DA, on February 22, 2024, the City sent to the purported successor Developer a written notice of default via certified mail with return receipt requested, consistent with the manner prescribed in Section 7.15 of the DA. In addition, the City's outside counsel emailed a courtesy copy of the Notice of Default to counsel for the purported successor Developer. Upon receipt of the Notice of Default, the purported successor Developer was required to promptly commence to cure the identified default and complete the cure of such default not later than sixty (60) days after receipt of the Notice of Default.

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. As such, the Planning Director found that the purported successor Developer remained in default and sought to utilize the Failure to Cure Default procedures in Section 5.1.3. of the DA to terminate the DA.

Staff on behalf of the Director of Planning made a report to the Planning Commission regarding the Failure to Cure Default, and the City Planning Commission held a public hearing in accordance with (a) the notice and hearing requirements of Government Code Sections 65867 and 65868, (b) the CPC Guidelines for Processing Development Agreements, and (c) the California Government Code Section 65867, the verification of which was provided in the administrative record.

After the required public hearing, the City Planning Commission found and determined, on the basis of substantial evidence, that the purported successor Developer had not cured the default. Although the DA had already expired and terminated according to its own terms as of November 5, 2022, the City terminated any purported surviving rights of the current owner under the DA, pursuant to Section 5.1.3. of the DA.

The purported successor Developer appealed the finding and determination of the City Planning Commission on June 10, 2024 to the City Council in accordance with Sections 5.1.3 and 7.3. of the DA. The appeal before the Planning and Land Use Committee is whether the City Planning Commission erred in terminating the DA Contract where the purported successor Developer, on the basis of substantial evidence, had failed to cure the default during the 60-day cure period.

Based on the information in the record, Planning Staff contends that the purported successor Developer's claim for monetary damage was a breach of the DA and that the purported successor Developer was properly notified of the breach and were provided a 60-day cure period to rectify the default. The purported successor Developer did not cure the default during the appropriate cure period. Accordingly, the City Planning Commission did not err or abuse its discretion in terminating the DA.

**Purported Successor Developer's Appeal Points**

Below is a summary of the appeal points from the purported successor Developer in the Attachment A which was attached to their Appeal Application:

***A1 Claims that the CPC lacked jurisdiction and legal authority to terminate the DA.***

The appellant claims that the City Planning Commission was not authorized to terminate the DA without the purported successor Developer's consent. The appellant cites sections of the DA which address the process for amending or cancelling the DA in whole or in part, which requires a mutual consent of the parties, and claims that this section (regarding cancellation or amendment) would apply to a termination based on a breach of the DA. However, the language regarding a cancellation or amendment of the DA is not relevant to the issue at hand. The City was not proposing an amendment of the DA or cancelling the DA in whole or in part. The City was utilizing the Default Provisions in Section 5 of the DA which clearly state that the City was entitled to terminate the DA following an uncured default, if the City complied with the procedures in Section 5.1.2.

The appellant also claims that Section 5.1.3 of the DA cited in the determination letter did not authorize the CPC with the ability to terminate the DA, but the appellant does not provide any evidence supporting their position. Instead, they pivot to another section of the DA, Section 7.5, which addresses the parties' rights to seek legal action to remedy any default or enforce any covenant or agreement. The appellant then falsely claims that this use of a legal action to enforce a covenant was the City's only recourse to address the default.

Both claims, that the DA purportedly required the City to obtain Developer's consent or commence a legal action to terminate the DA, misstate the DA.

There are several sections in the DA which indicate that the City may terminate the DA without consent from the purported successor Developer based on an uncured default.

Specifically, Section 7.2.2. of the DA indicates that the DA may be terminated by either party following an uncured default, subject to the DA procedures and limitations. Consent to terminate is not required when utilizing the DA Failure to Cure Default procedures.

> **7.2.2. Early Full Termination of Agreement.** The Agreement is terminable: (I) by mutual written consent of the Parties; or (ii) by either Party following an uncured default by the other Party under this Agreement, subject to the procedures and limitations set forth in this Agreement.

Section 5.1.1. of the DA clearly states that the City shall have all rights and remedies which are provided in the DA and that the City may terminate the DA if the City has complied with the procedure in Section 5.1.2. This section states that nothing in this Section shall limit the City's right to terminate the DA agreement in accordance with Section 4.7. Nowhere in this language does it indicate that both parties must consent to the termination based on Developer's breach of the DA.

> **5.1.1 Default.** In addition to the Annual Review process set forth in Section 4, in the event Developer does not perform its obligations under this the Agreement in a timely manner, the City shall have all rights and remedies provided for in this Agreement, compelling the specific performance of the obligations of Developer under this Agreement, or modification or termination of this Agreement, provided that the City has first complied with the procedure in Section 5.1.2, including without limitation, Section 7.5; provided that the City shall have no right to monetary damages under this Development Agreement as a result of any default by Developer unless the default of the Developer relates to any requirement in this Development Agreement that the Developer pay money to the City or reimburse the City for any expenditures. Nothing in this Section 5.1.1 shall limit the City's right to terminate this Agreement in accordance with Section 4.7.

In accordance with Section 5.1.2. of the DA, on February 22, 2024, the City sent the purported successor Developer a written notice of the default via a certified mail with return receipt requested, consistent with the manner prescribed in Section 7.15 of the DA. In addition, the City's outside counsel emailed a courtesy copy of the Notice of Default to counsel for the purported successor Developer. Upon receipt of the of the notice of default, the purported successor Developer was required to promptly cure the identified default at the earliest reasonable time after the receipt of the notice of default and no later than sixty (60) days after the receipt of the notice of default. 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. As such, the Planning Director found that the purported successor Developer remained in default and sought to utilize the Failure to Cure Default procedures in Section 5.1.3. of the DA.

The Failure to Cure Default Procedures of 5.1.3 of the DA clearly indicate that the City Planning Commission had the authority to hold a public hearing, review the Director's report regarding whether the purported successor Developer remained in default, and terminate or modify the Agreement. Nowhere in this section of the DA does it indicate that the purported successor Developer must agree to the termination. Additionally, as the City Planning Commission is the initial decision-maker on the termination, the City Council is identified as the appellate body, and the purported successor Developer could appeal the decision of the City Planning Commission.

**5.1.3. Failure To Cure Default Procedure.** If after the cure period has elapsed, the Planning Director finds and determines that Developer , or its successors, transferees and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Director shall make a report to the Planning Commission and then set a public hearing before the Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Developer or its successors, transferees and/or assignees, as the case may be, has not cured default pursuant to this Section, and that the City shall terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, Developer and its successors, transferees and/or assigns, shall be entitled to appeal that finding and determination to the City Council in accordance with Section 7.3. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council review of Commission and Board actions).

To summarize, the City had the authority to terminate the DA upon the purported successor Developer's failure to cure the default within 60 days of the City's notice. The DA did not require a mutual consent to termination based on a breach. The appellant's claims are meritless because the City Planning Commission had the authority and jurisdiction to terminate the DA for such uncured default.

***A2 Claims that the City's Notice of Default was time barred under California law***

The appellant claims that the Notice of Default was time barred under California law. However, the appellant freely admits that "the DA does not specify a deadline for service of a notice of default following an alleged event of default".

The purported successor Developer defaulted on the DA by requesting monetary compensation when the DA clearly indicated that the "the City shall not be liable in monetary damages and, …the Parties covenant not to sue for or claim any monetary damages for the breach of any provision of this Agreement." (Section 5.3. of the DA).

The Appellant's claim that that the timing of the City's issuance of the Notice of Default was unreasonable is incorrect and irrelevant to the case at hand in any event. The purported successor Developer defaulted on its obligations in the DA, and as such, the City utilized the Notice of Default procedures to compel the purported successor Developer to comply with its obligation to cure within a specified timeframe. The purported successor Developer did not comply within the timeframe and as such, the Director was authorized to make a report to the City Planning Commission regarding the uncured default and the City Planning Commission was entitled to terminate the DA.

The issue before the City Council is whether the City Planning Commission erred in their determination that the purported successor Developer was still in default and that therefore, the City was entitled to terminate the DA.

***A3 Claims that CPC Hearing violated H&H's constitutional right to due process as the attorneys representing the City in the litigation between H&H and the City were***

***acting as advisors to the CPC and engaged in ex parte communications with the CPC Commissioners immediately before the CPC Hearing;***

The appellant claims that ex-parte communications occurred between the Commissioners and the City Attorneys and a closed-door session occurred during the City Planning Commission hearing. The City disputes this characterization of the City Planning Commission meeting, as it is commonplace for the commissioners to confer with legal counsel on legal questions both before hearing and during hearings if the Commission is on a break. The City asserts that no improper discussions occurred and the appellant's due process was not violated because the Developer has no due process right to invade the City's attorney-client privilege.

This claim is again meritless and irrelevant to the issue at hand, which was the City Planning Commission's determination whether the purported successor Developer had failed to cure the default, and whether the City was then entitled to terminate the DA.

***A4 Claims that there was no basis to terminate the DA because, for multiple reasons, there was no event of default by H&H under the DA***

The appellant claims that the monetary damages it sought under Section 1983 did not constitute a breach by the purported successor Developer of its obligations under the DA and claims that the Letter of Determination ("LOD") failed to identify the obligation under the DA that the purported successor Developer did not perform in a timely manner.

However, the DA clearly states multiple times that one of the purposes of the DA was to protect the City against exposure from monetary liability. Section 5.3 specifically states that, "It is acknowledged by the parties that the **City would not have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof**." It further provides that each party agrees to utilize any remedy at law for any breach of the agreement, except that the City shall not be liable for monetary damages, and the parties covenant not to sue for or claim any monetary damages.

> **5.3. No Monetary Damages**. It is acknowledged by the parties that the City would not have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof. Both parties agree and recognize that, as a practical matter, it may 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 require to enter into this Agreement to justify such exposure. Therefore, the parties agree 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 this Agreement.

As such, the purported successor Developer was required to comply with the provisions of the DA and was permitted to utilize any remedy at law other than suing for monetary damages.

On or about January 30, 2024, the purported successor Developer filed its First Amended Complaint ("FAC") seeking monetary damages against the City for alleged rights that arise under the DA. H&H alleged Fourth Cause of Action for Violation of Substantive Due Process, Fifth Cause of Action for Violation of Procedural Due Process, and Sixth Cause of Action for Equal Protection, all seeking monetary damages against the City. Although the purported successor Developer sought to bring these claims under Section 1983 of Title 42 of the U.S. Code, each claim arose out of and was based on alleged breach of "vested rights" under the DA. (See FAC paragraphs 4 and 140, which are "repeat[ed] and reallege[d]" in FAC paragraphs 188, 199, and 205.) As the parties agreed that the City "shall not be liable in monetary damages" for alleged breaches of the DA, H&H's assertion of claims seeking monetary damages against the City based on purported breaches of the DA constituted a clear default.

The purported successor Developer was notified that this monetary claim was a default pursuant to Sections 5.1.2 and 7.15 of the DA. Although the DA had already expired and terminated as of November 5, 2022, given that the purported successor Developer still claimed rights under the expired DA, the purported successor Developer was directed to cure the default by dismissing the above-referenced claims seeking monetary damages within 60 days after the receipt of the notice. If not, a report would be made to the Planning Commission and a public hearing would be scheduled before the City Planning Commission to terminate any purported rights the purported successor Developer asserted under the DA pursuant to Section 5.1.3 of the DA.

The purported successor Developer failed to withdraw its claim for monetary damages within such 60 days. As such, the purported successor Developer defaulted under the DA for which the City was authorized to terminate the DA.

***A5 Claims that there is no evidence, much less substantial evidence, to support the CPC's findings in the LOD regarding its termination of the DA***

The appellant claims there was no evidentiary support in the record to support the City Planning Commission's decision to terminate the DA.

As previously discussed, the purported successor Developer filed monetary claims against the City, which was a breach of the DA. The City issued a Notice of Default, indicating that the Developer was in default of the DA and was obligated to dismiss the claims seeking monetary damages within 60 days of receiving the notice. The purported successor Developer did not cure the default within the specified timeframe, and as such, the Planning Director found that the purported successor Developer remained in default and sought to utilize the Failure to Cure Default procedures in Section 5.1.3. of the DA.

The staff on behalf of the Director of Planning made a report to 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 the CPC Guidelines for Processing Development Agreements and California Government Code Section 65867; the verification of which was provided in the administrative record.

After the required public hearing, the City Planning Commission found and determined, on the basis of substantial evidence, that the purported successor Developer had not dismissed the claims seeking monetary damages and cured the default. Although the DA

had already expired and terminated as of November 5, 2022, the City then terminated any purported rights of the current owner under the DA pursuant to Section 5.1.3. of the DA. The City Planning Commission did not err in determining that the purported successor Developer had not cured the default and was still in breach of the DA.

**Appellant's Contest of a Fee letter dated July 23, 2024**

On July 23, 2024, a representative for the purported successor Developer transmitted a letter to the City via email to contest the fees which were required to file an appeal of the DA termination. The purported successor Developer claims to have paid a $32,066.91 fee for the appeal and claims that it was "an aggrieved person other than the applicant" and therefore should have been charged a $166 fee instead.

The fee for an appeal by the Applicant is 85% of the application fee, and as such, the purported successor Developer was charged a fee of $16,586.05 for the appeal, and due to other surcharges such as the Operating Surcharge, the City Planning Systems Development Surcharge, the Development Services Center Surcharge, and the General Plan Maintenance Surcharge, the total amount for the invoice was $20,400.83. Based on the BTC receipt submitted to the file, it appears that the Applicant paid an additional $11,666.08 for notification materials related to the hearing notice. The fee for notification materials is irrelevant to Appellant's argument, as it is based on the number of people who must be notified within a certain radius of the site and is not related to the appeal fee. The relatively high cost of the notification materials is a result of the high density of residents within the area.

TrizecHahn Hollywood LLC was the Applicant who originally applied for the vested rights under the DA with the City of Los Angeles. While the City of Los Angeles is a party to the DA, the City is not the applicant or developer.

Section 7.9 of the DA indicates that the "provisions of this Agreement shall constitute covenants which shall run with the land comprising the Development Site for the benefit thereof and as a burden thereon, and the burdens and benefits hereof shall bind and inure to the benefit of all assignees, transferees, and successors to the Parties hereto." As such, the purported successor Developer is bound to the provisions of the DA and would be considered the successor Applicant.

While the Notice of Default procedures were initiated by the City of Los Angeles, as the City sought to compel the purported successor Developer to comply with the obligations of the DA (which prohibited monetary claims against the City), the City was an initiating party but was not the Applicant for the DA. The City did not apply for any entitlements or rights under the DA. The Director merely reported to the City Planning Commission the purported successor Developer's default under the DA which was applied for by the original owner of the site.

As such, the purported successor Developer would be considered the successor Applicant and would be required to pay fees as the Applicant. The fee for "an aggrieved person other than the applicant" is typically a neighbor or other aggrieved person who did not apply for the underlying entitlements who is appealing the action. The $166 fee is intentionally low and subsidized by the City, and does not reflect the true cost of processing the appeal, in order to ensure that community members can appeal actions of the City and are not prohibited from appealing due to high costs. The purported successor Developer is the successor Applicant of the DA and is required to pay the full fee for an appeal.

*Conclusion*

In conclusion, the purported successor Developer defaulted under the DA and did not cure the default within the timeframe specified in the DA. The City was entitled to terminate the DA without the purported successor Developer's consent as long as the procedures in the DA were followed. The City Planning Commission found that these procedures were followed, and that the purported successor Developer was still in default at the time of the hearing. As such, the City was entitled to terminate the DA. The City Planning Commission did not err in making such findings and the City Council should deny the appeal and uphold the City Planning Commission's determination.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning

Jane Choi

Jane Choi, AICP
Principal City Planner

VPB:JC:VKJ

Attachments:
Appeal Application, Fee Contestation Letter, Development Agreement, First Amended Complaint

c: Emma Howard, Planning Director, Council District 13
Ted Walker, Planning Director, Council District 13

APPLICATIONS

# APPEAL APPLICATION
Instructions and Checklist

## RELATED CODE SECTION

Refer to the Letter of Determination (LOD) for the subject case to identify the applicable Los Angeles Municipal Code (LAMC) Section for the entitlement and the appeal procedures.

## PURPOSE

This application is for the appeal of Los Angeles Department of City Planning determinations, as authorized by the LAMC, as well as first-level Building and Safety Appeals and Housing Appeals.

## APPELLATE BODY

**Check only one. If unsure of the Appellate Body, check with City Planning staff before submission.**

☐ Area Planning Commission (APC) ☐ City Planning Commission (CPC) ☒ City Council

☐ Zoning Administrator (ZA) ☐ Director of Planning (DIR)

## CASE INFORMATION

**Case Number:** CPC-2001-1940-DA-ZV (Related Case Number CPC 2022-5315-DA); CEQA Number: ENV-2024-2272-CE

**APN:** See Attachment B

**Project Address:** 6801 West Hollywood Boulevard (6801 – 6909 West Hollywood Boulevard; 1755 – 1767 North Highland Avenue; 1722 North Orange Drive)

**Final Date to Appeal:** June 10, 2024

## APPELLANT

**For main entitlement cases, <u>except</u> for Building and Safety Appeals and Housing Appeals: Check all that apply.**

☐ Person, other than the Applicant, Owner or Operator claiming to be aggrieved

☒ Representative ☒ Property Owner ☐ Applicant ☐ Operator of the Use/Site

**For Building and Safety Appeals only:**

**Check all that apply.**

☐ Person claiming to be aggrieved by the determination made by **Building and Safety**[1]

☐ Representative ☐ Property Owner ☐ Applicant ☐ Operator of the Use/Site

**For Housing Appeals only:**

**Check all that apply.**

☐ Person claiming to be aggrieved by the determination made by **Housing**

☐ Representative ☐ Property Owner ☐ Applicant ☐ Interested Party ☐ Tenant

## APPELLANT INFORMATION

**Appellant Name:** H&H Retail Owner, LLC

**Company/Organization:** H&H Retail Owner, LLC

**Mailing Address:** 6801 Hollywood Blvd., Suite 170

**City:** Los Angeles **State:** CA **Zip Code:** 90028

**Telephone:** 323-817-0209 (ext. 1209) **E-mail:** kgolder@djmcapital.com

Is the appeal being filed on your behalf or on behalf of another party, organization, or company?

☒ Self ☐ Other: _____

Is the appeal being filed to support the original applicant's position? ☒ **YES** ☐ **NO**

## REPRESENTATIVE / AGENT INFORMATION

**Representative/Agent Name (if applicable):** Jeffrey B. Isaacs

**Company:** Isaacs - Friedberg - Zill LLP

**Mailing Address:** 555 S. Flower St., Ste. 4250

**City:** Los Angeles **State:** CA **Zip Code:** 90071

**Telephone:** (213) 929-5550 **E-mail:** jisaacs@ifzcounsel.com

[1] Pursuant to LAMC Section 13B.2.10.B.1. of Chapter 1A, Appellants of a Building and Safety Appeal are considered the Applicant and must provide the Noticing Requirements identified on page 4 of this form at the time of filing. Pursuant to LAMC Section 13B.10.3 of Chapter 1A, an appeal fee shall be required pursuant to LAMC Section 19.01 B.2 of Chapter 1.

## JUSTIFICATION / REASON FOR APPEAL

Is the decision being appealed in its entirety or in part? ☒ **Entire** ☐ **Part**

Are specific Conditions of Approval being appealed? ☐ **YES** ☒ **NO**

If Yes, list the Condition Number(s) here: _____

On a separate sheet provide the following:

☒ Reason(s) for the appeal

☒ Specific points at issue

☒ How you are aggrieved by the decision

## APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true.

**Appellant Signature:** _____ **Date:** 6/7/2024

## GENERAL NOTES

*A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.*

*The appellate body must act on the appeal within a time period specified in the LAMC Section(s) pertaining to the type of appeal being filed. Los Angeles City Planning will make its best efforts to have appeals scheduled prior to the appellate body's last day to act in order to provide due process to the appellant. If the appellate body is unable to come to a consensus or is unable to hear and consider the appeal prior to the last day to act, the appeal is automatically deemed denied, and the original decision will stand. The last day to act as defined in the LAMC may only be extended if formally agreed upon by the applicant.*

## THIS SECTION FOR CITY PLANNING STAFF USE ONLY

**Base Fee:** $16,586

**Reviewed & Accepted by (DSC Planner):** Jason Chan

**Receipt No.:** 200101204536 **Date :** 6/10/24

☒ Determination authority notified ☐ Original receipt and BTC receipt (if original applicant)

## GENERAL APPEAL FILING REQUIREMENTS

If dropping off an appeal at a Development Services Center (DSC), the following items are required. See also additional instructions for specific case types. To file online, visit our Online Application System (OAS).

## APPEAL DOCUMENTS

**1. Hard Copy**

Provide three sets (one original, two duplicates) of the listed documents for each appeal filed.

- ☐ Appeal Application
- ☐ Justification/Reason for Appeal
- ☐ Copy of Letter of Determination (LOD) for the decision being appealed

**2. Electronic Copy**

- ☐ Provide an electronic copy of the appeal documents on a USB flash drive. The following items must be saved as individual PDFs and labeled accordingly (e.g., "Appeal Form", "Justification/ Reason Statement", or "Original Determination Letter"). No file should exceed 70 MB in size.

**3. Appeal Fee**

- ☐ *Original Applicant.* The fee charged shall be in accordance with LAMC Section 19.01 B.1(a), or a fee equal to 85% of the original base application fee. Provide a copy of the original application receipt(s) to calculate the fee.
- ☐ *Aggrieved Party.* The fee charged shall be in accordance with the LAMC Section 19.01 B.1(b).

**4. Noticing Requirements (Applicant Appeals or Building and Safety Appeals Only)**

- ☐ *Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Section(s). Original Applicants must provide noticing per the LAMC for all Applicant appeals. Appellants for BSAs are considered Original Applicants.
- ☐ *BTC Receipt.* Proof of payment by way of a BTC Receipt must be submitted to verify that mailing fees for the appeal hearing notice have been paid by the Applicant to City Planning's mailing contractor (BTC).

  See the Mailing Procedures Instructions (CP13-2074) for applicable requirements.
- ☐ Not applicable for Housing Appeals.

# SPECIFIC CASE TYPES
# ADDITIONAL APPEAL FILING REQUIREMENTS AND / OR LIMITATIONS

## DENSITY BONUS (DB) / TRANSIT ORIENTED COMMUNITES (TOC)

Appeal procedures for DB/TOC cases are pursuant to LAMC Section 12.22 A.25(g) of Chapter 1.

- Off-Menu Incentives or Waiver of Development Standards are not appealable.
- Appeals of On-Menu Density Bonus or Additional Incentives for TOC cases can only be filed by adjacent owners or tenants and is appealable to the City Planning Commission.
  - ☐ Provide documentation confirming adjacent owner or tenant status is required (e.g., a lease agreement, rent receipt, utility bill, property tax bill, ZIMAS, driver's license, bill statement).

## WAIVER OF DEDICATION AND / OR IMPROVEMENT

Procedures for appeals of Waiver of Dedication and/or Improvements (WDIs) are pursuant to LAMC Section 12.37 I of Chapter 1.

- WDIs for by-right projects can only be appealed by the Property Owner.
- If the WDI is part of a larger discretionary project, the applicant may appeal pursuant to the procedures which govern the main entitlement.

## [VESTING] TENTATIVE TRACT MAP

Procedures for appeals of [Vesting] Tentative Tract Maps are pursuant LAMC Section 13B.7.3.G. of Chapter 1A.

- Appeals must be filed within 10 days of the date of the written determination of the decision-maker.

## BUILDING AND SAFETY APPEALS AND HOUSING APPEALS

### First Level Appeal

Procedures for an appeal of a determination by the Los Angeles Department of Building and Safety (LADBS) (i.e., Building and Safety Appeal, or BSA) and Housing (LAHD) are pursuant LAMC Section 13B.10.2. of Chapter 1A.

- The Appellant is considered the **Original Applicant** and must provide noticing and pay mailing fees.

1. Appeal Fee

   ☐ Appeal fee shall be in accordance with LAMC Section 19.01 B.2 of Chapter 1 (i.e., the fee specified in Table 4-A, Section 98.0403.2 of the City of Los Angeles Building Code, plus surcharges).

2. Noticing Requirement

   ☐ *Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Section(s). Original Applicants must provide noticing per LAMC Section 13B.10.2.C. of Chapter 1A. Appellants for BSAs are considered Original Applicants. (Not applicable for Housing appeals).

   ☐ *BTC Receipt.* Proof of payment by way of a BTC Receipt must be submitted to verify that mailing fees for the appeal hearing notice have been paid by the Applicant to City Planning's mailing contractor (BTC).

   ☐ Not applicable for Housing Appeals.

See the Mailing Procedures Instructions (CP13-2074) for applicable requirements.

**Second Level Appeal**

Procedures for a appeal of the Director's Decision on a BSA Appeal and LAHD appeals are pursuant to LAMC Section 13B.10.2.G. of Chapter 1A. The original Appellant or any other aggrieved person may file an appeal to the APC or CPC, as noted in the LOD.

1. Appeal Fee

   ☐ *Original Applicant.* Fees shall be in accordance with the LAMC Section 19.01 B.1(a) of Chapter 1.

2. Noticing Requirement

   ☐ *Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Section(s). Original Applicants must provide noticing per LAMC Section 13B.10.2.C of Chapter 1A. Appellants for BSAs are considered Original Original Applicants.

   ☐ *BTC Receipt.* Proof of payment by way of a BTC Receipt must be submitted to verify that mailing fees for the appeal hearing notice have been paid by the Applicant to City Planning's mailing contractor (BTC).

   ☐ Not applicable for Housing Appeals.

See the Mailing Procedures Instructions (CP13-2074) for applicable requirements.

## NUISANCE ABATEMENT / REVOCATIONS

Appeal procedures for Nuisance Abatement/Revocations are pursuant to LAMC Section 13B.6.2.G. of Chapter 1A. Nuisance Abatement/Revocations cases are only appealable to the City Council.

1. Appeal Fee

   ☐ *Applicant (Owner/Operator)*. The fee charged shall be in accordance with the LAMC Section 19.01 B.1(a) of Chapter 1.

   For appeals filed by the property owner and/or business owner/operator, or any individuals/ agents/representatives/associates affiliated with the property and business, who files the appeal on behalf of the property owner and/or business owner/operator, appeal application fees listed under LAMC Section 19.01 B.1(a) of Chapter 1 shall be paid, at the time the appeal application is submitted, or the appeal application will not be accepted.

   ☐ *Aggrieved Party.* The fee charged shall be in accordance with the LAMC Section 19.01 B.1(b) of Chapter 1.

**ATTACHMENT A**

**Appeal Justification re: H&H Retail Owner, LLC's ("H&H") Appeal of the City Planning Commission's Termination of the Development Agreement, Dated November 5, 2002, Between the City of Los Angeles and H&H, as Successor-In-Interest to TrizecHahn Hollywood, LLC**

**Case Number: CPC-2001-1940-DA-ZV (Related Case Number CPC 2022-5315-DA)**

**CEQA Number: ENV-2024-2272-CE**

*****THIS APPEAL IS BEING FILED UNDER PROTEST BECAUSE H&H MAINTAINS THAT THE CITY PLANNING COMMISSION LACKED JURISDICTION AND LEGAL AUTHORITY IN THE FIRST INSTANCE TO TERMINATE THE DEVELOPMENT AGREEMENT.*****

As set forth in detail below, the City Planning Commission's ("**CPC**") decision to terminate the Development Agreement between the City of Los Angeles (the "**City**") and H&H, as successor-in-interest to the original developer TrizecHahn Hollywood LLC ("**TrizecHahn**") (the "**DA**"), should be reversed for the following reasons:

1. The CPC lacked jurisdiction and legal authority to terminate the DA;
2. The City's Notice of Default was time barred under California law;
3. The CPC Hearing violated H&H's constitutional right to due process as the attorneys representing the City in the litigation between H&H and the City were acting as advisors to the CPC and engaged in *ex parte* communications with the CPC Commissioners immediately before the CPC Hearing;
4. There was no basis to terminate the DA because, for multiple reasons, there was no event of default by H&H under the DA; and
5. There is no evidence, much less substantial evidence, to support the CPC's findings in the Letter of Determination ("**LOD**") purporting to support its termination of the DA.

## I. Introduction.

H&H is the owner of Ovation Hollywood, the iconic entertainment, retail and office complex formerly known as "Hollywood and Highland," located at 6801 Hollywood Boulevard, Los Angeles, California 90028 (the "**Project**"). H&H is currently in litigation with the City regarding enforcement of H&H's vested sign rights under the DA.[1]

[1] The case is entitled *H&H Retail Owner, LLC v. City of Los Angeles, et al.*, Los Angeles Superior Court, Case No. 22STCP03975 (the "**Litigation**").

On February 22, 2024, the City served H&H with a Notice of Default (the "**Notice of Default**"), alleging that H&H was in default of Section 5.3 of the DA for seeking damages against the City in the Litigation under 42 U.S.C. section 1983 ("**Section 1983**").[2]

The City subsequently brought the matter before the CPC. At a hearing on May 9, 2024 (the "**CPC Hearing**"), the CPC voted to terminate the DA. On May 16, 2024, the CPC issued a Letter of Determination (the "**LOD**") in support of its decision.

H&H now timely appeals the CPC's decision (albeit under protest as H&H maintains that the CPC never had the jurisdiction or legal authority to terminate the DA in the first instance).

Many of the appeal points were raised and discussed in H&H's April 12, 2024 letter responding to the Notice of Default, and again in H&H's May 7, 2024 Secondary Submission to the CPC. Notably, however, the City never responded to H&H's letter, and the LOD fails to address any of H&H's points.

## II. Background.

In July 2019, Gaw Capital ("**Gaw**") and DJM Capital Partners, LLC ("**DJM**") purchased H&H for approximately $325 million, and thereafter invested approximately $54 million to revitalize and rebrand the Project to keep it attractive to shoppers and visitors, retain the Academy of Motion Pictures and Sciences annual Academy Awards presentation, and ensure its financial viability, so that it would continue as a bastion against blight in Hollywood.

Under Gaw and DJM's ownership and management, H&H has been a major source of revenue and prestige for the City, paying more than $24 million in property taxes, a portion of which was paid to the City, and $3 million in Community Improvement Fees to the City's Economic and Workforce Department.

The DA expressly granted H&H, as TrizecHahn's successor-in-interest, "vested rights . . . without limitation . . . to remodel, renovate, rehabilitate, rebuild or replace any signs [at the Project] . . . for any reason . . . ."

As part of the plan to renovate and update the Project, beginning in 2020, H&H sought to exercise its vested sign rights under the DA to "remodel," "renovate" and "replace" outdated and obsolete static signs at the Project – all of which were permitted – with digital signs of like or lesser dimensions. The digital signs are critical to the Project maintaining a modern, exciting look and to remaining financially viable.

[2] H&H responded to the Notice of Default in an April 12, 2024 letter, which was part of the record before the CPC.

For more than two years, H&H sought to work with City Planning in good faith to obtain clearances for the digital signs, but was met with delay, stalling and stonewalling. As detailed in H&H's First Amended Complaint, City Planning refused to even acknowledge H&H's vested rights under the DA, refused to apply the procedures and standards set forth in the DA to H&H's digital sign applications, and refused to commit to a pathway for the processing and review of H&H's digital sign applications, acting as if the DA did not exist.

In an October 26, 2022 letter from the Deputy Director of City Planning, Lisa Webber, to H&H's land use counsel, City Planning denied H&H's digital sign applications without a hearing, without written findings and without a Letter of Determination, and by employing a standard taken from a document other than the DA (the Disposition and Development Agreement between the Community Redevelopment Agency of Los Angeles and TrizecHahn), which City Planning later conceded did not apply.

Accordingly, with no alternative, on November 3, 2022, H&H filed a Verified Petition for Writ of Mandate and Complaint (the "**Original Complaint**"). The Original Complaint included a claim for damages under Section 1983.

Prior to the Notice of Default, the City had never declared H&H to be in non-compliance with the DA.

## III. The CPC Lacked Jurisdiction and Legal Authority to Terminate the DA.

The DA was entered into pursuant to the California Development Agreement Act, Government Code section 65864 *et seq.* (the "**DA Act**"). The DA Act makes clear that the DA "is a legislative act." Gov't Code § 65867.5*; see also Mammoth Lakes Land Acquisition, LLC v. Town of Mammoth Lakes*, 191 Cal. App. 4th 435, 442 (2010) ("*Mammoth Lakes*") ("The development agreement must be approved by ordinance and is, therefore, a 'legislative act.'"). The City Council approved the City entering into the DA by City Ordinance No. 174843 (the "**DA Ordinance**").[3]

The LOD states that the CPC "[t]erminated the Development Agreement (DA) contract, pursuant to California Government Code Section 65867 and 65868 and Section 5.1.3. of the DA

[3] The DA Ordinance included findings that the DA:

(a) [I]s consistent with the City's General Plan and with the objectives, policies and programs specified in the Hollywood Community Plan, which is a portion of the City's General Plan. Specifically, the Development Agreement encourages the retention of a major entertainment center on the site and encourages the retention of the Academy of Motion Pictures and Sciences annual Academy Awards Presentation at the site.

(b) The Development Agreement will not be detrimental to the public health, safety and general welfare since it encourages the utilization of a project that is desirable and beneficial to the public. . . .

(Ordinance 174,843)." The Government Code sections cited, however, do not authorize the CPC to terminate the DA without H&H's consent, which it has never given.

Government Code section 65868, which is part of the DA Act, states that "[a] development agreement may be amended, or canceled in whole or in part, ***by mutual consent of the parties*** to the agreement or their successors in interest." Gov't Code § 65868 (emphasis added); *see also Mammoth Lakes*, 191 Cal. App. 4th at 458 ("[A] development agreement may be amended or cancelled only by mutual consent of the parties to the agreement."). H&H did not consent to the City's termination of the DA; accordingly, section 65868 has no application.

Likewise, Government Code section 65867, which is also part of the DA Act, provides no authority for the CPC to terminate the DA. It merely provides that "[a] public hearing on ***an application for a development agreement*** shall be held by the planning agency and by the legislative body . . . ." (emphasis added). It says nothing about termination of a development agreement. It too, therefore, is inapplicable.

Nor did the DA section cited in the LOD, Section 5.1.3, authorize the CPC to terminate the DA. Rather, according to DA Section 7.5, for the City to terminate the DA for H&H's alleged breach of DA Section 5.3, the City was required to seek that relief from a court of competent jurisdiction. Specifically, Section 5.3 states, in relevant part, that "the Parties ***covenant*** not to sue for or claim any monetary damages for the breach of any provision of this Agreement." (emphasis added). Section 7.5 then provides that "either Party may . . . institute legal action to . . . ***enforce any covenant*** [of the DA]." As Section 5.3 creates a covenant, for the CPC to enforce that covenant, it needed to follow the procedures set forth in DA Section 7.5, not in DA Section 5.

The CPC thus lacked authority under both the DA Act and the DA itself to terminate the DA in the manner it did.

## IV. <u>The City's Notice of Default Was Time Barred Under California Law.</u>

H&H's Original Complaint, which was filed in November 2022, alleged a claim for damages under Section 1983. The City, however, delayed for more than 15 months before serving the Notice of Default, which alleged that H&H had violated DA Section 5.3 by bringing that claim.

Moreover, during those 15 months, the Litigation progressed rapidly, with both the City and H&H each spending tens-of-thousands of dollars responding to each other's discovery requests. H&H in particular was required to answer numerous interrogatories relating to its Section 1983 claims; produced more than 125,000 pages of documents pursuant to the City's document requests; and prepared and sought leave to file a First Amended Complaint that, among other things, further detailed the basis of its Section 1983 claims.

While the DA does not specify a deadline for service of a notice of default following an alleged event of default, California law states that, "[i]f no time is specified for the performance of an act required to be performed, a reasonable time is allowed." Civ. Code § 1657. "[W]hat constitutes a reasonable time is a question of fact, depending upon the situation of the parties, the nature of the transaction, and the facts of the particular case." *Sawday v. Vista Irr. Dist*., 64 Cal. 2d 833, 836 (1966).

Generally, however, California cases have held that any delay of more than 12 months in the exercise of a procedural right akin to that here will constitute a waiver of that right, especially where, as here, that delay prejudiced the other party (i.e., H&H). *See, e.g., Sawday*, 64 Cal. 2d at 836 (Plaintiff "should have made her claim . . . within one year after the year in which the alleged damages were incurred, that by not doing so she was guilty of laches to the prejudice of the [defendant], and that she therefore waived her right to compel arbitration."); *Semprini v. Wedbush Sec. Inc.*, 101 Cal. App. 5th 518 (2024) ("It is well established that a four to six month delay . . . may result in a finding of waiver"); *Desert Regional Medical Center, Inc. v. Miller* 87 Cal. App. 5th 295 (2022) (one year delay supported finding of waiver); *Lewis v. Fletcher Jones Motor Cars, Inc.* 205 Cal. App. 4th 436 (2012) (finding waiver where defendant waited four months to give notice and then another month to file a motion); *Augusta v. Keehn & Associates* 193 Cal.App.4th 331 (2011) (waiver found based on five and a half month delay); *Adolph v. Coastal Auto Sales, Inc.* 184 Cal. App. 4th 1443 (2010) (finding waiver based on six month delay); *Guess?, Inc. v. Super. Ct.* 79 Cal. App. 4th 553, 555 (2000) (finding waiver based on three-month delay); *Kaneko Ford Design v. Citipark, Inc.* 202 Cal. App. 3d 1220, 1228-29 (1988) (finding waiver based on five-and-a-half-month delay).[4]

In this case, H&H's damages claim under Section 1983 had been pending for more than 15 months before the City served the Notice of Default, asserting that such claims were barred by DA Section 5.3. Moreover, although this issue was explicitly raised by H&H in response to the Notice of Default and at the CPC Hearing, the City has never sought to justify or even explain the reason for this delay. Because the delay substantially exceeded the 12-month limit for delay recognized by California law and was prejudicial to H&H, the City has waived any right it had to terminate the DA based on this alleged default by H&H.

## V. The CPC Hearing Violated H&H's Due Process Rights.

At the CPC Hearing, the Commissioners were advised by Deputy City Attorney ("**DCA**") Amy Brothers, even though Ms. Brothers had represented the City in the Litigation. In addition, before the CPC Hearing, the Commissioners could be seen speaking with DCA Kenneth Fong, who has represented the City in the Litigation from the outset, and Henry Oh, who is outside

[4] All of these cases involved waiver of a contractual right to compel arbitration, which is a right not easily waived, much more so than a right to send a notice of default.

counsel for the City in the Litigation. In fact, just prior to the CPC Hearing, during a break that lasted 10 minutes longer than planned, Mr. Oh and DCA Fong were seen entering into a closed-door session with the Commissioners, notwithstanding that no such session was on the agenda.

"When, as here, an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal." *Morongo Band of Mission Indians v. State Water Res. Control Bd*., 45 Cal. 4th 731, 737, (2009). In particular, due process requires a separation between advocates and decision makers to preserve the adjudicative body's neutrality. *See id.*; *see also Nightlife Partners v. City of Beverly Hills*, 108 Cal. App. 4th 81, 93 (2003) ("California courts, too, recognize that the combination of prosecutorial and adjudicative functions is the most problematic combination for procedural due process purposes. . . . Accordingly, to permit an advocate for one party to act as the legal advisor for the decision-maker creates a substantial risk that the advice given to the decision-maker will be skewed . . . particularly when the prosecutor serves as the decision-maker's advisor in the same or a related proceeding."); *Howitt v. Super. Ct*., 3 Cal. App. 4th 1575, 1585 (1992) ("To allow an advocate for one party to also act as counsel to the decision-maker creates the substantial risk that the advice given to the decision-maker . . . will be skewed.").

The CPC Hearing clearly violated due process. The CPC was acting as an adjudicative (as opposed to legislative) body. The hearing pitted City Planning against H&H and involved the same subject matter as the Litigation. Nonetheless, DCA Brothers, who had represented the City against H&H in the Litigation, served as the legal advisor to the CPC in the hearing, and Mr. Oh and DCA Fong, who presently represent the City against H&H in the Litigation, were seen speaking with and then going into a closed-door meeting with the Commissioners immediately prior to the start of the hearing.

Under the circumstances, the CPC Hearing is invalid as having deprived H&H of its due process rights to even-handed treatment by a fair and unbiased tribunal and to a hearing untainted by improper *ex parte* communications between the Commissioners and attorneys for a party adverse to H&H.[5] *See* Gov't Code § 11430.10, subd. (a) ("While the proceeding is pending there shall be no communication, direct or indirect, regarding any issue in the proceeding, to the presiding officer from an employee or representative of an agency that is a party or from an

[5] The CPC Hearing also violated the Brown Act because a closed session occurred with counsel for the City, which was neither on the agenda nor publicly announced. *See* Gov't Code § 54956.9, subd. (g) ("Prior to holding a closed session pursuant to this section, the legislative body of the local agency shall state on the agenda or publicly announce the paragraph of subdivision (d) that authorizes the closed session.").

interested person outside the agency, without notice and opportunity for all parties to participate in the communication.").[6]

## VI. There Was No Basis to Terminate the DA Because There Was No Event of Default Under the DA.

The CPC terminated the DA based on its determination that H&H was in default of DA Section 5.3. That section provides that:

> **5.3. No Monetary Damages.** It is acknowledged by the parties that the City would not have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof. Both parties agree and recognize that, as a practical matter, it may 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 require to enter into this Agreement to justify such exposure. Therefore, the parties agree 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 this Agreement.

The CPC's determination is not supported by substantial evidence, or any evidence for that matter.

***First***, H&H is not in default of the DA because it has not failed to timely perform any of its obligations under the DA. Under DA Section 5.1.1, "Default by Developer" occurs only "in the event Developer does not perform its obligations under this Agreement in a timely manner." H&H never failed to timely perform its obligations under the DA. Rather, the City contended that H&H breached Section 5.3 by bringing damages claims under Section 1983. But that does not constitute a failure by H&H to "perform its obligations under this Agreement" under the plain meaning of Section 5.1.1.

This conclusion, moreover, is reinforced by DA Section 5.1.2, "Notice of Default," which requires that any notice of default "identify[] with specificity those obligations of Developer which have not been performed." Significantly, the Notice of Default did not identify "with specificity the

[6] "[A]lthough California's Administrative Procedure Act (APA) (Gov. Code, §§ 11340–11529) does not apply to hearings before local, as opposed to state, administrative agencies . . . to the extent citizens generally are entitled to due process in the form of a fair trial before a fair tribunal, the provisions of the APA are helpful as indicating what the Legislature believes are the elements of a fair and carefully thought out system of procedure for use in administrative hearings." *Nightlife Partners*, 108 Cal. App. 4th at 91.

obligations that [H&H] has not performed." It did not because there were none. Likewise, the LOD fails to identify any obligation under the DA that H&H did not timely perform.

In short, H&H is not in default under the DA because it has not failed to timely perform its obligations under the DA within the plain meaning of DA Section 5.1.1.

***Second***, H&H's Section 1983 claims are not covered by DA Section 5.3.[7] Section 5.3 does not bar H&H from recovering damages for the City's violation of H&H's constitutional rights. What it bars is H&H from suing to recover "monetary damages for the breach of any provision of this Agreement." However, H&H is not seeking damages for the City's breach of the DA; it is seeking damages for the City's violations of H&H's constitutional rights under Section 1983, which are claims that sound in tort and not in contract. *See City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 709 (1999) ("[T]here can be no doubt that claims brought pursuant to § 1983 sound in tort."); *Continental Casualty Co. v. County of Chester*, 244 F. Supp. 2d 403, 410-11 (E.D. Pa. 2003) ("The due process rights raised by [the developer] are socially imposed. Public officials have a duty not to abuse their positions to deprive citizens of constitutional or statutory rights. It is the breach of this official duty and not of the contract which constitutes the gist of [the developer's] § 1983 claim.") (internal citation omitted).

Nor can it be said that H&H's Section 1983 claims are brought "under or with respect to" the DA or involve "the application thereof," as those terms are used in Section 5.3. To the contrary, as discussed earlier, H&H's Section 1983 claims are based on the City's refusal to afford H&H due process by acting as if the DA did not exist, including refusing to even acknowledge its vested sign rights.

***Third***, to the extent that DA Section 5.3 purports to limit H&H's ability to recover monetary damages pursuant to Section 1983, Section 5.3 would be invalid and unenforceable under Civil Code Section 1668 ("**Section 1668**").

That statute states that "[a]ll contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or ***violation of law***, whether willful or negligent, ***are against the policy of the law***." (emphasis added). Section 1668 "applies to invalidate provisions that merely limit liability," *Epochal Enterprises, Inc.,* 99 Cal. App. 5th at 60, which Section 5.3 purports to do. *See also Health Net of Calif., Inc. v. Dept. of Health Servs.,* 113 Cal.App.4th 224, 239, (2003) ("It . . . makes

[7] California law is clear that "contractual clauses seeking to limit liability will be strictly construed and any ambiguities resolved against the party seeking to limit its liability." *Epochal Enterprises, Inc. v. LF Encinitas Properties*, LLC, 99 Cal. App. 5th 44, 60 (2024) (quoting *Nunes Turfgrass, Inc. v. Vaughan – Jacklin Seed Co*., 200 Cal. App. 3d 1518, 1538 (1988)). Thus, DA Section 5.3 must be strictly construed, and any ambiguity in Section 5.3 must be resolved against the City as the party seeking to be released from liability for damages.

no difference that the contractual clause here bars only the recovery of damages, and not equitable relief, because section 1668 can apply to a limitation on liability."); *Peregrine Pharms., Inc. v. Clinical Supplies Mgmt., Inc.,* 2014 WL 3791567, *7 (C.D.Cal. Jul. 31, 2014) ("[C]ourts applying California law have analyzed damage limitation clauses in light of the restrictions of Section 1668.").

Here, H&H's Section 1983 claims are based upon the City's violations of H&H's constitutional rights to substantive due process, procedural due process and equal protection, and thus are based upon "violation[s] of law" within the meaning of Section 1668. Accordingly, to the extent that the CPC applied Section 5.3 to bar H&H's claims under Section 1983, Section 5.3 is invalid and unenforceable under Section 1668 because the City cannot exempt itself from damages resulting from such "violation of law." S*ee Epochal Enterprises, Inc.,* 99 Cal. App. 5th at 62 ("[T]o the extent the limitation of liability clause exculpates defendants for their violations of the Health and Safety Code, it is invalid under Civil Code section 1668.").

For each of these reasons, there is no substantial evidence – or any evidence – supporting the CPC's determination that H&H was in default of the DA, and thus no basis to terminate the DA.

## VII. <u>There is No Evidence, Much Less Substantial Evidence, to Support the CPC's Findings in the LOD.</u>

As shown below, the LOD's findings critical to the CPC's determination to terminate the DA are without any evidentiary support in the record.

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

The finding is contrary to the relevant facts. Government Code section 65865.1 ("**Section 65865.1**"), which is part of the DA Act, provides the procedure for the termination of a development agreement after a "periodic review." [8] However, there has never been a "periodic review" of H&H, and thus there cannot be a "find[ing] and determin[ation], on the basis of substantial evidence," that H&H "has not complied in good faith with the terms or conditions of the agreement." In fact, H&H is in full compliance with its obligations under the DA; it is the City that is in breach of the DA, as detailed in H&H's First Amended Complaint.

[8] Section 65865.1, entitled "Periodic review; termination or modification of agreement," states as follows:

> Procedures established pursuant to Section 65865 shall include provisions requiring periodic review at least every 12 months, at which time the applicant, or successor in interest thereto, shall be required to demonstrate good faith compliance with the terms of the agreement. If, as a result of such periodic review, the local agency finds and determines, on the basis of substantial evidence, that the applicant or successor in interest thereto has not complied in good faith with terms or conditions of the agreement, the local agency may terminate or modify the agreement.

"*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 . . . .*"

The finding is patently untrue. Section 65865.1 relates to termination after a "periodic review." As just noted, there has never been such a review of H&H; therefore, Section 65865.1 has no applicability here.

"*4.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.*"

The finding misconstrues the facts. H&H is not seeking to make "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 . . . ." Instead, it seeks to "remodel, renovate, rehabilitate, rebuild or replace" existing, permitted signs at the Project for which DA Section 3.1.1.2 expressly grants H&H the "vested right" to do "for any reason." Moreover, all existing and proposed signs at the Project comply with all "Applicable Rules" as they are defined in the DA, and the City has never found otherwise.

"*4.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.*"

The finding is demonstrably not true. Deputy Director Lisa Webber's October 26, 2022 letter denying H&H's digital sign applications was in response to H&H's October 5, 2022 Notice of Default. It makes no mention of the Applicable Rules, Environmental Analysis, or the City's Reserve Powers. In any event, all of the proposed signs fully comply with the Applicable Rules and the City's Reserve Powers, and the City has never found otherwise. Further, the City, which as lead agency is responsible for environmental review under the California Environmental Quality Act ("**CEQA**"), did not prepare any environmental analysis related to the proposed signs, and, in fact, issued what it considers a discretionary approval without any CEQA review, contrary to CEQA.

"*4.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.*"

The finding is contrary to the express terms of the DA. As discussed above, the purported breach of the "covenant" set forth in DA Section 5.3 does not trigger section 5.1.1. Rather, the City is limited to the remedies provided for in section 7.5, which requires it to "institute legal action to . . . enforce any covenant [of the DA]."

"*4.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.*"

The finding materially misconstrues the nature of H&H's Section 1983 damage claims. As discussed above, Section 5.3 has no applicability to those claims because they are not "for the breach of any provision of" the DA, nor are they "under or with respect to" the DA or involve "the application thereof." To the contrary, H&H's Section 1983 claims seek damages from the City for its outright refusal to apply or follow the DA or to even acknowledge H&H's vested sign rights under the DA.

"*4.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.*"

The finding materially misstates the facts. H&H first sought monetary damages against the City in its Original Complaint, filed on November 3, 2022, which included a Section 1983 claim for damages. In fact, the City filed an Answer to the Original Complaint on December 16, 2022, and therefore cannot credibly maintain that it was unaware of this claim at the time. Furthermore, H&H is not seeking monetary damages from the City for "alleged breaches of the Development

Agreement." As discussed above, H&H's Section 1983 claims sound in tort, and H&H is seeking damages from the City for acting as if the DA did not exist and did not grant H&H vested sign rights.

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

The finding is contrary to the facts. The City Council previously found that "[t]he Development Agreement will not be detrimental to the public health, safety and general welfare since it encourages the utilization of a project that is desirable and beneficial to the public." City Ordinance 174863. In fact, termination of the DA will be detrimental to the Project, which has benefitted the City tremendously as a source of revenue, jobs and prestige and as the cornerstone of the rebirth of Hollywood, by preventing H&H from completing its modernization and revitalization of the Project and undermining the Project's continued financial viability.

## VIII. Conclusion.

In summary, the Council should reverse the decision of the CPC terminating the DA: the CPC lacked jurisdiction and legal authority to terminate the DA; the City's Notice of Default was time barred under California law; the CPC Hearing violated H&H's constitutional right to due process; H&H did not fail to timely perform its obligations or otherwise default under the DA; and the LOD's findings are not supported by substantial or any evidence of record.

For these reasons, as detailed above and in the record, H&H respectfully requests that the City Council reverse the decision of the CPC terminating the DA.

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July 23, 2024

***VIA EMAIL***

City of Los Angeles
Planning and Land Use Management Committee
clerk.plumcommittee@lacity.org

**Re: Protest of Unlawful Fee Assessment Regarding Case No. CPC-2001-1940-DA-ZV (CEQA: ENV-2024-2272-CE)**

Dear Honorable Committee Members:

We write on behalf of our client, H&H Retail Owner, LLC ("**H&H**"), to contest the onerous fees wrongly assessed against it in connection with H&H's appeal of a determination by the City Planning Commission ("**CPC**") in a matter initiated by the City of Los Angeles (the "**City**"). As shown below, H&H was required to pay **$32,066.91** in appeal and notification fees to the City because the City's Planning Department ("**Planning**") considered H&H to be the "Original Applicant" for the appeal, when, in fact, it was the City that was the Applicant, as the record in this matter leaves no doubt, and H&H was "an aggrieved person other than the applicant."

## I. INTRODUCTION

H&H did not initiate the CPC hearing (the "**Hearing**") being appealed; the City initiated the Hearing to terminate a Development Agreement between the City and H&H (the "**DA**"). Indeed, there is no question but that the City was the Applicant: it is listed as the "Applicant" on the CPC's Agenda for the hearing (a copy of which is attached as **Exhibit A**) and in the CPC Letter of Determination ("**LOD**") to H&H issued following the Hearing (a copy of which is attached as **Exhibit B**).

It is clearly incorrect, therefore, for Planning to require H&H to pay more than $32,000 in fees to appeal a decision that it did not apply for, does not benefit from and which is contrary to the plain language of the Los Angeles Municipal Code ("**LAMC**"), provisions requiring the Applicant to pay such fees.

Accordingly, H&H hereby demands that the City refund **$31,900.91** in Applicant appeal and notification fees, which is $32,066.91, less the $166 fee H&H must pay as the "aggrieved person other than the applicant."

## II. STATEMENT OF RELEVANT FACTS.

H&H is the owner of Ovation Hollywood, the iconic entertainment, retail and office complex formerly known as "Hollywood and Highland," located at 6801 Hollywood Boulevard, Los Angeles, California 90028 (the "**Project**").

On February 22, 2024, the Director of City Planning, Vincent Bertoni, served H&H with a Notice of Default (a copy of which is attached hereto as **Exhibit C**). The Notice alleged that H&H was in default of the DA and sought to terminate the DA as a remedy for the alleged default. In the Notice, Director Bertoni advised H&H that if the default was not cured within 60 days, "a report will be made to the Planning Commission and I will schedule a public hearing before the City Planning Commission in accordance with Government Code §§ 65867 and 65868 to terminate any purported rights of H&H asserted under the Development Agreement, pursuant to Section 5.1.3 of the Development Agreement." (*Id*., p. 2.)

On April 12, 2024, H&H responded to the Notice of Default, setting forth in an eighteen-page letter (a copy of which is attached hereto as **Exhibit D**) how the CPC lacked jurisdiction and legal authority to grant the requested relief and the reasons why Planning's allegations were factually erroneous and legally meritless. On April 24, 2024, H&H was served with a Notice of Public Hearing (a copy of which is attached hereto as **Exhibit E**). The Notice of Public Hearing made clear that to seek judicial review of any adverse determination by the CPC in response to Director Bertoni's Notice of Default, H&H would have to exhaust its administrative remedies and obtain a final decision from the City:

> **Exhaustion Of Administrative Remedies and Judicial Review** – If you challenge these agenda items in court, you may be limited to raising only those issues you or someone else raised at the public hearing agendized here, or in written correspondence on these matters delivered to this agency at or prior to the public hearing. If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

(*Id*., at p. 4).

The Hearing was held on May 9, 2024. The Agenda (attached hereto as **Exhibit A**) expressly provided that in this matter:

> **"Applicant:** City of Los Angeles"

(*Id*., at p. 5.) Moreover, consistent with the City being the Applicant, at the hearing, the representative from Planning argued first and urged the termination of the DA, which the CPC voted to do.

On May 16, 2024, the CPC issued its LOD (attached hereto as **Exhibit B**), which explicitly indicated on the front page that:

> **"Applicant:** City of Los Angeles"

(*Id*., at p. 1.)

Consistent with these instructions, H&H thereafter had until 4:30 p.m. on June 10, 2024, to file an appeal to the City Council. Pursuant to the instructions in the LOD: "An appeal application should be filed early to ensure that DSC staff members have adequate time to review and accept the documents, and to allow appellants time to submit payment."

H&H timely submitted its Appeal Application (a copy of which is attached hereto as **Exhibit F**) at 4:10 p.m. on June 7, 2024, three days before the deadline. As discussed further below, per LAMC section 19.01, subdivision B.I.b, H&H should have been charged a filing fee of $166 as "an aggrieved person, other than applicant," and that is all. Instead, on June 10—the filing deadline for H&H's appeal to the City Council—Planning informed H&H that it had to pay a fee of $20,400.83, or else Planning would not accept H&H's Appeal Application for filing.

With no alternative for H&H to timely file its Appeal Application, H&H paid the fee (a copy of the invoice and receipt for which is attached hereto as **Exhibit G**). H&H, however, made the payment under protest, noting to Planning that "despite H&H's payment, it disputes that the appeal fee has been correctly calculated, and City Planning has not provided an explanation for why it believes that amount is correct." (A copy of that email is attached hereto as **Exhibit H**, at p. 2.)

In addition, as a result of Planning wrongly deeming H&H the Applicant, it was also required to pay Better Technology Corporation $11,666.08 to send out the required notices. (A copy of the email exchange in which the requirement was raised is attached hereto as **Exhibit I**.) Again, H&H paid this amount (a copy of the receipt for which is attached hereto as **Exhibit J**) under protest, with no alternative if its Appeal Application was to be timely accepted.

## III. PLANNING IMPROPERLY REQUIRED H&H TO PAY THE $32,066.91 IN APPEAL AND MAILING FEES.

When initially asked why H&H was being required to pay the Applicant's fee when it was so clearly the City and not H&H that was the Applicant, Planning could only say that "the appeal fee is correctly charged." (**Exhibit H**, at p. 2.) Later, Planning offered the following explanation: "While the City was the party that initiated the termination process, we consider the owner of the site as the applicant, because they

are the operator of the site and the responsible party, and the beneficiary of this case, if the appeal is overturned." (*Id.*, at p.1.)

Planning's explanation is clearly erroneous: it is refuted by the plain and unequivocal language of the governing LAMC sections and contrary to the undisputed facts.

LAMC section 19.01 subdivision B sets forth the rules imposing appeal fees. It provides in relevant part that:

> **B. Appeal Fees**
>
> 1. Except as expressly provided in Subdivision 2, below, the following fees shall be charged and collected with the filing of all appeals
>
>    a. A fee equal to 85 percent of the total underlying application fees or $16,586 for first level appeal and $12,153 for additional level appeals, whichever is less ***when the appeal is made by the applicant.***
>
>    b. A fee of $166 in the case of an appeal ***by an aggrieved person, other than the applicant.***

(emphasis added.) Thus, since H&H was "an aggrieved person, other than the applicant," it should have only been assessed $166 as a matter of law.

In addition, the "General Appeal Filing Requirements," at page 4 of the City's Appeal Application form, could not be any clearer that the City, as the "Original Applicant," is responsible for payment of the appeal fee and the fees for mailing the required notices:

> 1. Appeal Fee
>
>    ☐ ***Original Applicant.*** Fees shall be in accordance with the LAMC Section 19.01 B1(a) of Chapter 1.
>
> 2. Noticing Requirement
>
>    ☐ *Copy of Mailing Labels.* All appeals require noticing of the appeal hearing per the applicable LAMC Sections(s). ***Original Applicants*** must provide noticing per LAMC Section 13B.10.2.C of Chapter 1A….
>
>    ☐ *BTC Receipt.* Proof of payment by way of a BTC Receipt must be submitted to verify that mailing fees for the appeal hearing notice have been ***paid by the Applicant*** to City Planning's mailing contractor (BTC).

(emphasis added.)

The City initiated this proceeding and was the Original Applicant, as is evident from Director Bertoni's Notice of Default, the CPC Hearing Agenda and the LOD; indeed, of this there can be no doubt. On the other hand, H&H is "an aggrieved person other than the applicant," and, accordingly, H&H should only have been required to pay $166.

Further, neither the LAMC or any other authority of which we are aware remotely supports the City's position that H&H must pay Applicant fees merely because it is "the owner of the site" or "the operator of the site." To the contrary, under the express terms of LAMC section 19.01, subdivision B.1 and the City's Appeal Application form, the City is the "Original Applicant" and H&H is "an aggrieved person other than the applicant."

Nor was H&H "the beneficiary of this case." It is the City that sought the termination of the DA and will benefit from a final decision by the City Council terminating it, not H&H. That is why, as the City admits, "it initiated the termination process." (**Exhibit H**, at p. 1.)

Finally, insisting that H&H pay the City more than $32,000 in fees as a condition precedent to the City timely accepting H&H's Appeal Application is a violation of H&H's due process rights. This is especially true where, as here, H&H must timely appeal the CPC's decision in order to exhaust its administrative remedies, should it need to file suit to have its rights under the DA restored. *See generally California Tchrs. Ass'n v. State of California*, 20 Cal. 4th 327, 331, 345 (1999) (due process violated by requiring teachers to pay half the cost of an administrative hearing "whenever a teacher exercises his or her constitutional rights to request a hearing regarding a threatened suspension or dismissal, but ultimately does not prevail at the hearing" because to do so "impermissibly chills the right to a hearing").

## IV. CONCLUSION.

For these reasons, H&H should be refunded the appeal and mailing fees it was improperly forced to pay to have its Appeal Application from the CPC Hearing accepted by Planning. That amount is **$31,900.91** (i.e., $32,066.91 minus $166). Please remit payment in accordance with the instructions set forth in **Exhibit K** hereto.

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Please do not hesitate to contact Glenn Kimball at gkimball@ifzcounsel.com or (213) 929-5562 should you have any questions. In the meantime, H&H reserves all rights, claims, defenses and privileges and waives none.

Very truly yours,

**ISAACS · FRIEDBERG · ZILL LLP**

Jeffrey B. Isaacs, Esq.
Amy Yeh, Esq.
Glenn Kimball, Esq.

*Attorneys for H&H Retail Owner, LLC*

cc: Kyndra Casper, Esq.
Jane Choi
Valentina Knox-Jones

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AND WHEN RECORDED MAIL TO:
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& MALLORY LLP
515 South Figueroa Street, Seventh Floor
Los Angeles, California 90071-3398
Attention: Jerold B. Neuman, Esq.
(Space Above For Recorder's Use)

# DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF LOS ANGELES

AND

TRIZECHAHN HOLLYWOOD LLC

DATED AS OF

11/5/02

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DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF LOS ANGELES AND
TRIZECHAHN HOLLYWOOD LLC

This Development Agreement ("Agreement") is made and entered into this 5th day of November, 2002, by and between THE CITY OF LOS ANGELES, a charter city and a municipal corporation duly organized and existing under the Constitution and the laws of the State of California ("City") and TRIZECHAHN HOLLYWOOD LLC, a Delaware limited liability company ("Developer") pursuant to the authority set forth in Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code (the "Development Agreement Act") and the City's inherent power as a charter city.

RECITALS:

WHEREAS, the Community Redevelopment Agency of the City of Los Angeles ("Agency"), and Developer have entered into that certain Disposition and Development Agreement dated as of February 10, 1999 (the "DDA"), pursuant to which the Agency and Developer made certain agreements and established certain procedures with respect to the development of a mixed-use, entertainment/retail destination project and public space as further defined here ("Project") on that certain property depicted in Exhibit A attached hereto (the "Development Site"); and

WHEREAS, the City and Developer recognize that construction and development of the Project will create significant opportunities for economic growth in the City, the Southern California region and the State of California, and will generate significant economic benefits to the State, the region, the City and Developer; and

WHEREAS, the Project will provide opportunities for growth in the City which will provide new general fund revenues intended to offset incremental City costs associated with such growth; and

WHEREAS, the City has approved and adopted Ordinance No. 174063 (the "Signage Ordinance") establishing requirements for the design, construction, installation and maintenance of various signs on or around the Project; and

WHEREAS, in order to provide for the orderly development of the Project and render development of the Project more feasible in light of the large amount of capital investment necessary to implement the Project, Developer requires assurance from the City that signs will be permitted to be installed and maintained in various areas of the Project as approved pursuant to the Signage Ordinance; and

WHEREAS, the Project includes an approximately 3,300 seat live broadcast theater ("Theater") on the Development Site, which is intended, in part, to be utilized for the presentation of the annual Academy Awards Presentation ; and

WHEREAS, Developer and the Academy of Motion Picture Arts and Sciences ("Academy") have entered into that certain license agreement dated as of April 20, 1999, and amended on October 15, 2001 ("License Agreement"), pursuant to which the Theater is intended to be the venue for the broadcast of the annual "Academy Awards

Presentation" which is sponsored by the Academy for a period of 20 years commencing with the March, 2002 Academy Awards Presentation; and

WHEREAS, the terms of the License Agreement, the Academy is obligated to use the Theater as the venue for the broadcast of the annual Academy Awards Presentation only if certain contingencies, which are specified in the License Agreement, are met by both the Developer and by the Academy; and

WHEREAS, because preparations for the annual Academy Awards Presentation will affect public streets and sidewalks, and may necessitate the closures of certain streets and sidewalks adjacent to and beyond the Theater as well as related accommodations to facilitate the production and broadcast of the annual Academy Awards Presentation, one of the contingencies of the License Agreement requires the permission of the City to temporarily close certain streets and sidewalks; and

WHEREAS, by entering into this Agreement and agreeing to allow certain street closures, the City is assisting in the performance of one of the contingencies of the License Agreement, and therefore, eliminating one of the reasons permitted under the License Agreement for the Academy to seek another venue for the annual Academy Awards Presentation; and

WHEREAS, this Agreement will benefit the City and the Developer by making it easier for the Academy to hold the annual Academy Awards Presentation at the Theater, which will, in turn, provide financial benefits to the Developer and the City; and

WHEREAS, by entering into this Agreement, the City is reserving to the City the legislative powers necessary to remain responsible and accountable to its residents; and

WHEREAS, for the foregoing reasons, the Parties desire to enter into a development agreement for the Project pursuant to Government Code Section 65864 et seq. and the City's charter powers upon the terms set forth herein:

## AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and the City's inherent powers as a charter city, and in consideration of the premises and mutual promises and covenants herein contained and other valuable consideration the receipt and adequacy of which the Parties hereby acknowledge, the Parties hereto agree as follows:

## 1. DEFINITIONS.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

**1.1. "Academy"** means the Academy of Motion Picture Arts and Sciences, a California non-profit corporation.

**1.2. "Academy Awards Presentation"** means the annual Academy Awards ceremony to be produced and broadcast by the Academy at the Theater.

**1.3. "Agency"** means the Community Redevelopment Agency of the City of Los Angeles, a public entity duly organized under the laws of the State of California particularly Sections 33000 et seq. of the California Health and Safety Code.

**1.4. "Agreement"** means this Development Agreement and all amendments and modifications thereto.

**1.5. "Annual Review"** means the annual review process as described in Section 4 of this Agreement.

**1.6. "Applicable Rules"** means the rules, regulations, ordinances and officially adopted plans and policies of the City in force as of the Effective Date of this Agreement, including the Signage Ordinance. Notwithstanding the language of this Section or any other language in this Agreement, Applicable Rules shall mean and include this Agreement, the Existing Development Approvals, and the Fees in effect as of the Effective Date of this Agreement.

**1.7. "CEQA"** means the California Environmental Quality Act ("CEQA") (Cal. Public Resources Code Sections 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs., Title 14, Sections 15000 et seq.).

**1.8. "City Agency"** means each and every agency, department, board, commission, authority, employee, and/or official acting under the authority of the City, including without limitation the City Council, the Planning Commission and the Agency.

**1.9. "City Attorney"** means the City Attorney of the City.

**1.10. "City Council"** means the City Council of the City, the legislative body of the City pursuant to Section 65867 of the California Government Code.

**1.11. "City"** means the City of Los Angeles, a municipal corporation of the State of California exercising municipal home rule powers pursuant to a charter approved and issued by the State of California.

**1.12. "Counsel"** shall mean the counsel retained by Developer to represent Developer and to assist the City in connection with any Litigation.

**1.13. "DDA"** means that certain Disposition and Development Agreement entered into by and between the Agency and Developer, providing for the financial arrangements between Developer and the Agency with regard to the funding and construction of the Project.

**1.14. "Developer"** means TrizecHahn Hollywood LLC, a Delaware limited liability company.

**1.15. "Development Agreement Act"** means Article 2.5 of Chapter 4 of Division I of Title 7 (Sections 65864 through 65869.5) of the California Government Code.

**1.16. "Development Site"** means that certain real property located at the northwest quadrant of the intersection of Highland Avenue and Hollywood Boulevard in the City, as shown on the Development Site Map attached hereto as Exhibit A.

**1.17. "Discretionary Action"** means an action which requires the exercise of judgment, deliberation or a decision on the part of the City and/or any City Agency in the process of approving or disapproving a particular activity, as distinguished from an activity, including issuance of ministerial permits and approvals, which merely requires the City and/or any City Agency to determine whether there has been compliance with statutes, ordinances or regulations.

**1.18. "Effective Date"** shall have the meaning ascribed in Section 7.1 of this Agreement.

**1.19. "EIR"** means the Final Environmental Impact Report for the Project certified by the Agency and/or the City in accordance with the requirements of CEQA.

**1.20. "Existing Development Approvals"** means those certain land use and building permits and entitlements, as amended, issued by the City for the Project on or before the Effective Date and which are listed in Exhibit B attached hereto.

**1.21. "Fees"** means Impact Fees, Processing Fees and Charges and any other fees or charges imposed or collected by the City.

**1.22. "General Plan"** means the General Plan of the City.

**1.23. "Impact Fees"** means impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on and in connection with new development by the City pursuant to rules, regulations, ordinances and policies of the City set forth in the Applicable Rules. Impact Fees do not include (I) Processing Fees and Charges or (ii) other City-wide fees or charges of general applicability, provided that such City-wide fees or charges are not imposed on impacts of new development.

**1.24. "Inspections"** means all field inspections and reviews by City officials during the course of construction of the Project and the processing of certificates of occupancy (permanent or temporary).

**1.25. "LAMC"** means the Los Angeles Municipal Code.

**1.26 "License Agreement"** means that certain license agreement dated April 20, 1999, as amended October 15, 2001, made and entered into among the Developer, Academy, and TrizecHahn Hollywood Hotel, LLC for the Academy Awards Presentation a composite copy of which is attached as Exhibit C, and a full copy of which is contained in Los Angeles City Council File No. 98-1766, S-2.

**1.27. "Litigation"** shall mean any lawsuit (including any cross-action) filed against the City and/or Developer to the extent such lawsuit challenges the validity, implementation or enforcement of, or seeks any other remedy directly relating to, all or any part of this Agreement. Litigation also means the lawsuit entitled "Hollywood Heights Association v. City of Los Angeles, TrizecHahn, Real Party in Interest, Los Angeles Superior Court Case No. BS070774.

**1.28. "Ministerial Permits and Approvals"** means the permits, approvals, plans, inspections, certificates, documents, licenses, and all other actions required to be taken by the City in order for Developer to implement the Project in accordance with the Applicable Rules. Ministerial Permits and Approvals shall not include any Discretionary Actions.

**1.29. "Mortgage"** means any mortgage, deed of trust, pledge, encumbrance, sale leaseback, or other security interest granted to a lender not affiliated with Developer, made in good faith and for fair value, encumbering all or any part of the Development Site or Developer's interest in this Agreement, given by Developer for the purpose of obtaining financing for the acquisition of land within the Development Site or any portion thereof, or the construction of any improvements thereon.

**1.30. "Mortgagee"** means any mortgagee, beneficiary under any deed of trust, and/or, with respect to any parcel which is the subject of a sale-leaseback transaction, the person acquiring fee title under a Mortgage.

**1.31. "Parties"** means collectively Developer and the City.

**1.32. "Party"** means any one of Developer or the City.

**1.33. "Plaintiff"** means any party seeking relief or compensation through Litigation whether as plaintiff, petitioner, cross-complainant or otherwise.

**1.34. "Planning Commission"** means the Planning Commission of the City and the planning agency of the City pursuant to Section 65867 of the California Government Code.

**1.35. "Planning Director"** means the Planning Director for the City.

**1.36. "Processing Fees and Charges"** means all processing fees and charges required by the City including, but not limited to, fees for land use applications, project permits, building applications, building permits, grading permits, encroachment permits, tract or parcel maps, lot line adjustments, air right lots, street vacations, certificates of occupancy and other similar permits. Processing Fees and Charges shall not include Impact Fees.

**1.37. "Project"** means the development of a mixed-use, entertainment/retail destination project and public space on the Development Site as more particularly described in the Existing Development Approvals.

**1.38. "Redevelopment Plan"** means that certain Redevelopment Plan for the Hollywood Redevelopment Project Area approved and adopted by the City Council by Ordinance No. 161202 pursuant to the Community Redevelopment Law (Cal. Health & Safety Code Sections 33000 et seq.).

**1.39. "Reserved Powers"** means the rights and authority excepted from this

Agreement's restrictions on the City's police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date that may be in conflict with the Applicable Rules, but: (1) prevent or remedy conditions which the City has found to be injurious or detrimental to the public health or safety; (2) are Uniform Codes; (3) are necessary to comply with state and federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a court order or judgment of a state or federal court; or (4) are agreed to or consented to by Developer; and (4) which include any signage ordinance/overlay zone, as reserved in the Signage Ordinance.

**1.40. "Signage Ordinance"** means Ordinance No. 174063, approved and adopted by the City, establishing requirements for the design, construction, installation, and maintenance of various signs on and around the Project.

**1.41. "Term"** means the applicable period of time during which this Agreement shall be in effect and shall bind the City and Developer, as described in Section 7.2.

**1.42. "Theater"** means that approximately 3,300 seat live broadcast theater constructed by Developer as part of the Project and for which Developer has granted the Academy a license to broadcast the Academy Awards Presentation for a period of twenty years.

**1.43. "Uniform Codes"** means those building, electrical, mechanical, fire and other similar regulations of a City-wide scope which are based on recommendations of a multi-state professional organization and become applicable throughout the City, such as, but not limited to, the Uniform Building Code, the Uniform Electrical Code, the Uniform Mechanical Code, or the Uniform Fire Code (including those amendments to the promulgated uniform codes which reflect local modification to implement the published recommendations of the multi-state organization and which are applicable City-wide).

## 2. RECITALS OF PREMISES, PURPOSE AND INTENT.

**2.1. State Enabling Statute.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

"The Legislature finds and declares that:

"(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

"(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City: (1) accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties; and (2) to offset such restraints, seeks public benefits which go beyond those obtained by traditional City controls and conditions imposed on development project applications.

**2.2. Purpose of this Agreement.**

**2.2.1. Developer Objectives**. In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, Developer wishes to obtain reasonable assurances with respect to its ability to implement the Project in accordance with the Applicable Rules and subject to the terms of this Agreement and the City's Reserved Powers. In the absence of this Agreement, Developer would have no assurance that it can implement the Project as set forth in this Agreement. This Agreement, therefore, is necessary to assure Developer that Developer will not be subjected to different rules, regulations, ordinances or official policies or delays which are not permitted by this Agreement, the Applicable Rules, or the Reserved Powers.

**2.2.2 City Objectives.** A development agreement for the Project will provide assurances to the City that its investment in the Project will be better protected, that the Academy Awards Presentation is more likely to be held at the Theater, and that the City will be protected from monetary liability for its actions in approving the Project and granting the Existing Development Approvals

**2.2.3. Mutual Objectives.** A development agreement for the Project will eliminate uncertainty in planning for and securing the orderly development and operation of the Project and the broadcast of the Academy Awards Presentation, thereby achieving the goals and purposes for which the Development Agreement Act was enacted. The Parties believe that such orderly implementation will provide many public benefits to the City through the imposition of development standards and requirements under the provisions and conditions of this Agreement, including without limitation, increased tax revenues and job creation. Additionally, although implementation of this Agreement may restrain the City's land use or other relevant police powers, the Agreement provides the City with sufficient reserved powers during the Term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to the City, Developer will receive assurance that the Project may be implemented during the Term of this Agreement in accordance with the Reserved Powers and subject to the terms and conditions of this Agreement.

**2.3. Applicability of the Agreement**. This Agreement does not: (1) grant density, intensity or uses in excess of that otherwise established in the Applicable Rules; (2) eliminate future Discretionary Actions otherwise required; or (3) amend the City's General Plan.

## 3. AGREEMENT AND ASSURANCES.

**3.1. Agreement and Assurances on the Part of the City.** In consideration for Developer entering into this Agreement, and as an inducement for Developer to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the purposes and intentions set forth in Section 2 of this Agreement, the City hereby agrees during the Term as follows:

**3.1.1. Entitlement to Implement the Signage Ordinance.**

**3.1.1.1. Signage Ordinance.** During the Term of this Agreement, Developer has the vested right to erect, construct and maintain signs on the Project in accordance with the Signage Ordinance, subject to the terms and conditions of this Agreement, the Applicable Rules, and the Reserved Powers.

**3.1.1.2. Right to Rebuild or Replace.** Developer's vested rights under this Agreement shall include, without limitation, the right to remodel, renovate, rehabilitate, rebuild or replace any signs erected on the Development Site or any portion thereof that are consistent with the Signage Ordinance throughout the applicable Term for any reason including without limitation, in the event of damage, destruction or obsolescence of such signs or any portion thereof, subject to the terms and conditions of this Agreement, the Applicable Rules, and the Reserved Powers.

**3.1.2. Entitlement to Implement the Existing Development Approvals.** During the Term of this Agreement, Developer has 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.

**3.1.3. Street Closures.** The purpose of the Street Closure Provision is to facilitate the production and broadcast of the Academy Awards Presentation by making certain public street and sidewalk areas available for the use of the Academy in connection with the Academy Awards Presentation Presentation, as provided in the License Agreement.

**3.1.3.1. Entitlement to Street Closures.** The City shall, during the term of this Agreement, secure appropriate closures of certain streets and sidewalks (including traffic and bus rerouting) adjacent to and beyond the Theatre, as well as related facilities, sufficient to accommodate the production and broadcast of an Academy Awards Presentation of a scope, size and function consistent with the March 2002 Presentation.

**3.1.3.2. Base Street Closure Plan.** The City shall each year

cooperate with the Academy and other appropriate governmental agencies in formulating a street closure plan, and shall, in conjunction with such parties, develop as soon as practicable, a base plan for future right-of-way closures based upon the information and experience derived from the prior Presentations (the "Base Plan"). The Base Plan shall be an evolving plan which is updated in each successive year commencing with the 2003 street closure plan which shall evolve from the Initial Plan (as defined below). The Base Plan from the immediately preceding year shall be utilized by the City and the Academy in the event a dispute ever arises relative to the appropriate street closures in any year. In working with the Developer and the Academy to implement the requested street closures, the City shall cause any agreed-upon street closure plan to include the complete closure of Orchid Alley beginning twenty-one (21) days prior to the Presentation and ending seven (7) days thereafter, and the complete closure of Hawthorn Avenue from 2:00 a.m. two (2) days prior to the date of the Presentation until at least 6:00 a.m. on the day following the Presentation. Any of the Base Plans shall not materially interfere with, or decrease the efficiencies of, the Academy Awards Presentation relative to: (a) set-up and tear-down of press, arrivals and production facilities and use of Project areas as contemplated in the License Agreement; (b) distances of travel from the area provided for drop-off and pick-up of Academy Awards Presentation attendees to the Theater; (c) timing and location of street closures on the day of the Academy Awards Presentation; (d) ability to accommodate the volume and types of vehicles and timely access to the Academy Awards Presentation; and (e) space provided by the City in City rights-of-way, including cabling, for production facilities.

**3.1.3.3. Academy's Right to Utilize Street Closure Plans.** The City agrees to allow the Academy to utilize the street closure plan which was adopted by the City Council on February 22, 2002 (Council File No. 00-0269) for the March 2002 Presentation (the "Initial Plan") or the Base Plan (collectively "Street Closure Plans") for future Academy Awards Presentations during the term of this Agreement, subject to the City's right to modify those Plans for any of the reasons set forth in section 3.1.3.4 and provided that, unless and to the extent waived by the City Council: (a) customary fees charged by the City for implementation and processing of the street closure plan must be paid, and the Academy pays those fees, in an amount to be determined by the City; and (b) prior to the removal of any City structures, fixtures, traffic devices or signals requested by the Academy to be removed, the Academy agrees in writing to reimburse the City for the removal and replacement of such structures, fixtures, traffic devices or signals.

**3.1.3.4. Limitations on Right to Utilize Street Closure Plans.** The City reserves the right to modify the Street Closure Plans for the following reasons, as determined to be necessary by the City acting through its Department of Transportation:

a. The need to exercise the Reserved Powers with respect to the Street Closure Plans; and

b. The failure by any jurisdiction other than the City or a department, bureau or agency of, or controlled by, the City, to cooperate in closing rights-of-way or facilities under their authority or control when such closures are part of any Base Plan.

The Parties acknowledge that the Community Redevelopment Agency of Los Angeles is

developing a parking garage to be located between Highland Avenue and Orange Drive on the north side of Hawthorn Avenue (commonly known as the "Parkade Project") in a manner which, as contemplated in the above-referenced License Agreement, may meet the Academy's needs for staging and operation of press and international broadcaster facilities, including satellite and microwave vehicles placed in an area suitable for satellite and microwave transmission, production trucks, trailers, support vehicles and tents, all as determined in Academy's reasonable discretion. In the event the Parkade Project is developed and utilized by the Academy, the Developer, Academy and City shall determine the extent, if any, to which the City might be released of its obligation to provide a complete closure of Hawthorn Avenue as described above, and during the time in which the Parkade Project is being constructed, to the extent that Hawthorn Avenue is not available due to that construction, the City shall also be released from the foregoing obligation to provide a closure of Hawthorn Avenue.

**3.1.3.5 Agreement to Cooperate in Implementation of Modifications to Street Closure Plans.**

Without limiting the generality of the foregoing, the City , acting through its Department of Transportation, will cooperate with the Academy and other appropriate governmental agencies in formulating the Street Closure Plans as may be adopted for any succeeding presentation. The City acknowledges that it is its intention to cooperate with such parties to implement, for each Academy Awards Presentation, a Street Closure Plan that will accomplish the objectives set forth above in a manner that will incorporate the experience gained from prior Presentations.

**3.1.3.6 Survival of Obligations Regarding Street Closure Plans.**

Notwithstanding anything to the contrary herein, including, without limitation, Section 7.2.2 hereof, no termination of this Agreement shall void the obligations of the City under this Section 3.1.3 until the expiration of six (6) months following notice from City to Developer of such termination.

**3.1.4 Nonapplication of Changes in Applicable Rules.** Any change in, or addition to, the Applicable Rules, including, without limitation, any change in the General Plan, zoning ordinance or building regulation adopted or becoming effective after the Effective Date, including, without limitation, any such change by means of ordinance, City Charter amendment, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the Mayor, City Council, Planning Commission or City Agency, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict with the Applicable Rules or this Agreement, shall not be applied to the Project unless such changes represent an exercise of the City's Reserved Powers or are otherwise expressly allowed by this Agreement.

**3.1.5 Agreed Changes and Other Reserved Powers.** This Agreement shall not preclude application to the Project of rules, regulations, ordinances and officially adopted plans and policies in conflict with the Applicable Rules where such additional rules, regulations, ordinances and officially adopted plans and policies (I) are mutually agreed to in writing by Developer and the City in accordance with the requirements of Section 7.7 of this Agreement or (ii) result from the Reserved Powers.

**3.1.6 Subsequent Development Review.** The City shall not require Developer to obtain any approvals or permits for the implementation of the Project in accordance with this Agreement other than those permits or approvals which are required by the Applicable Rules or the Reserved Powers. Moreover, the City hereby agrees that it will not unreasonably withhold or unreasonably condition any approvals or permits for the implementation of the Project which must be issued by the City, provided that Developer satisfactorily complies with all City-wide standard procedures and policies of the City for processing any such approvals or permits and pays any applicable Processing Fees and Charges. No change to the Project which is consistent with the Applicable Rules shall require an amendment of this Agreement, and in the event any such change is approved, the references in this Agreement to the Project shall be deemed to refer to the Project as so changed.

**3.1.7. Moratoria.** In the event an ordinance, resolution or other measure is enacted, whether by action of the City, by initiative, or otherwise, which relates to the implementation of the Project, City agrees that such ordinance, resolution or other measure shall not alter the terms of this Agreement, unless such changes are adopted pursuant to the City's exercise of its Reserved Powers or other applicable provision of this Agreement.

**3.1.8. Environmental Review.** The Agency has conducted extensive environmental review of the Project and has certified the EIR pursuant to the requirements of CEQA. The City intends that the approval of the Signage Plan and this Agreement is not an action subject to requirements for further environmental review pursuant to CEQA. Consistent with the provisions of Section 3.1.5, the City further agrees to use its good faith efforts to consult with Developer regarding any approvals necessary for the implementation of the Project to avoid any unnecessary or unreasonable delays due to requirements for additional documentation pursuant to CEQA.

**3.2. Agreement and Assurance on the Part of Developer**. In consideration for the City entering into this Agreement, and as an inducement for the City to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the premises, purposes and intentions set forth in Section 2 of this Agreement, Developer hereby agrees as follows:

**3.2.1. Implementation of the Signage Ordinance**. Developer shall ensure that all signs erected on the Project shall comply with the requirements set forth in the Applicable Rules. Developer may modify the design, configuration, elements and content of the signage plan that was approved by the Agency and the City in conjunction with the adoption of the Signage Ordinance only with the written consent of the City.

**3.2.2 .Employee Transit Program**. Developer shall make commercially reasonable efforts to implement an employee transit program to provide a range of transportation alternatives for Project employees, including but not limited to such alternatives as providing public transit passes to eligible employees and providing incentives for employee vanpooling and ridesharing. Notwithstanding any provision of this Agreement or the Existing Development Approvals to the contrary, Developer shall not be required to spend more than $16,680 per month in connection with the implementation of the employee parking program.

**3.2.3 Commitment that Academy Awards Presentation Will be Presented at the Theater**.

The Developer agrees to fulfill its obligations under the License Agreement to ensure that the Academy Awards Presentation will be held at the Theater for the duration of the License Agreement. Failure of the Academy to conduct the Academy Awards Presentation at the Theater due to a default by Developer under the License Agreement shall constitute a default of the Developer under section 5.1.1 of this Agreement. Additionally, (i) the Developer shall provide written notice to the City within ten days of receiving notification from the Academy that the Academy will seek an alternate venue for the Academy Awards Presentation each time Developer receives such notification from the Academy, and (ii) upon receiving notification from the Academy that the Academy will seek an alternate venue for the Academy Awards Presentation, Developer shall take all steps within its power that are necessary to enforce the Academy's obligation under the License Agreement to conduct the Academy Awards Presentation at the Theater.

**3.2.4 Developer Indemnification of City for Development Agreement Litigation**.

The Developer agrees to indemnify the City for any costs of Litigation, including attorneys fees incurred by the City whether paid to another party and whether incurred by the City for costs of representation in the Litigation. This section shall not apply to Litigation brought by the Developer against the City or brought by the City against the Developer.

**3.2.5 Commitment and Promise by Developer To Fulfil All Conditions of the Existing Development Approvals.**

The Developer agrees to comply with all conditions, rules and requirements that are part of the Existing Development Approvals. Failure of the Developer to satisfy this section 3.2.5 shall constitute, among other things, a default of the Developer under section 5.1.1.

**3.2.6 Notice of Transfer or Assignment of Rights**. Developer agrees to provide prior written notice to the City of its intent to transfer any of the Developer's rights or obligations under this Development Agreement to a third party, as provided by section 7.8 of this Agreement.

## 4. ANNUAL REVIEW

**4.1. Annual Review.** During the Term of this Agreement, the City shall review annually Developer's compliance with this Agreement. Such Annual Review shall be limited in scope to good faith compliance with the provisions of this Agreement as provided in the Development Agreement Act and Developer shall have the burden of demonstrating such good faith compliance.

**4.2. Pre-Determination Procedure**. Developer's submission of compliance with this Agreement, in a form which the Director of Planning may reasonably establish, shall be made in writing and transmitted to the Director of Planning not later than sixty (60) days prior to the yearly anniversary of the Effective Date. The public shall be afforded an opportunity to submit written comments regarding compliance to the Director of Planning at least sixty (60) days prior to the yearly anniversary of the Effective Date. All such public comments shall, upon receipt by the City, be made available to Developer

**4.3. Director's Determination**. On or before the yearly anniversary of the Effective Date of the Agreement, the Director of Planning shall make a determination regarding whether or not Developer has complied in good faith with the provisions and conditions of this Agreement. This determination shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to Developer in the manner prescribed in Section 7.15. Copies of the determination shall also be available to members of the public.

**4.4. Appeal By Developer**. In the event the Director of Planning makes a finding and determination of non-compliance, Developer shall be entitled to appeal that determination to the Planning Commission. After a public hearing on the appeal, the Planning Commission shall make written findings and determinations, on the basis of substantial evidence, whether or not Developer has complied in good faith with the provisions and conditions of this Agreement. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245. (City Council review of Commission and Board actions).

**4.5. Period To Cure Non-Compliance.** If, as a result of this Annual Review procedure, it is found and determined by the Planning Director or the Planning Commission, on appeal, that Developer has not complied in good faith with the provisions and conditions of this Agreement, the City, after denial of any appeal or, where no appeal is taken, after the expiration of the appeal period described in Section 7.3, shall submit to Developer, by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 7.15, stating with specificity those obligations of Developer which have not been performed. Upon receipt of the notice of default, Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than sixty (60) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), by mutual consent of the City and the Developer provided that Developer shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

**4.6. Failure To Cure Non-Compliance Procedure**. If the Director of Planning finds and determines that Developer, or its successors, transferees, and/or assignees, as

the case may be, has not cured a default pursuant to this Section, and that the City intends to terminate or modify this Agreement or those transferred or assigned rights and obligations, as the case may be, the Director of Planning shall make a report to the Planning Commission. The Director of Planning shall then set a date for a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after such public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Developer, or its successors, transferees, and/or assignees, as the case may be, has not cured a default pursuant to this Section, and that the City shall terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the finding and determination shall be appealable to the City Council in accordance with Section 7.3. In the event of a finding and determination of compliance, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council review of Commission and Board actions).

**4.7. Termination Or Modification Of Agreement**. The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after such final determination of the City Council or, where no appeal is taken, after the expiration of the appeal periods described in Section 7.3. There shall be no modification of this Agreement unless the City Council acts pursuant to Government Code Sections 65867.5 and 65868.

**4.8. Reimbursement Of Costs**. Developer shall reimburse the City for its actual costs, reasonably and necessarily incurred, to accomplish the required annual review.

## 5. DEFAULT PROVISIONS.

### 5.1. Default by Developer.

**5.1.1 Default.** In addition to the Annual Review process set forth in Section 4, in the event Developer does not perform its obligations under this the Agreement in a timely manner, the City shall have all rights and remedies provided for in this Agreement, compelling the specific performance of the obligations of Developer under this Agreement, or modification or termination of this Agreement, provided that the City has first complied with the procedure in Section 5.1.2, including without limitation, Section 7.5; provided that the City shall have no right to monetary damages under this Development Agreement as a result of any default by Developer unless the default of the Developer relates to any requirement in this Development Agreement that the Developer pay money to the City or reimburse the City for any expenditures. Nothing in this Section 5.1.1 shall limit the City's right to terminate this Agreement in accordance with Section 4.7.

**5.1.2 Notice Of Default.** With respect to a default pursuant to this Agreement, the City, through the Planning Director shall submit to Developer, by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 7.15, identifying with specificity those obligations of Developer which have not been performed. Upon receipt of the notice of default, Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time

after receipt of the notice of default and shall complete the cure of such default(s) not later than sixty (60) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that Developer shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

**5.1.3. Failure To Cure Default Procedure.** If after the cure period has elapsed, the Planning Director finds and determines that Developer , or its successors, transferees and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Director shall make a report to the Planning Commission and then set a public hearing before the Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Developer or its successors, transferees and/or assignees, as the case may be, has not cured default pursuant to this Section, and that the City shall terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, Developer and its successors, transferees and/or assigns, shall be entitled to appeal that finding and determination to the City Council in accordance with Section 7.3. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council review of Commission and Board actions).

**5.2. Default By The City.**

**5.2.1. Default**. In the event the City does not accept, process, or render a decision on necessary development permits, entitlements, or other land use or building approvals for use the implementation of the Project as provided in this Agreement upon compliance with the requirements therefor, or as otherwise agreed to by the Parties, or the City otherwise defaults under the provisions of this Agreement, Developer shall have those rights and remedies provided herein or by applicable law, which shall include Section 7.5, compelling the specific performance of the City's obligations under this Agreement provided that the Developer has first complied with the procedures in Section 5.2.2. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses the City may otherwise have with respect to claims for monetary damages or specific performance and all rights and remedies set forth in the DDA or available at law or in equity.

**5.2.2 Notice of Default.** Developer shall first submit to the City a written notice of default in the manner prescribed in Section 7.15 stating with specificity those obligations of the City which have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than one hundred and twenty (120) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City shall continuously and diligently pursue such remedy at all times until such default(s) is cured. In the case of a dispute as to whether the City has cured the default, the Parties shall submit the matter to arbitration pursuant to Section 7.12.2 of this Agreement.

**5.3. No Monetary Damages**. It is acknowledged by the parties that the City would not have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof. Both parties agree and recognize that, as a practical matter, it may 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 require to enter into this Agreement to justify such exposure. Therefore, the parties agree 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 this Agreement.

## 6. MORTGAGEE PROTECTIONS.

### 6.1. No Encumbrances Except Mortgage, Deeds of Trust. Sales and Lease-Backs or Other Financing for Development.

Developer shall have the same right to encumber Developer's right, title and interest in, to and under this Agreement and the Development Site that Developer would have absent this Agreement, pursuant to one or more Mortgages, provided that each such Mortgage is given for the purpose of securing funds to be used for financing the acquisition of the Development Site or any portion thereof, the construction of improvements thereon, and any other expenditures reasonably necessary and appropriate to develop the Project.

**6.2 Title by Foreclosure**. Except as otherwise set forth herein, all of the provisions contained in this Agreement shall be binding on and for the benefit of any person who acquires title to the Development Site or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or expiration or other involuntary transfer under a Mortgage.

**6.3 Modification of Article; Conflicts.** The City hereby agrees to cooperate in including in this Agreement by suitable amendment from time to time any provision which may reasonably be requested by any proposed Mortgagee for the purpose of allowing such Mortgagee reasonable means to protect or preserve the lien and security interest of the Mortgage hereunder as well as such other documents containing terms and provisions customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or ratings agencies) in connection with any such financing. The City agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment; provided, however, that any such amendment shall not in any way materially adversely affect any rights of either Party under this Agreement. If there is any conflict between this Article 6 and any other provision contained in this Agreement, this Article 6 shall control.

**6.4. Entitlement to Written Notice of Default.** The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Property, or any part thereof, and their successors and assigns shall, upon written request to the City, be entitled to receive from the City written notification of any default by Developer of the performance of Developer's

obligations under this Agreement which has not been cured within sixty (60) days following the date of default. Notwithstanding the foregoing, the City's failure to comply with this section shall not constitute a default, or grounds for termination. Developer shall reimburse the City for its actual costs, reasonably and necessarily incurred, to prepare this notice of default.

## 7. GENERAL PROVISIONS

**7.1. Effective Date**. This Agreement shall be effective upon such date as it is attested by the City Clerk of the City of Los Angeles after approval by the City Council and execution by Developer and the Mayor of the City of Los Angeles.

**7.2. Basic Term**. The term of this Agreement ("Term") shall commence on the Effective Date and shall extend until twenty (20) years after the Effective Date, unless said Term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties hereto. The Term shall be subject to extension pursuant to Section 7.4.

**7.2.1 Termination of Agreement**. Following the expiration of the Term, this Agreement shall terminate and be of no further force and effect.

**7.2.2. Early Full Termination of Agreement.** The Agreement is terminable: (I) by mutual written consent of the Parties; or (ii) by either Party following an uncured default by the other Party under this Agreement, subject to the procedures and limitations set forth in this Agreement.

**7.3. Appeals To City Council**. Where an appeal by Developer to the City Council from a finding and/or determination of the Planning Director or Planning Commission is created by this Agreement, such appeal shall be taken, if at all, within twenty (20) days after the delivery of notice in accordance with Section 7.15 of such finding and/or determination to Developer, or its successors, transferees, and/or assignees, as the case may be. The City Council shall act upon the finding and/or determination of the Planning Director or Planning Commission within eighty (80) days after such delivery of notice in accordance with Section 7.15, or within such additional period as may be agreed upon by the Developer and the City Council. The failure of the City Council to act shall not be deemed to be a denial or an approval of the appeal, which shall remain pending until final City Council action.

**7.4. Enforced Delay; Extension Of Time Of Performance**. In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which either Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs

such as the Annual Review); any approval required by the City (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; the exercise of the City's Reserved Powers; or similar bases for excused performance which is not within the reasonable control of the Party to be excused (financial inability excepted). This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of Developer or, if not dismissed within ninety (90) days, by any third parties against Developer. If written notice of such delay is given to either Party within thirty (30) days of the commencement of such delay, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon; in the event no such notice is given, such claim of delay from that cause shall be deemed waived and no extension shall be granted on that basis.

**7.5. Legal Action**. Subject to the limitation on remedies imposed by this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, or enforce by specific performance the obligations and rights of the Parties hereto or seek declaratory relief with respect to its rights, obligations and interpretations of this Agreement or pursue other remedies under applicable law.

**7.6. Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California, and the venue for any legal actions brought by any Party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions.

**7.7. Amendments.** This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any amendment to this Agreement which relates to the Term, permitted uses, density or intensity of use, height, or size of buildings, provisions for reservation and dedication of land, conditions, restrictions, and requirements relating to subsequent Discretionary Action, monetary contributions by Developer, if any, or any conditions or covenants relating to the use of the Development Site shall require notice and public hearing before the Parties may execute an amendment thereto. Developer shall reimburse the City for its actual costs, reasonably and necessarily incurred, to review any amendments requested by Developer including the cost of any public hearings.

**7.8 Assignment**

**7.8.1. Right to Assign Development Site**. Developer shall have the right to sell, transfer, or assign the Development Site or any portion thereof (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.) to any person, partnership, joint venture, firm, or corporation at any time during the Term of this Agreement, together with the rights granted to and obligations imposed upon the Development Site pursuant to this Agreement, including the right to transfer and allocate density and other development rights, without consent of the City,

subject to the following:

7.8.1.1 Notwithstanding Section 7.8.1 of this Agreement, because this Agreement is intended to represent an integrated plan, the failure of any successor-in-interest to perform the obligations assigned to it may result, at the City's option, in a declaration that this Agreement has been breached and an election to terminate this Agreement in its entirety as provided for in Section 5.1.

7.8.1.2 Developer, or any successor transferor, shall give prior written notice to the City of its intention to assign or transfer any of its interests, rights or obligations under this Agreement and a complete disclosure of the identity of the assignee or transferee, including copies of the Articles of Incorporation in the case of corporations and the names of individual partners in the case of partnerships. Any failure by Developer to provide said notice shall be curable in accordance with the provisions of Section 5.1.

**7.8.2 Allocation of Development Rights.** Notwithstanding the foregoing, Developer shall have the right to contractually allocate with any proposed purchaser, transferee, or assignee of any portion of the Development Site, the rights and obligations of Developer hereunder with respect to such portion of the Development Site, including, without limitation, permitted density and/or other development rights, and the right and obligation to construct improvements, all of which shall be set forth in a written assignment and assumption agreement between Developer and the proposed purchaser, transferee, or assignee. The assignment of Developer's rights and obligations under this Agreement shall not be effective unless the City consents in writing thereto. The City may withhold its consent to such assignment if the City reasonably believes that the assignment of the rights and obligations under this Agreement will interfere with or will diminish the Developer's and/or assignee's ability to perform the obligations under this Agreement.

**7.9. Covenants.** The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Development Site for the benefit thereof and as a burden thereon, and the burdens and benefits hereof shall bind and inure to the benefit of all assignees, transferees, and successors to the Parties hereto. To the extent that the Development Site consists of property leased to Developer, this Agreement shall encumber only the leasehold interest and shall not constitute an encumbrance upon the estate in fee.

**7.10. Implementation**.

**7.10.1. Processing**. Upon satisfactory completion by Developer of all required preliminary actions, applications and payment of appropriate Processing Fees and Charges, including the fee for processing this Agreement, the City and Developer shall commence and diligently process all required steps necessary for the implementation of this Agreement and the implementation of the Project in accordance with the terms of this Agreement. Developer shall, in a timely manner, provide the City with all documents, plans, fees and other information necessary for the City to carry out its processing obligations.

**7.10.1.1. Processing Fees and Charges**. Processing Fees and Charges for the implementation of the Project shall be limited to Processing Fees and

Charges in effect on the Effective Date.

**7.10.1.2. Time frames and Staffing for Processing and Review.** The City agrees that expeditious processing of Ministerial Permits and Approvals, Inspections, and any other approvals or actions required for the implementation of the Project are critical. The City and Developer agree that all requests for Ministerial Permits and Approvals shall be reviewed and/or completed by the City as expeditiously as possible following the submittal of full and complete applications for such Ministerial Permits and Approvals. The City further agrees to expeditiously respond to requests for Inspections by Developer.

**7.10.2. Other Governmental Permits**. Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate with Developer in its endeavors to obtain such permits and approvals and shall, from time to time at the request of Developer, attempt with due diligence and in good faith to enter into binding agreements with any such entity to ensure the availability of such permits and approvals, or services, provided such agreements are reasonable and not detrimental to the City. These agreements may include, but are not limited to, joint powers agreements under the provisions of the Joint Exercise of Powers Act (Government Code Section 6500, et seq.) or the provisions of other laws to create legally binding, enforceable agreements between such parties. To the extent allowed by law, Developer shall be a party to any such agreement, or a third party beneficiary thereof, entitled to enforce for its benefit on behalf of the City, or in its own name, the rights of the City or Developer thereunder or the duties and obligations of the parties thereto. Developer shall reimburse the City for all costs and expenses incurred in connection with seeking and entering into any such agreement provided that Developer has requested it. Developer shall defend the City in any challenge by any person or entity to any such agreement, and shall reimburse the City for any costs and expenses incurred by the City in enforcing any such agreement. Any fees, assessments, or other amounts payable by the City thereunder shall be borne by Developer, except where Developer has notified the City in writing, prior to the City entering into such agreement, that it does not desire for the City to execute such agreement.

**7.10.3. Impact Fees**. This Agreement shall not limit any impact fees, linkage fees, exaction, assessments or fair share charges or other similar fees or charges imposed by other governmental entities and which the City is required to collect or assess pursuant to applicable law (e.g., school district impact fees pursuant to Government Code Section 65995).

**7.11. Relationship Of The Parties.** It is understood and agreed by the Parties hereto that the contractual relationship created between the Parties hereunder is that Developer is an independent party and not an agent of the City. Further, the City and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

**7.12. Dispute Resolution.**

**7.12.1. Dispute Resolution Proceedings**. The Parties may agree to dispute resolution proceedings to fairly and expeditiously resolve disputes or questions of interpretation under this Agreement. These dispute resolution proceedings may include: (a) procedures developed by the City for expeditious interpretation of questions arising under development agreements; (b) non-binding arbitration as provided below; or (c) any other manner of dispute resolution which is agreed upon by the Parties.

**7.12.2. Arbitration.** Any dispute between the Parties that is to be resolved by arbitration shall be settled and decided by arbitration conducted by an arbitrator who must be a former judge of the Los Angeles County Superior Court or Appellate Justice of the Second District Court of Appeals or the California Supreme Court. This arbitrator shall be selected by mutual agreement of the Parties.

**7.12.3. Arbitration Procedures.** Upon appointment of the arbitrator, the matter shall be set for arbitration at a time not less than thirty (30) nor more than ninety (90) days from the effective date of the appointment of the arbitrator. The arbitration shall be conducted under the procedures set forth in the Code of Civil Procedure Section 638, et seq., or under such other procedures as are agreeable to both Parties, except that provisions of the California Code of Civil Procedure pertaining to discovery and the provisions of the California Evidence Code shall be applicable to such proceeding.

**7.12.4. Extension Of Agreement Term**. The Term of this Agreement as set forth in Section 7.2 shall automatically be extended for the period of time in which the Parties are engaged in dispute resolution to the degree that such extension of the Term is reasonably required because activities which would have been completed prior to the expiration of the Term are delayed beyond the scheduled expiration of the Term as the result of such dispute resolution.

**7.13. Cooperation In The Event Of Litigation**. In the event of any Litigation instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Signage Ordinance, or the Existing Development Approvals, the Parties hereby agree to affirmatively cooperate in defending said action.

**7.13.1. Coordination and Notice**. In the event any Litigation should arise, the City shall notify Developer in writing of such Litigation not later than five (5) business days after service upon City and shall transmit to Developer any and all documents (including, without limitation, correspondence and pleadings) received by, or served upon, City in connection with such Litigation. Upon receipt of such notice from the City, Developer shall retain and appoint legal counsel ("Counsel" for purposes of this Section) with respect to the Litigation. The Parties acknowledge that Counsel will appear and represent Developer in connection with such Litigation and such Counsel shall, at the request of the City Attorney, cooperate with the City Attorney and shall coordinate legal strategy and otherwise cooperate with City in connection with the Litigation. The City Attorney or his designee shall appear on behalf of the City in any such Litigation and shall at all times retain final authority and control over all documents to be filed on the City's behalf and all actions to be taken by the City with respect to Litigation. The City and

Developer shall cooperate in the defense of the Litigation, and each shall make its records (other than documents privileged from disclosure) and personnel available to the other as may be reasonably requested in connection with the Litigation.

**7.13.2. Joint Defense**. It is understood and agreed that Counsel shall represent Developer and that the City shall not be considered the client of Counsel, nor Developer the client of the City Attorney. Both Developer and the City understand that the requirements of cooperation contained in this Agreement apply only as to matters reasonably necessary for the accomplishment of the defense of the Litigation and shared information is intended to be, and must be, kept confidential.

**7.14. Hold Harmless and Insurance.**

**7.14.1. Developer Hold Harmless.** Developer hereby agrees to and shall indemnify, save, hold harmless and defend the City, and its elected and appointed representatives, boards, commissions, officers, agents, and employees (collectively, "the City" in for purposes of this Section), from any and all claims, costs, and liability for any damages, personal injury or death which may arise, directly or indirectly, from Developer or Developer's contractors, subcontractors, agents, or employees' operations, acts or omissions in connection with the construction of the Project or implementation of the Signage Ordinance, whether such operations, acts or omissions be by Developer or any of Developer's contractors, subcontractors, by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer further agrees to and shall indemnify, save, hold the City harmless in any action brought by a third Party (1) challenging the validity of this Agreement or (2) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement. Developer specifically agrees that it will indemnify City for its costs of defense of such litigation, including the costs of attorneys fees which may be incurred by or payable by the City. Nothing in this Section shall be construed to mean that Developer shall hold the City harmless and/or defend it from any claims that arise from, or are alleged to have arisen from, the negligent acts, or negligent failure to act, on the part of the City. City agrees that it shall fully cooperate with Developer in the defense of any matter in which Developer is defending and/or holding the City harmless.

**7.14.2. Insurance.** Without limiting its obligation to hold the City harmless, Developer shall provide and maintain at its own expense, at all times during the Term of this Agreement, the following program of insurance concerning its operations hereunder. The insurance shall be provided by insurer(s) satisfactory to the City on or before the Effective Date of this Agreement. The program of insurance provided shall specifically identify this Agreement and shall contain express conditions that the City is to be given written notice at least thirty (30) days prior to any modification or termination of coverage. Such insurance shall be primary to and not contributing with any other insurance maintained by the Developer, shall name the City as an additional insured, and shall include, but not be limited to, either comprehensive general liability insurance endorsed for Premises/Project Site Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury or Builder's All-Risk Insurance, with a combined single limit of not less than [ ----------per occurrence.

From time to time, but not more often than once every two (2) years, Developer shall increase the coverage limits of the insurance required under this Section if so directed by the City after a determination by the City that such an increase is justified using customary and reasonable risk management methods and principles.

**7.15. Notices.** Any notice or communication required hereunder between the City or Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested or by overnight courier. If given by registered or certified mail, the same shall be deemed to have been delivered and received on the first to occur of (I) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or delivered by courier, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other address in substitution of the address, or any additional address, to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City:

Director of Planning
City of Los Angeles
City Hall Room 561-C
200 North Spring Street
Los Angeles, California 90012

with copies to:

General Manager
Department of Transportation
City of Los Angeles
Room 1200, City Hall
200 North Spring Street
Los Angeles, California 90012

City Administrative Officer
1500 floor, City Hall East
200 No. Main Street
Los Angeles, California 90012

City Attorney, City of Los Angeles
Real Property/Environment Division
Managing Assistant
1800 City Hall East,
200 N. Main Street
Los Angeles, California 90012

If to Developer:

TrizecHahn Hollywood LLC
4350 La Jolla Village Drive, Suite 400

San Diego, CA 92122-1233
Attn.. General Counsel

with copies to:

Allen, Matkins, Leck, Gamble & Mallory, LLP
515 South Figueroa Street
Los Angeles, California 90071
Attn.: Jerold B. Neuman, Esq.
Michael J. Kiely, Esq.

**7.16. Estoppel Certificates.** Any Party may, at any time, deliver written notice to any other Party requesting such Party to certify in writing that, to the best knowledge of the certifying Party, (I) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligation set forth in this Agreement or, if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. Any third Party including a Mortgagee shall be entitled to rely on the Certificate.

**7.17. Recordation**. As provided in Government Code Section 65868.5, the City Clerk of Los Angeles shall record a copy of this Agreement with the Registrar-Recorder of the County of Los Angeles within ten (10) days following its execution by both Parties. Developer shall provide the City Clerk with the fees for such recording prior to or at the time of such recording.

**7.18. Constructive Notice And Acceptance.** Every person who now or hereafter owns or acquires any right, title, interest in or to any portion of the Development Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Development Site.

**7.19. Severability.** If any provisions, conditions, or covenants of this Agreement, or the application thereof to any circumstances of either Party, shall be held invalid or unenforceable, the remainder of this Agreement or the application of such provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

**7.20. Time Of The Essence.** Time is of the essence for each provision of this Agreement of which time is an element.

**7.21. Waiver**. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought and refers expressly to this Section. No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of any right or remedy with respect to any other occurrence or event.

**7.22. No Third Party Beneficiaries.** The only Parties to this Agreement are the City and Developer and their successors-in-interest. There are no third Party beneficiaries and this Agreement is not intended, and shall not be construed to benefit or be enforceable by any other person whatsoever.

**7.23 Expedited Processing.** Developer and the City agree to cooperate in the expedited processing of any legal action seeking specific performance, declaratory relief or injunctive relief, to set court dates at the earliest practicable date(s) and not cause delay in the prosecution/defense of the action, provided such cooperation shall not require any Party to waive any rights.

**7.24 Entire Agreement**. This Agreement and the documents, agreements and exhibits referenced herein or attached hereto set forth and contain the entire understanding and agreement of the Parties with respect to the rights and obligations contained herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements except as expressly referred to herein, and no testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceedings of any kind or nature to interpret or determine the provisions or conditions of this Agreement

**7.25 .Legal Advice; Neutral Interpretation; Headings, and Table Of Contents**

Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question. The headings and table of contents, used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

**7.26 Counterparts.** This Agreement is executed in duplicate originals, each of which is deemed to be an original. This Agreement, not counting the Cover Page, and Table of Contents, consists of X pages and X Exhibits which constitute the entire understanding and agreement of the Parties. The Exhibits are identified in the List of Exhibits, which is contained in the Table of Contents of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

TRIZECHAHN HOLLYWOOD LLC

By_____ Date_____

CITY OF LOS ANGELES

By_____ Date NOV 5 2002

APPROVED AS TO FORM AND LEGALITY

ALLEN MATKINS LECK GAMBLE & MALLORY LLP

By_____ Date_____
(For TrizecHahn Hollywood LLC)

ROCKARD J. DELGADILLO, CITY ATTORNEY

By Susan D. Pfann Date Nov 4, 2002
Susan D. Pfann
Assistant City Attorney

81050-3
November 3, 2002

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

TRIZECHAHN HOLLYWOOD LLC

By  Date 11-5-02

CITY OF LOS ANGELES

By _____ Date _____

APPROVED AS TO FORM AND LEGALITY

ALLEN MATKINS LECK GAMBLE & MALLORY LLP

By  Date 11-5-02
(For TrizecHahn Hollywood LLC)

ROCKARD J. DELGADILLO, CITY ATTORNEY

By _____ Date _____
Susan D. Pfann
Assistant City Attorney

81050-3
November 3, 2002

**EXHIBIT A**

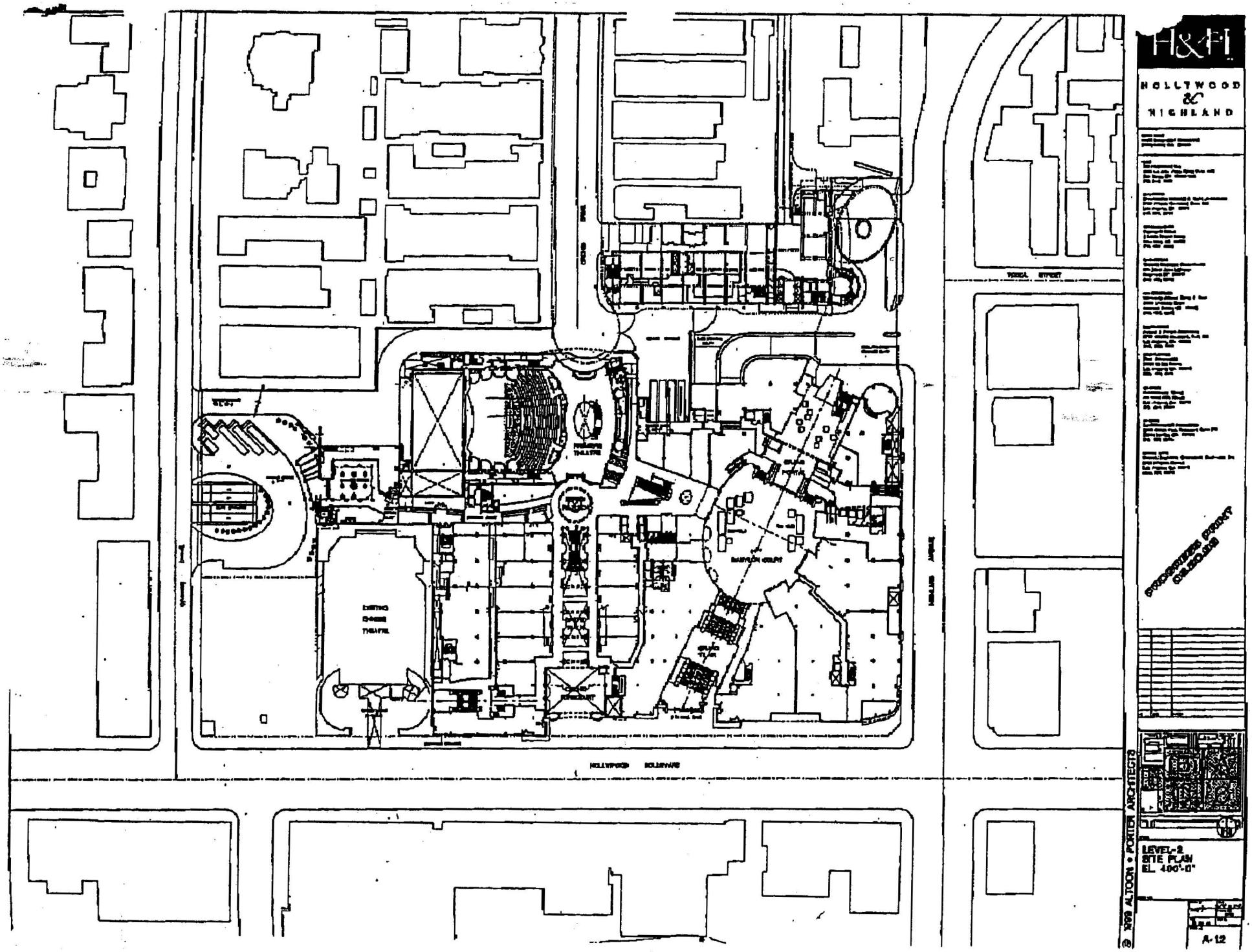
H&H
HOLLYWOOD & HIGHLAND
HOLLYWOOD BOULEVARD
LEVEL-2
SITE PLAN
EL. 400'-0"
A-12

**EXHIBIT B**

# ENTITLEMENTS RE: 6801 HOLLYWOOD BOULEVARD

| Item | Date | Description |
|---|---|---|
| 1. | 9/15/98 | **City Plan Case No. 98-0203 (ZC),** Zone Change to C4 2-D<br>City Planning Commission; |
| 2. | 10/7/98 | **Vesting Tract Map No. 52496 (VTM No. 52496)**<br>City Council; |
| 3. | 12/16/98 | **CF 98-1766-S2, CD 13,** Conditions of Approval and Variance Appeal (BZA 5614, 5615, 5616, 5617)(ZA 98-0449 CUB, CUX, CUZ, ZV)<br>City Council; |
| 4. | 6/9/99 | **VTM No. 52496, Letter of Modification/Revised Map** re condition F-1.<br>Darryl Fisher, Deputy Advisory Agency; |
| 5. | 6/15/99 | **VTM No. 52496, Letter of Clarification** re Orchid Street Vacation<br>Daryl Fisher, Deputy Advisory Agency |
| 6. | 9/16/99 | **VTM No. 52496, Letter of Correction** re conditions B.2, E.16, F.16, A.7, A.8, and M.3<br>Darryl Fisher, Deputy Advisory Agency; |
| 7. | 11/17/99 | **CPC 99-2674, VTM 52496, CPC 98-0203,** Amendment of Council's Instructions Re Removal of [T] Tentative Conditions<br>Con Howe, Planning Director; |
| 8. | 12/20/99 | **Case No. ZA 98-0449(CUB)(CUX)(CUZ)(ZV), Letter of Clarification**<br>Emily Gabel-Luddy, Associate Zoning Administrator; |
| 9. | 2/22/00 | **VTM 52496 Letter of Clarification** re conditions C.6 and C.15<br>Emily Gabel-Luddy, Deputy Advisory Agency |
| 10. | 3/6/00 | **Case No. ZA 98-0449(CUB)(CUX)(CUZ)(ZV), Letter of Clarification**<br>Emily Gabel-Luddy, Associate Zoning Administrator |
| 11. | 6/23/00 | **CF 00-1231, City Council Action approving Final Map No. 52496-01** |
| 12. | 10/12/00 | **Case No. ZA 2000-3409(CUB)** Conditional Use Permit for sale of alcoholic beverages in a duty free shop,<br>John Perica, Associate Zoning Administrator; |
| 13. | 11/21/00 | **VTM No. 52496, Letter of Clarification** re Condition F-1<br>Emily Gabel-Luddy, Deputy Advisory Agency; |
| 14. | 12/21/00 | **VTM No. 52496, Letter of Clarification** re Condition F-1<br>Emily Gabel-Luddy, Deputy Advisory Agency; |
| 15. | 1/16/01 | **Case No. ZA 2000-4320(CUB)(CUX)** Conditional Use Permit to allow the sale and dispensing of alcoholic beverages in three restaurants and two stand alone bars; live entertainment and dancing in one restaurant; and extend hours for one stand alone bar,<br>Jon Perica, Associate Zoning Administrator; |
| 16. | 2/22/01 | **Case No. ZA 98-0449(CUB)(CUX)(CUZ)(ZV), Reissued Letter of Clarification** re Condition No. 14, Governors' Ballroom to include terrace and pre-function areas and that the hotel has maintained exiting deemed to be approved and CUP locations for sales of alcoholic beverages, Jon Perica, Associate Zoning Administrator; |
| 17. | 3/28/01 | **VTM No. 52496** Recorded as Instrument No. 01-0513983, in Book 1258, at Page 1 of Maps in the County of Los Angeles; |
| 18. | 6/28/01 | **Ordinance No. 174063**<br>City Council |
| 19. | 2/13/02 | **CF 98-1766-S2** Zone Variance Appeal for Off-Site Parking and Transit Programs for Employees (CPC 2001-1940-DA-ZV),<br>City Council; |

**EXHIBIT C**

**COMPOSITE***

# LICENSE AGREEMENT

TRIZECHAHN HOLLYWOOD LLC,
a Delaware limited liability company

as Licensor,

TRIZECHAHN HOLLYWOOD HOTEL LLC,

a Delaware limited liability company

as Hotel Owner,

and

THE ACADEMY OF MOTION PICTURE ARTS AND SCIENCES,
a California non-profit corporation

as Academy.

*** (An assembledge of the original License Agreement dated as of April 20, 1999 and the First Amendment to License Agreement dated October 15, 2001; additions/replacements attributable to the First Amendment are set forth in bold)**

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# COMPOSITE
# LICENSE AGREEMENT

This License Agreement (this "License" or "License Agreement") and the First Amendment to License Agreement were each entered into by and between TRIZECHAHN HOLLYWOOD LLC, a Delaware limited liability company ("Licensor"), ACADEMY OF MOTION PICTURE ARTS AND SCIENCES, a California nonprofit corporation ("Academy"), and, for certain limited purposes as further set forth in this License, TRIZECHAHN HOLLYWOOD HOTEL LLC, a Delaware limited liability company, in its capacity as owner of the "Hotel," as that term is defined below (in such capacity, "Hotel Owner").

## RECITALS

A. Licensor is the developer of that certain mixed use retail/entertainment complex, to be located at the northwest corner of Hollywood Boulevard and Highland Avenue in the Hollywood area of the City of Los Angeles, California (the "Project"). The Project shall be deemed to include the parking facility servicing the same, the land upon which the Project and the parking facility are located, and all other improvements located on such land. That certain hotel and related facilities located adjacent to the Project and currently owned by Hotel Owner is herein referred to as the "Hotel." Hotel Owner is renovating the Hotel concurrently with the construction of the Project (the "Hotel Renovations").

B. Licensor, Hotel Owner and Academy each desire to enter into an agreement for the operations specified in this License. As part of such agreement, Academy desires to use and Licensor and Hotel Owner each desire to grant to Academy a license for the use of those portions of the Project and Hotel specified in this License.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants to be performed hereunder, Licensor, Hotel Owner and Academy agree as follows.

## SECTION 1.

## THE LICENSE AREA

1.1 Construction of License Area. Licensor shall construct the Project and the "License Area," as that term is defined in Section 1.2, below, in accordance with the terms of the Work Letter attached hereto as Exhibit B. Hotel Owner shall complete the Hotel Renovations in accordance with the "Design Development Drawings," as defined in Section 1.3 of the Work Letter, and the applicable terms of the Work Letter. In order to effect such construction, Licensor acknowledges that it is necessary to, and Licensor therefor shall, acquire, or cause the City of Los Angeles or the Los Angeles Community Redevelopment Agency to acquire, the property generally known as the Madison surface parking lot.

1.2 Use and Definition of License Area; Delivery Condition.

1.2.1 **Use and Definition of License Area. In consideration of the payment by Academy to Licensor of the "License Fees," as that term is defined in Section 3.1 of this License, Licensor and Hotel Owner shall allow Academy the right to use, and access to, pursuant to the terms of this License, those areas of the Project and the Hotel set forth below, as more particularly set forth on Exhibit A, attached to this Amendment (collectively, the "License Area"), and such other areas of the Project as Licensor, Hotel Owner and Academy may mutually designate from time to time. The License Area shall consist of the following areas, provided that to the extent of any discrepancy between the descriptions set forth below and Exhibit A, Exhibit A shall control:**

(i) **the "Theatre," consisting of the Theatre structure, stage, staging and audience areas, lobbies, backstage areas which serve the Theatre, offices which serve the Theatre, loading dock areas which serve the Theatre, and other areas as shown on Exhibit A;**

(ii) **the "Governors Ballroom Area," consisting of the ballroom, storage rooms, and other areas as shown on Exhibit A, and including the designated bay(s) of the "East Retail Loading Dock" defined below, the "Kitchen Area," consisting of the kitchen and food services areas of the Governors Ballroom, and the service elevator which travels between the Kitchen Area and the Theatre Loading Dock, as designated on Exhibit A;**

(iii) **the "Pool Deck Area," consisting of the pool deck of the Hotel which is adjacent to the Governors Ballroom Area, as shown on Exhibit A;**

(iv) **the "Arrivals Area," consisting of the Hollywood Boulevard Frontage and those certain portions of the Orchid Walk Area as are included in the Arrivals Area for a particular Presentation, as more particularly set forth in Section 4 of the Operational Addendum attached hereto as Exhibit C;**

(v) **the "Hollywood Boulevard Frontage," consisting of that certain portion of the sidewalk owned by Licensor on Hollywood Boulevard between Highland Avenue and Orange Drive as is included in the Arrivals Area for a particular Presentation, as more particularly set forth in Section 4 of the Operational Addendum;**

(vi) **the "Pathway," consisting of the path to be used by guests for ingress and egress between the Arrivals Area, the Theatre and the Governors Ballroom for the applicable Presentation, as shown on Exhibit A;**

(vii) **the "Orchid Walk Area," consisting of the forecourt, lower and upper arcade walkway, and rotunda, as shown on Exhibit A;**

(viii) **the "Production Access Area," consisting of the circular bus drive and areas providing ingress and egress to the Theatre and the cable tunnel, as shown on Exhibit A;**

(ix) **the "Parking Area," consisting of all of the Project parking areas, as shown on Exhibit A, but not including the "Valet Parking Area" defined below;**

(x) **the "Valet Parking Area," consisting of those certain areas of Level P1 of the Project parking facility designated for the construction of temporary facilities, security offices, and other ancillary uses as shown on Exhibit A;**

(xi) **the "Press Area," consisting of those certain areas of the Project and Hotel shown on Exhibit A, including the Hotel's "Junior Ballroom" and adjacent meeting rooms, designated for the construction of temporary press facilities and interview rooms;**

(xii) **the "Hotel Meeting Rooms," consisting of the rooms on Level 435 of the Hotel located directly over the "Junior Ballroom," and the "Business Center" of the Hotel, as designated on Exhibit A;**

(xiii) **the "Security Offices Area," consisting of the area within the Valet Parking Area designated for Security Offices on Exhibit A; and**

(xiv) **the "East Retail Loading Dock," consisting of the southernmost loading dock in the east retail loading dock area on Level 400 of the Project.**

1.2.2 Delivery Condition; Covenants Regarding Use.

(i) **Theatre. On the commencement of Academy's period of exclusive use of the Theatre, as such period is set forth in Section 9.2 of this License, Licensor shall deliver the Theatre to Academy "broom clean," with the Theatre manager office, storage, dressing and other areas empty and ready for use by Academy. Notwithstanding the foregoing, certain areas, which shall be mutually agreed upon by Academy and Licensor, such as the janitorial closets, may remain stocked with supplies and related equipment.**

(ii) Elevator. During Academy's period of exclusive use of the Theatre, the elevator located approximately at the intersection of grid lines H and 10 on the page of Exhibit A showing Theatre Level 390, shall be "locked out" so that it will not stop at Level 390.

(iii) Governors Ballroom. On the commencement of Academy's period of exclusive use of the Governors Ballroom Licensor shall deliver the Governors Ballroom, other than the Kitchen Area, to Academy, empty and "broom clean," with storage areas empty and ready for use by Academy. Notwithstanding the foregoing, certain areas, which shall be mutually agreed upon by Academy and Licensor, such as the janitorial closets, may remain stocked with supplies and related equipment. Additionally, Academy shall have the right, on reasonable prior request to Licensor, subject to the terms of this License, to use the furniture or equipment of Licensor which is generally used by Licensor in the Governors Ballroom (not including the Kitchen Area). Such use of furniture or equipment shall be at no cost or expense to Academy. Academy shall be responsible for any damage to such furniture or equipment resulting from such use.

(iv) Kitchen Area. On the commencement of Academy's period of exclusive use of the Kitchen Area, Licensor shall deliver the Kitchen Area to Academy, empty and "broom clean," with storage areas empty and ready for use by Academy. Licensor shall make available to Academy, or cause any food service tenant or operator then occupying the Kitchen Area (the "Food Service Operator") to make available to Academy, the kitchen fixtures and major items of kitchen equipment located in the Kitchen Area. Academy shall be responsible for any damage caused by its use of any such fixtures or equipment. Academy will provide its own cookware, servingware, dishes, utensils and other minor items of equipment necessary for the Presentation (or make arrangements with such Food Service Operator to use its such property) at Academy's sole cost and expense. At least five (5) days prior to the Presentation, the refrigerators, freezers and other food storage areas within the Kitchen Area, shall be emptied and cleaned and Academy shall return the same to Licensor (or such Food Service Operator) in like condition one (1) day following the Presentation. In connection with Licensor's delivery of the Kitchen Area to Academy as set forth above, if Academy has not entered into a separate agreement with the Food Service Operator to provide food services for the Presentation, Academy shall pay to Licensor, as compensation for the use of the fixtures and major items of kitchen equipment, and the costs of emptying and cleaning the food storage areas within the Kitchen Area, an amount equal to Two Thousand Five Hundred Dollars ($2,500.00) for each day during the Annual Use Period which Academy has exclusive use of the Kitchen Area (which daily amount shall be increased annually by an amount equal to the annual increase in the Consumer Price Index for all Urban Consumers for the Los Angeles-Anaheim-Riverside area, published by the US Department of Labor).

(v) Security Offices Area. Licensor shall have the right to relocate the Security Offices Area within the Project after the day following the Presentation, to a location reasonably acceptable to Academy, and reasonably coordinated in advance with the Academy and its security team.

(vi) **Arrivals Area. Licensor shall deliver the Arrivals Area and provide access to the Arrivals Area as set forth in, and subject to the terms of, the Operational Addendum for the applicable Presentation.**

(vii) Crew Feed. In addition to the License Area, Licensor shall provide Academy with a location at the Project, reasonably acceptable to Academy, where Academy can set up its "crew feed" area, sufficient to allow for sit-down meals (lunch and dinner) for approximately 600 persons in one hour in reasonable proximity to the Theatre, during the period commencing three (3) days prior to the Presentation, and continuing through the day of the Presentation.

(viii) Ingress, Egress and Bathrooms. In addition to the License Area, Academy shall have the right to use certain areas of the Project for ingress and egress (including, without limitation, on the day of the Presentation, the service exit corridor on the west side of Orchid Walk at level 380 of the Project). Additionally, (a) all of the Project public restrooms; shall be open and available for use by Academy and its invitees, and (b) Academy shall have the right, on reasonable prior notice to Licensor, and when accompanied by a representative of Licensor, to access the Project mechanical and utility rooms as necessary to prepare for the Presentation.

(ix) Kitchen Service Elevator. On the day after the Presentation Academy shall have the right to use the service elevator connecting to the Kitchen Areas for the purpose of removing trash and other items from the Governors Ballroom.

1.3 **Initial Year of License Term; Failure to Complete Project.**

**1.3.1 Initial Presentation Requirements. With respect to the Presentation scheduled for March, 2002 (the "Initial Presentation"), Licensor and Hotel Owner hereby covenant and agree to cause the Project to be "Presentation Ready," as that term is defined in Section 1.3.3, below, on or before January 1, 2002. In connection therewith, Licensor and Hotel Owner shall (i) demonstrate to the Academy, on or before January 1, 2002, that the Known Conflicts have been resolved, and (ii) demonstrate to the Academy, on or before January 1, 2002, that the Licensor Offsite Conditions have been or will be met in the manner and to the extent required by the terms of Section 9.6 of the License. Provided that the Project is Presentation Ready on or before January 1, 2002, Academy shall stage the Presentation scheduled for March, 2002, at the Project in accordance with the terms of the License Agreement, as amended hereby.**

**1.3.2 Failure to be Presentation Ready. If Licensor has failed to cause the Project to be Presentation Ready on or before January 1, 2002, then either party shall have the right to terminate this License by notice given to the other on or before January 15, 2002. Upon termination of this License by either party pursuant to the terms of this Section 1.3.2, Licensor shall pay to Academy the "Termination Damages," defined in, and subject to the limitation set forth in, Section 12.4. of the License Agreement.**

**1.3.3 Presentation Ready. As used in this License, the term "Presentation Ready" shall mean that all of the following have occurred: (i) "Substantial Completion," as defined in Section 2 of the Work Letter, has occurred, with a demonstration by Licensor that any punch list items will be completed in a timely manner and so as not to cause any interference with the preparations for, and staging of the Presentation, and in any event prior to the commencement of Academy's exclusive use period of any areas to which any particular punch list items relate, (ii) all "Presentation Conflicts," as that term is defined in Section 4.3.2, below, have been resolved in accordance with the requirements of such Section 4.3.2, (iii) the "Licensor Offsite Conditions," as such term is defined in Section 9.6, below, have been satisfied in accordance with the requirements of such Section 9.6, and (iv) in lieu of the requirements of Schedule 1 of the Work Letter, Licensor has delivered to Academy certifications in the form set forth on Exhibit G attached hereto, or in another form reasonably acceptable to Academy, from the parties listed on such Exhibit G, or any substitute for any such party as is mutually reasonably agreed upon by Academy and Licensor.**

**1.3.4 Construction Drawings. Notwithstanding anything to the contrary contained in Sections 1.3 and 1.4 of the Work Letter, the parties hereto acknowledge and agree as follows:**

**1.3.4.1 As used in this Section 1.3.4, the term "Baseline Construction Drawings" shall have the meaning set forth in Exhibit E attached to this Amendment.**

**1.3.4.2 Academy hereby approves the Baseline Construction Drawings and, except as set forth in this Section 1.3, (i) Academy shall have no right to require any changes in the Final Construction Drawings and, (ii) notwithstanding anything to the contrary contained in the License, except with respect to future changes as set forth in Section 13.3 of the License Agreement, as amended hereby, Academy shall have no further rights to approve or disapprove of the design or construction of the Project.**

**1.3.4.3 Licensor and Hotel Owner shall complete the construction of the Project and the Hotel in accordance with the Baseline Construction Drawings; subject however, to such deviations therefrom which would not require Academy's consent as a change, alteration, addition or improvement pursuant to Section 13.3 of the License Agreement, as amended hereby.**

**1.3.5 Resolution of Presentation Conflicts. Licensor shall resolve the Known Conflicts in order to meet the requirements of Section 4.3.2.2 of the License Agreement as soon as practicable and in any event on or before January 1, 2002. Academy agrees that various methods of resolving the Known Conflicts may be acceptable, provided the Known Conflicts are resolved on or before January 1, 2002, and provided that the resolution meets the standard set forth in Section 4.3.2 of the License.**

## SECTION 2.

## LICENSE TERM AND COMMENCEMENT DATE

2.1 License Term. This License shall be for a term of twenty (20) years (the "License Term"), commencing in the year of the Initial Presentation, subject however, to earlier termination as provided elsewhere in this License, including pursuant to Section 12, below. The period each year during which Academy has the right of use of certain portions of the Project and the Hotel pursuant to the terms of this License shall be referred to herein as the "Annual Use Period". In the event that in any year of the License Term after the Initial Presentation, Academy, in accordance with the terms of this License, is excused from the requirements of Section 9.1, below, and does not stage the Presentation at the Project, the License Term shall be extended by one additional year, so that as of the end of the License Term, Academy will have staged the Presentation at the Project on twenty (20) separate occasions, subject however, to earlier termination as provided elsewhere in this License, including pursuant to Section 12, below.

2.2 Commencement of License Term. The License Term shall commence upon the first day of the calendar year of the Initial Presentation (the "Commencement Date"), and the License Term shall end at 11:59 p.m. on the last day of the Annual Use Period in the final year of the License Term, unless terminated earlier in accordance with the provisions of this License.

2.3 Acceptance of the License Area. Licensor and Hotel Owner shall construct the project, Hotel and the License Area, as applicable, as specifically set forth in this License and in the Work Letter attached hereto as Exhibit B (the "Work Letter"). Licensor and Hotel Owner shall not be obligated to provide or pay for any other improvements for the License Area. Academy acknowledges that neither Licensor nor Hotel Owner, nor any of their respective agents, have made any representation or warranty regarding the condition of the License Area or the Project or with respect to the suitability of any of the foregoing for the conduct of Academy's business or the production of the Presentation, except as specifically set forth in this License and the Work Letter. Subject to any "punch list" to be timely provided by Academy to Licensor following the delivery of the License Area in connection with the Initial Presentation, the taking of possession of the License Area by Licensee shall conclusively establish that the License Area was at such time in good and sanitary order, condition, and repair.

## SECTION 3.

## LICENSE FEES

3.1 License Fees. During the License Term, Academy shall pay to Licensor the following amounts for the rights granted under the provisions of this License (collectively, the "License Fees"): (i) a basic annual license fee (the "Basic License Fee") equal to (a) for the first year of the License Term, Four Hundred Thousand Dollars ($400,000.00), and (b) for each year thereafter, an amount equal to one hundred five percent (105%) of the Basic License Fee applicable to the immediately preceding year, and (ii) additional charges consisting of all other sums payable by Academy under the provisions of this License ("Additional Charges"). The Basic License Fee for each year during the License Term shall be payable on or before February 1 of each year of the License Term.

3.2 Payment of License Fees. Academy shall pay the Basic License Fee when due, without notice or demand, and without any abatement, deduction or setoff. Academy shall pay the License Fees in lawful money of the United States, to Licensor at its office at the address set forth in Section 13.4, below, or to such other person or place as Licensor may designate in writing from time to time. Academy hereby acknowledges that the late payment of Basic License Fees will cause Licensor to incur damages, including administrative costs, loss of use of the overdue funds and other costs, the exact amount of which would be impractical and extremely difficult to ascertain. Licensor and Academy therefore agree that if Licensor does not receive a payment of License Fees within ten (10) days after notice from Licensor that the same are due, Academy shall pay to Licensor, as Additional Charges, a late charge of Two Thousand Dollars ($2,000.00). All Additional Charges shall be payable within thirty (30) days after invoice, unless otherwise provided herein. Notwithstanding anything to the contrary contained in this License, all payments received by Licensor, may in Licensor's sole and absolute discretion, be applied to any arrearages owed by Academy, irrespective of any designation of payment by Academy.

3.3 Interest on Past Due Amounts. In addition to the late charge described above, any amounts owing hereunder which are not paid by Academy within ten (10) days after the date they are due shall bear interest from the date when due until paid at a rate per annum equal to the lesser of (i) the floating commercial loan rate announced from time to time by Bank of America,

a national banking association, or its successor, as its prime rate, plus 2% per annum, or (ii) the highest rate permitted by applicable law.

## SECTION 4.

## USE AND COMPLIANCE WITH LAW

4.1 Use. Academy shall only use the License Area for the purpose of preparing for, producing and presenting the annual Academy Awards presentation and Governors Ball, as more particularly set forth in Section 9, below, and as otherwise mutually agreed by the parties, and for no other purpose whatsoever.

4.2 Prohibited Uses. Academy shall not at any time conduct its business or use or occupy or permit any person to use or occupy the License Area during the Annual Use Period, or do or permit anything to be done or kept in the License Area, in a manner which: (i) causes or is liable to cause damage to the Project, the License Area or any equipment, facilities or other systems therein; or (ii) constitutes a violation of law. Notwithstanding the foregoing, Licensor agrees that damage or alterations to the License Area which occur during the normal course of preparing for and staging the Presentation shall not be a breach of this Section 4.2, provided that Academy timely complies with the repair and maintenance obligations set forth in Section 6.1, below.

4.3 Compliance and Cooperation.

4.3.1 Compliance by Academy. Academy shall promptly forward to Licensor any notice it receives of the violation of any law involving the use and occupancy of the License Area by Academy. Academy shall, at Academy's sole cost and expense, comply with all laws and, to the extent applicable to Academy's use of the Project, if at all, the recorded covenants, conditions, and restrictions identified on Exhibit C attached hereto (the "Project Documents"), that impose any obligation, order or duty on Academy, arising from or related to: (a) Academy's use of the License Area; or (b) the manner or conduct of Academy's operation of its installations, equipment or other property therein. Licensor hereby represents and warrants to Academy that the Project Documents delivered to Academy or its attorneys, pursuant to cover letters dated March 25, 1999, April 8, 1999, and April 16, 1999 are true, correct and complete, provided that Academy acknowledges that the Hollywood And Highland Reciprocal Easement And Operating Agreement (the "REA") so delivered is not in final form. Licensor shall not permit the modification of the REA in any way that could prevent Licensor from providing to Academy the rights contemplated under this License. Licensor hereby further represents and warranty to Academy that, to its best knowledge, other than the Known Conflicts, no provisions of the project Documents will prevent Licensor from providing to Academy the rights contemplated under this License. For purposes of the foregoing representation and warranty, best knowledge of Licensor shall mean the due inquiry of Douglas Curtis, Douglas Hageman, Jerold Neuman, and Michael Kiely. Academy shall pay all of the costs, expenses, fines, penalties, and damages which may be imposed upon Licensor by reason of or arising out of Academy's failure to fully and promptly comply with and observe the provisions of this Section 4.3. Licensor and Hotel owner each hereby represent and warrant to Academy that, other than the Project Documents, no documents or agreements to which Licensor or Hotel Owner is a party, or which otherwise affect

the Project, will have a material adverse effect on Academy's rights under this License. Where Academy's compliance as required by this Section 4.3 necessitates actions by Academy for which this License requires Licensor's consent, Academy shall obtain Licensor's consent before taking such actions, which consent shall not be unreasonably withheld.

4.3.2 Known Conflicts with Project Documents; New Conflicts. Academy and Licensor have determined that certain provisions of the Project Documents may prevent Licensor from providing to Academy the rights contemplated under this License (the "Known Conflicts"). Such Known Conflicts are set forth in Section 4.3.2.1, below. Any conflicts with the Project Documents other than the Known Conflicts, including any such conflicts that would not result in a breach of Licensor's representation and warranty regarding the Project Documents set forth in Section 4.3.1, above, shall be referred to herein as the "Future Conflicts". Conflicts with the Project Documents which would result in a breach of Licensor's representation and warranty regarding the Project Documents set forth in Section 4.3.1, above, as well as any similar conflicts with documents or agreements other than the Project Documents, or with changes to the Project Documents made after the date hereof, which changes are not approved by Academy, shall be referred to herein as the "New Conflicts". Academy shall not withhold its consent to such changes unless, in the good faith opinion of Academy, the result of such change is such that the Academy cannot prepare for and present the Presentation within the Annual Use Period with (i) no material interference other than as contemplated pursuant to the License during any period of partial access to a License Area or that is inherent in the design of the Project as a mixed-use project and (ii) no material decrease in efficiencies from that currently contemplated. The Known Conflicts, Future Conflicts and the New Conflicts are referred to collectively herein as the "Presentation Conflicts". Notwithstanding anything to the contrary contained herein, no conflict created by Academy's use of the Project or Hotel, and in particular, the License Area, in a manner that is not permitted under the terms of this License, will be deemed to be a Presentation Conflict, and Licensor shall have no obligation to resolve any such conflict.

4.3.2.1 Known Conflicts. The "Known Conflicts" are as follows:

(a) Public Access Rights. Certain of the conditions of approval for the Project require that (i) Licensor provide public access across portions of the Project, and (ii) that Orchid Alley, located adjacent to the Project on the Project's northeast side, remain open for vehicular traffic at all times. Neither of such conditions provide for the suspension of such access rights at anytime.

(b) Ullman Property Rights. The owner of the property located at the southeast comer of Hollywood Boulevard and Orange Drive known as the "Hollywood Spectacular" has (i) a right to use up to 136 parking spaces in the Parking Area, and a corresponding right of access over the Project for pedestrian access to the Parking Area, and (ii) rights to use portions of the Orange Court for vehicular access to the Hollywood Spectacular property.

4.3.2.2 Resolution of Presentation Conflicts. Licensor shall use good faith, commercially reasonable efforts to resolve all Presentation Conflicts in a manner that will provide to Academy the rights contemplated under this License. In connection therewith, Licensor shall seek to effect long term solutions to the Presentation Conflicts, and at any time

that Licensor determines that it will be unable to resolve a particular Presentation Conflict, Licensor shall so notify Academy. Academy will cooperate with Licensor in good faith and with due diligence, but at no third party, out-of-pocket cost or expense to Academy, in order to enable Licensor to modify or amend the Project Documents, obtain variances from applicable governmental agencies, or otherwise resolve any Presentation Conflicts. In particular, Licensor shall use good faith, commercially reasonable efforts to resolve the Known Conflicts prior to the Initial Presentation as follows.

(i) The Project and Orchid Alley shall be closed to all traffic, pedestrian and vehicular, on the day of the Presentation, and all vehicles, other than as expressly allowed pursuant to Section 9.3.4 of this License, shall be removed from the Parking Areas.

(ii) The applicable portions of the License Area shall be closed to pedestrian access during the period of Academy's exclusive use thereof.

(iii) During the period of Academy's exclusive use of the Theatre, public access to Orchid Alley shall be limited so as not to materially interfere with Academy's use of the Theatre for loading and unloading of trucks or the staging of trucks for purposes of expanding the backstage area of the Theatre, and to enable Academy to provide security to the Theatre comparable to that which it would be able to provide if it were not using such area for such purpose. Without limiting the generality of the foregoing, during the fourteen (14) day period prior to the Presentation, Orchid Alley will be closed to all public access, except, to the extent necessary, emergency vehicles other than fire trucks; provided, however, that if the Licensor cannot cause Orchid Alley to be closed to fire trucks, Licensor shall redesign the Theatre and/or adjacent areas of the Project or otherwise provide a solution that will permit Academy to use Orchid Alley for such loading/unloading, staging and security purposes.

(iv) The loading areas for the Hollywood Spectacular shall be constructed so as not to interfere with Academy's use of the License Area as provided in this License.

4.3.2.3 **Failure to Resolve Presentation Conflicts**. **With respect to any Presentation which occurs after the year 2002, if the Known Conflicts are not resolved as set forth above, or if any New Conflict or Future Conflict is not resolved, in each instance at least nine (9) months prior to the date of the applicable Presentation, and in the good faith opinion of Academy, such Presentation Conflict is such that the Academy cannot prepare for and present the Presentation within the Annual Use Period with (i) no material interference other than as contemplated pursuant to the License during any period of partial access to a License Area or that is inherent in the design of the Project as a mixed-use project and (ii) no material decrease in efficiencies from that currently contemplated, then Academy shall have the right to (A) notify Licensor of such Presentation Conflict, which notice shall include a reasonably detailed explanation of the nature of the Presentation Conflict, and, to the extent known by Academy, a description of specific actions that could be taken to cure such Presentation Conflict, and (B) secure the rights to use an alternative venue (the "Back-Up Venue") in which to stage the applicable Presentation. If all such Presentation Conflicts are not resolved to the satisfaction of the Academy on or before the date which is six (6) months prior to the applicable Presentation**

**(the "Outside Compliance Date"), Academy shall have the right, within five (5) business days after the Outside Compliance Date, to notify Licensor of such failure to cure the Presentation Conflicts, and to stage such Presentation at such Back-Up Venue. Such notification by Academy shall release Licensor from any obligation to make the Project available to Academy to stage the applicable Presentation. In the event Academy fails to deliver such notice within five (5) business days after the Outside Compliance Date, such Presentation Conflicts shall be deemed to have been resolved. In the event all such Presentation Conflicts are resolved (or are deemed to have been resolved) by the Outside Compliance Date, then, notwithstanding the terms of any agreement entered into by Academy with respect to the Back-Up Venue, Academy shall stage such Presentation at the Project and Licensor shall reimburse Academy for its actual, out-of-pocket costs incurred in connection with (i) securing the rights to the Back-Up Venue; (ii) terminating any agreement regarding the Back-Up Venue; and (iii) its preparation for the production of the Presentation at the Back-Up Venue to the extent such costs are unique to the Back-Up Venue (collectively, the "Back-Up Venue Termination Costs"). Academy will use its best efforts to negotiate a fee structure for the Back-Up Venue that will enable Licensor to minimize the Back-Up Venue Termination Costs.**

**In the event that a Presentation Conflict prevents the staging of the Presentation at the Project for more than two (2) consecutive years, either party shall have the right to terminate this License by giving written notice of such termination to the other within thirty (30) days after the determination has been made, with respect to a particular Presentation, that a Presentation Conflict prevents the staging of such Presentation at the Project. Upon termination of this License by either party pursuant to the terms of this Section 4.3.2.3, other than as a result of a Future Conflict, Licensor shall pay to Academy the Termination Damages in accordance with the terms of Section 12.4 of the License. If either party terminates this License pursuant to the terms of this Section 4.3.2.3 as a result of either a Future Conflict or a Presentation Conflict under the second sentence of Section 4.3.2.2(iii) of the License relating to Licensor's inability to cause closure of Orchid Alley to fire trucks or otherwise provide an alternate solution as provided therein, Licensor shall not be required to pay the Termination Damages.**

4.3.2.4 Pyrotechnics. Licensor and Academy acknowledge that Paragraph B.4 of the Mitigation Plan attached to and incorporated into the decision dated September 16, 1998 of the Los Angeles City Planning Commission regarding Vesting Tract Map No. 52496 Appeal provides that Licensor "shall not permit any pyrotechnics, explosives or fireworks to be utilized within the Project at any time" (such condition, together with all recorded covenants and agreements implementing same being referred to collectively as, the "Pyrotechnics Condition"). It is Licensor's understanding that the Pyrotechnics Condition does not apply to the interior of any building within the Project and, accordingly, the Pyrotechnics Condition shall not constitute a Project Document with which Academy is obligated to comply pursuant to Section 4.3.1 above in its use of the interior of the Theatre. Notwithstanding the foregoing, in connection with Academy's use of pyrotechnics, explosives or fireworks (collectively, "Pyrotechnics") within the Theatre, Academy shall (a) comply with all laws and Project Documents other than the Pyrotechnics Condition, and (b) obtain all necessary permits and licenses from applicable governmental authorities. Academy acknowledges and agrees that the Pyrotechnics Condition does apply to Academy's use of Pyrotechnics at the Project outside the Theatre. If Academy

desires to use Pyrotechnics at the Project outside the Theatre, it may do so provided that (i) it obtains a variance from or waiver of the Pyrotechnics Condition from the City, and (ii) complies with the conditions set forth in clauses (a) and (b) above. Licensor shall reasonably cooperate with Academy's efforts to obtain any such variances, waivers, permits and/or licenses (collectively, "Pyrotechnics Permits") ; provided, however, Licensor makes no representation or warranty that any such Pyrotechnics Permits will be available. Academy's inability to obtain any Pyrotechnics Permits for its use of Pyrotechnics at the Project shall not constitute a basis for termination of this License.

4.4 Service Contracts. Academy shall, to the extent required by any of the Project Documents, or by applicable law, comply with the terms of the City of Los Angeles "Living Wage Ordinance". Any work and/or other services to be performed by, or at the direction of, the Academy or by Licensor, shall be performed by or at the direction of such party, as applicable, so as to avoid any labor dispute that causes or is likely to cause stoppage or impairment of work, deliveries, or any other services in the Project. If there shall be any such stoppage or impairment as the result of any such labor dispute or potential labor dispute, Academy or Licensor, as applicable, shall immediately undertake such action as may be necessary to eliminate such dispute or potential dispute, including, without limitation, (a) removing all disputants from the Project until such time as the labor dispute no longer exists, (b) seeking a temporary restraining order and other injunctive relief with regard to illegal union activities or a breach of contract between Academy or Licensor, as applicable, and any individuals or entities working for, or on behalf of, Academy or Licensor, as applicable, and (c) filing appropriate unfair labor practice charges. The foregoing shall apply to each party only with respect to its particular actions and inactions regarding its own labor force, and shall not apply to any conflict between the respective labor forces.

4.5 Cooperation in Project Operations. Throughout the License Term, and in particular during each Annual Use Period, Academy shall use reasonable, good faith efforts to cooperate with Licensor and Hotel Owner in connection with Licensor's and Hotel Owner's legitimate use of the Project and Hotel, including complying with Licensor's and Hotel Owner's reasonable requests relating to Licensees and Hotel Owner's use of portions of the License Area and the Project that are not then subject to Academy's exclusive use. Likewise, during each Annual Use Period, Licensor and Hotel Owner shall use reasonable, good faith efforts to cooperate with Academy in connection with Academy's legitimate use of the Project and the Hotel, including complying with Academy's reasonable requests relating to Academy's use of portions of the License Area not then subject to Academy's exclusive use.

4.6 Cooperation with Press. During the License Term, and in particular during each Annual Use Period, Licensor shall use commercially reasonable efforts to comply with reasonable requests from media outlets concerning advance publicity and news reports relating to the Presentation. Such efforts shall include reasonable accommodation of such media outlets for the purpose of televising or filming at the Project in the weeks prior to the Presentation.

4.7 Licensor's Development, Maintenance, and Operation of the Project.

4.7.1 General Provisions. Licensor and Hotel Owner shall develop, construct, maintain and manage the Project and Hotel, as applicable, as appropriate for a first-class, "world

landmark" mixed-use project. Licensor and Hotel Owner shall repair and maintain the Project and Hotel, as applicable, including the License Area, in good condition and repair, reasonable wear and tear excepted, and shall provide security, janitorial, and other services as necessary to maintain the first-class appearance and nature of the Project and Hotel.

4.7.2 Use Restrictions. No part of the Project or Hotel shall be used in a manner which would be incompatible with the standards set forth in Section 4.7.1, above. In particular, Licensor agrees that, during the, License Term, no part of the Project or Hotel shall be used for the following:

(i) An "adult" or pornographic bookstore, video store or rental establishment, nor as a "head shop" or retail sales establishment which sells or leases "adult" paraphernalia;

(ii) An "adult" bar or club permitting nude, semi-nude or sexually explicit performances;

(iii) a purveyor of alcoholic beverages for off-site consumption, except for specialty retail boutiques which cater to "high-end" sales of such products;

(iv) A massage parlor or tattoo parlor;

(v) A retail or service establishment whose primary business is the sale of tee-shirts;

(vi) A thrift store or flea market;

(vii) A discount electronics/retail furniture or similar discount establishment;

(viii) A "food-court"; provided that the Project may contain a mix of food service establishments ranging from those serving fully prepared "fast" foods to "high-end" restaurants; and

(ix) An electronic games arcade or attraction, whether or not an entrance fee is charged, except as an incidental use in a retail establishment which is compatible with the first-class, "world-landmark" nature of the Project.

4.8 Licensor's Use of Theatre.

4.8.1 Prior to Initial Presentation. The Theatre will not be used for any commercial purpose prior to the Initial Presentation. Notwithstanding the foregoing, if the Initial Presentation does not occur prior to the end of April, 2001, Licensor shall have the right to use the Theatre for commercial purposes after April, 2001, or, if it is earlier determined that the Initial Presentation will not occur prior to the end of April, 2001, after the date of such determination (but not after the date which is the earlier to occur of (i) February 1 in the year of the Initial Presentation, and (ii) the commencement of the Annual Use Period in the year of the Initial Presentation), provided that Academy shall have the right to use the Theatre for up to five

(5) consecutive days to host an event at the Theatre (with set up and clean up included) to "debut" the Theatre following its completion and prior to the Initial Presentation. Any such use of the Theatre for such "debut" shall be subject to all of the terms of this License regarding Academy's use and maintenance of the License Area.

4.8.2 During the License Term. In any calendar year during the License Term, and provided that the Presentation occurs prior to the end of the month of April in such calendar year, Licensor shall not allow the Theatre or Governors Ballroom to be used for the presentation of any other award shows prior to the date of the Presentation. In no event shall the Theatre or Governors Ballroom be used for any award show in which any award relating to movies made for theatrical release is presented. Notwithstanding the foregoing, Licensor may use the Governors Ballroom for (i) presentation of the AFI Life Achievement Award which may be televised, (ii) any untelevised award shows, and/or (iii) any untelevised dinners, parties or other events held in connection with movie award presentations or shows other than the Presentation (whether such other presentations or shows are televised or untelevised).

## SECTION 5.

## UTILITIES AND SERVICES AND EXCULPATION OF LICENSOR

5.1 Basic Utilities and Services. Licensor and Hotel Owner, as applicable, will furnish to Academy heating, air conditioning, and electrical energy used for lighting and power to the License Area, all in such amounts as are reasonably necessary for the operation of the License Area (but not for supplying electrical or other utilities to, e.g., equipment trucks). Such utilities, and any other utilities used by Academy in the License Area during the Annual Use Period shall be at Academy's own cost and expense. If such utilities are not separately metered to the License Area, Licensor and Hotel Owner shall have the right to reasonably estimate the amounts and costs of the utilities used by Academy. In any event, Academy shall pay the costs of such utilities to Licensor or Hotel Owner, as applicable, within thirty (30) days after Licensor's delivery of an invoice therefor to Academy. If Academy performs work outside of the Annual Use Period that involves the use of Project utilities in excess of such utilities as would ordinarily be provided to the portion of the License Area so used by Academy for more than one (1) day, Academy shall pay to Licensor a utility use fee equal to $500.00 per day. In no event shall Licensor or Hotel Owner be liable in damages or otherwise for any failure or interruption of any utility or service and no failure or interruption of any utility or service shall entitle Academy to terminate this License or to stop making any payments due under this License.

5.2 Exculpation of Licensor and Hotel Owner. Academy hereby agrees that neither Licensor nor Hotel Owner shall be liable for, and Academy hereby waives all claims against Licensor and Hotel Owner for, injury to Academy's business or any loss of income therefrom, or for any damage to the goods, wares, merchandise or other property of Academy, Academy's employees, invitees, customers, or any other person in or about the License Area, nor shall Licensor or Hotel Owner be liable for injury to the person of Academy, Academy's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air-conditioning or lighting fixtures, or from any

other cause, whether such damage or injury results from conditions arising upon the License Area, the Hotel or the Project, or from other sources or places, and regardless of whether the cause of such damage or injury, or the means of repairing same is inaccessible to Academy, except to the extent resulting from the gross negligence or willful misconduct of Licensor or Hotel Owner. Neither Licensor nor Hotel Owner shall be liable for any damages arising from any act or neglect of any other licensee, tenant, guest or occupant of Licensor or Hotel Owner.

## SECTION 6.

## REPAIRS, MAINTENANCE AND IMPROVEMENTS TO THE LICENSE AREA; SIGNAGE

6.1 Repairs and Maintenance. Academy shall maintain the License Area in good condition and repair during the portions of the Annual Use Period during which Academy has exclusive use of the corresponding portion of the License Area. On or before the end of each Annual Use Period during the term hereof, Academy shall (i) return the License Area, and other areas of the Project and Hotel used by Academy, to Licensor and Hotel Owner in "broom clean" condition, (ii) make any repairs or replacements necessary to return the License Area, and other areas of the Project and Hotel used by Academy, to the condition it was in as of the commencement of such Annual Use Period, and (iii) **repair any damage to the Project or Hotel caused by Academy or Academy's use of the Project or Hotel, in each instance at Academy's sole cost and expense, reasonable wear and tear excepted. Reasonable wear and tear as stated above shall include normal wear and tear (*i.e.*, wear and tear that would have resulted from the general day-to-day use of the Project and Hotel) as well as normal wear and tear resulting from the staging of the Presentation as currently contemplated by the parties hereto, including through the proper and appropriate use of the equipment in the manner and in the portions of the License Area described in Exhibit B to this Amendment.** Unless otherwise agreed by Licensor in advance, any replacements shall be of the same size, type and quality as the item being replaced. Academy shall be responsible for the obtaining, and expense of, any telephone service and equipment required by Academy, including payments of any deposits therefor, and Academy shall reimburse Licensor for the cost of any janitorial services required by Academy and provided by Licensor during the portion of the Annual Use Period in which Academy has (i) exclusive occupancy of the corresponding portion of the License Area, and (ii) partial access of the License Area, in each instance to the extent such services are attributable to Academy's particular use of the License Area and the cost of providing the same is greater than the cost of providing such services that Licensor would otherwise incur with respect to the License Area.

6.2 Alterations, Additions, and Improvements. Licensor shall, at its sole cost and expense, install the fixtures, equipment, and furnishings to be described in the "Construction Drawings," as that term is defined in the Work Letter. Academy shall at its sole cost and expense, supply and furnish any trade fixtures, equipment and furnishings which are not installed by Licensor pursuant to the Work Letter and are needed for Academy's use of the License Area. All fixtures shall become and remain a part of the License Area and the property of Licensor, regardless of whether the fixtures were installed by Academy or at Academy's expense and shall not be removed by Academy, except that Academy may remove trade fixtures, and, with Licensor's prior approval, which shall not be unreasonably withheld, remove and/or replace

other fixtures on account of obsolescence or technological advance, and, upon Licensor's request, Academy shall remove any other fixtures, equipment or furnishings installed by or on behalf of Academy as designated by Licensor on or before the end of the License Term and repair any damage caused to the License Area or Project by such removal. The timing and manner of completion of any such work, if not performed during the Annual Use Period, shall be approved in advance by Licensor, which approval shall not be unreasonably withheld.

6.3 Academy's Property. All furnishings and other articles of movable personal property installed by or on behalf of Academy and located in the License Area shall remain the property of Academy and may be removed by or on behalf of Academy at any time during the annual Use Period, and, in any event, shall be removed by Academy prior to the end of each Annual Use Period. Academy shall repair, at its sole cost and expense, any damage to the License Area or to the Project resulting from the installation or removal of such property.

6.4 Signage; Identity.

6.4.1 Project and Theatre Identity. Licensor shall have the right to name the project, and the "Theatre Complex," which shall include the physical structure containing the Theatre, but shall not include the interior of the Theatre itself. Academy shall have the right to approve the names given to the Project and the Theatre Complex. Notwithstanding the foregoing, Academy shall not disapprove (i) any name for the Project which is either generic or geographic in nature (e.g., the Hollywood/Highland Project), or which is a derivative of Licensor's name (e.g., the TrizecHahn Project), provided that in no event shall the Project be identified, through signage or other form of identification, by any name related to the industry, or any corporate name or identity which is not then a nationally recognized real estate or real estate management company, or (ii) the names "Ford Center for the Performing Arts" or "AT&T Center for the Performing Arts" or "George Eastman Center for the Performing Arts" or "Thomas A. Edison Center for the Performing Arts" for the Theatre Complex. Except as set forth in Section 9.4.1, below, Academy shall not be required to utilize the name of the Project or the Theatre Complex in connection with the Presentation, the telecast of the Presentation or Academy's use of the Theatre. Furthermore, except as set forth in item (ii), above, Academy may withhold its consent to any name related to the industry (e.g., the Douglas Fairbanks Center), or which is commercial in nature (e.g., the General Motors Center), in its sole discretion. Academy shall have the right to designate a name for the Theatre. Licensor shall not disapprove any name given to the Theatre by Academy that is the name or common name or a former, current or fixture member of the Academy (e.g. the Douglas Fairbanks Theatre), but shall otherwise have the right to disapprove any such name in Licensor's sole discretion. In no event shall Academy extract, as a quid pro quo, any compensation in exchange for designating the name or identity of the Theatre or independently promote the name of the Theatre.

6.4.2 Theatre Identity Signage. In reviewing and approving the Design Development Drawings as provided in the Work Letter, Academy acknowledges that Licensor shall have the right to identify the Theatre Complex by (i) placing a sign bearing the name of the Theatre Complex, no more than three (3) feet wide or high, on the west side of the Orchid Walk entrance portal, positioned in the approximate location as set forth in Exhibit A-1 attached hereto, (ii) placing a sign bearing the name of the Theatre Complex on the top crosspiece of such entrance portal, (iii) placing a sign or identifying marker in the Rotunda Area of the Project, in

the approximate location, and of the approximate size, as set forth on Exhibit A-2, attached hereto, and (iv) subject to the prior approval of Academy with respect to size and positioning, placing a poster display on the south facade of the Project. Commencing two (2) days prior to the Presentation, and continuing through the day of the Presentation, Academy will have the right to drape or otherwise cover the sign referenced in item (ii) above and to use such area for its own signage announcing the Presentation.

6.4.3 Use of Academy Trademarks. Licensor and Hotel Owner agree that, except in connection with a "Best Picture" Award presentation to be located in the Orchid Walk Area, and which shall be subject to Academy's prior approval, not to be unreasonably withheld, delayed or conditioned, neither Licensor nor Hotel Owner shall use, or permit any tenant of the Project, pursuant to its lease, to use, the Oscar statuette or any look-alike statuette; the name or phrases "Oscar(s)," "Oscar Night," "Academy Award(s)," "Academy of Motion Picture Arts and Sciences," "Academy," "A.M.P.A.S.," "Academy Foundation" or "Center for Motion Picture Study"; or any derivative of any such name or phrase (collectively, "Trademarks"). Notwithstanding the foregoing, the terms of this Section 6.4.3 shall not require Licensor to prohibit any of its tenants, pursuant to its lease or otherwise, from using any of such tenant's respective tradenames or trademarks which is a nationally recognized chain or trademark, or a regionally recognized chain or trademark of a company or chain based in the Los Angeles area. Nothing contained herein shall imply any right on the part of Licensor or any of its tenants or invitees to make any use of a Trademark or prohibit Academy from seeking to enforce its rights with respect to the same.

6.4.4 Other Uses of Trademarks. Academy shall entertain discussions with Licensor to allow Licensor to use certain of the Trademarks in connection with a film to be produced by Licensor for presentation in the Theatre to customers and invitees of the Project. The manner of Licensor's use of any Trademarks in such regard shall be subject to the prior approval of Academy, which approval may be granted or withheld in Academy's sole discretion.

6.4.5 Hotel Identity. Licensor shall not allow the Hotel to carry any name related to the industry, or to carry any corporate name or identity which is not then a nationally recognized hotel enterprise.

## SECTION 7.

## INDEMNITY AND INSURANCE

7.1 Indemnification and Waiver. Academy shall indemnify, defend, and protect Licensor and Hotel Owner, and their respective partners, lenders, parent and subsidiary corporations, and their respective officers, directors, shareholders, beneficiaries, agents, servants, employees, and independent contractors (collectively, the "Licensor Parties"), and hold Licensor Parties harmless from any and all loss, cost, damage, expense, and liability (including, without limitation, court costs and attorneys' fees) incurred in connection with or arising from Academy's use of the Project or Hotel, except to the extent any such loss, etc., is attributable to Licensor's or Hotel Owner's gross negligence or willful misconduct. Licensor and Hotel Owner shall indemnify, defend, and protect Academy, its partners, subsidiary corporations, and their respective officers, directors, members, governors, beneficiaries, agents, servants, employees,

and independent contractors (collectively, the "Academy Parties"), and hold Academy Parties harmless from any and all loss, cost, damage, expense, and liability (including, without limitation, court costs and attorneys' fees) incurred in connection with or arising from Licensor's or Hotel Owner's gross negligence or willful misconduct. Licensor Parties shall not be responsible for any breaking and entering into the License Area, or for the theft of any property owned, rented, used or in any way connected with Academy or anyone associated with Academy while located on or adjacent to the License Area. The provisions of this Section 7.1 shall survive the expiration or sooner termination of this License with respect to any claims or liability occurring prior to such expiration or termination.

7.2 Insurance. Academy shall maintain, during each Annual Use Period throughout the License Term, and at its own cost and expense, commercial general liability insurance, including public liability and property damage insurance in the amount of Ten Million Dollars ($10,000,000) per occurrence for personal injuries or deaths of persons occurring in or about the License Area, Hotel or Project including a Broad Form Commercial General Liability endorsement covering Academy's contractual liability, including the insuring provisions of this Agreement and the performance by Academy of the indemnity agreements set forth in Section 7.1 hereof. Additionally, if Academy performs work at the Project or Hotel outside of any Annual Use Period, Academy shall maintain, or require its contractors to maintain, commercial general liability insurance in connection with such work in amounts, and to the extent, that such insurance is customarily carried by contractors performing similar work in projects similar to the Project. Licensor and Hotel Owner shall maintain during each Annual Use Period throughout the License Term, and at its own cost and expense, commercial general liability insurance, including public liability and property damage insurance, of the types and in the amounts required pursuant to the Reciprocal Easement Agreement identified on Exhibit C hereto, including a Broad Form Commercial General Liability endorsement covering Licensor's and Hotel Owner's contractual liability, including the insuring provisions of this License and the performance by Licensor and Hotel Owner of the indemnity agreements set forth in Section 7.1 hereof.

7.3 Form of Policies. The minimum limits of policies of insurance required under this License shall in no event limit the liability of any party under this License. All policies required hereunder shall (i) name the other parties hereto and, with respect to the insurance obtained by Academy, any first mortgage lender to the Project or Hotel and any third-party manager of the Project or Hotel, which it so specifies, as well as, if requested by Licensor, the City of Los Angeles (or such City agency or subdivision as may have an ownership interest in any portion of the Project), the Community Redevelopment Agency of the City of Los Angeles, and the Municipal Improvement Corporation of the City of Los Angeles, as an additional named insured; (ii) be issued by an insurance company with a Best's rating of A-/IV or better; (iii) be primary insurance as to all claims thereunder and provide that any insurance carried by the additional insured is excess and noncontributing with any insurance requirement of the insured; (iv) provide that such insurance shall not be canceled or coverage changed unless thirty (30) days prior written notice shall have been given to the additional insured and, with respect to the insurance obtained by Academy, the first mortgage lender to the Project or Hotel specified by Licensor or Hotel Owner; and (v) contain a cross liability endorsement or severability of interest clause acceptable to the additional insured. Each party hereto shall deliver a copy of its policy or

policies or a certificate or certificates thereof to the additional insured on or before the commencement of each Annual Use Period.

7.4 Subrogation. The parties intend that their respective property loss risks shall be borne by insurance carriers to the extent above provided, and each party hereby agrees to look solely to, and seek recovery only from, their respective insurance carriers in the event of a property loss to the extent that such coverage is agreed to be provided hereunder or if higher, to the extent such insurance has been obtained. The parties each hereby waive all rights and claims against each other for such losses, and waive all rights of subrogation of their respective insurers, provided such waiver of subrogation shall not affect the right to the insured to recover thereunder from the insurer. The parties agree that their respective insurance policies are now, or shall be, endorsed such that the waiver of subrogation shall not affect the right of the insured to recover thereunder.

## SECTION 8.

## PERSONAL LICENSE

It is agreed between Licensor and Academy that this License is personal to Academy and shall not inure to the successors or assigns of Academy, other than an entity succeeding to substantially all of the assets of Academy (including the Trademarks) which succeeds to the mission of the Academy and, in particular, the Presentation. No other person or entity may use any portion of the License Area or conduct Academy's business and any "Transfer," as defined below, shall be null and void and of no further force and effect. As used herein, "Transfer" shall include any attempts to mortgage, pledge or otherwise encumber this License or the License Area or any part thereof in any manner whatsoever or the assignment or other transfer of this License or offer to advertise to do so, whether voluntarily, involuntarily, by operation of law or otherwise. Any dissolution of Academy's existence, other than in connection with the succession to substantially all of the assets of Academy (including the Trademarks) by an entity which succeeds to the mission of the Academy and, in particular, the Presentation, shall be deemed a Transfer of this License subject to the above prohibition.

## SECTION 9.

## PRODUCTION AND PRESENTATION OF ACADEMY AWARDS SHOW

9.1 The Presentation. During the License Term, except as otherwise expressly set forth in this License, Academy agrees that it shall use the License Area only for the purposes of preparing for and presenting its annual awards show, commonly known as "The Academy Awards Show," and the traditional honoree's banquet following such show, commonly known as the "Governors Ball," and thereafter dismantling and removing the trade fixtures, equipment and other items of personal property used in connection therewith. The Academy Awards Show and Governors Ball are referred to herein collectively as the "Presentation". The Presentation shall be held annually during the month of March or April. Academy shall determine the precise date on which the Presentation will be held (the "Presentation Date") on or before July 1 of the calendar year preceding the date of the Presentation, and shall notify Licensor of such

Presentation Date immediately following such determination. During the License Term, except as provided in Sections 1.3, 10.5, or 11.4, Academy shall not use any other venue other than the License Area for the Presentation.

9.2 Access to and Use of License Area. During each Annual Use Period, Academy shall have the right to partial access to, and/or exclusive use of, the various portions of the License Area for the periods set forth herein.

| License Area Sub Area | Partial Access | Exclusive Access |
|---|---|---|
| **Theatre Area** | **28 days prior, 8 days after** | **21 days prior, 4 days after** |
| **Governors Ballroom Area** | | |
| • **Ballroom(s), including prefunction area, storage rooms, elevator and access** | **14 days prior, 4 days after** | **12 days prior, 2 days after** |
| • **Kitchen Area** | **None.** | **5 days prior, 2 days after** |
| • **Access and Loading areas (as designated on Exhibit A)** | **14 days prior (1 bay, 6-7 hrs/day), 6 days prior (2 bays, 4-5 hrs/day), 2 days after (2 bays, 4-5 hrs/day)** | **Close of Business* the day prior, 6 a.m. the day after** |
| **Pool Deck** | **None.** | **Close of Business the day prior, 6 a.m. the day after** |
| **Arrivals Area** | **As provided in the Operational Addendum.** | **As provided in the Operational Addendum.** |
| **East Retail Loading Dock (Can be used after hours)** | **14 days prior (1 bay, 6-7 hrs/day), 6 days prior (2 bays, 4-5 hrs/day), 2 days after (2 bays, 4-5 hrs/day)** | **Close of Business the day prior, 6 a.m. the day after** |
| **Orchid Walk Area** | | |
| • **Forecourt** | **21 days prior, 5 days after** | **4 days prior** |
| • **Lower Walkway** | **21 days prior, 5 days after** | **4 days prior** |
| • **Upper Walkway** | **As necessary to install cable and lighting, to access cable ways, and to otherwise prepare for the Presentation** | **9 p.m. the day prior, 6 a.m. the day after** |
| • **Lower Rotunda** | **14 days prior, 1 day after** | **9 p.m. the day prior, 6 a.m. the day after** |
| • **Upper Rotunda** | **7 days prior, 1 day after** | **9 p.m. the day prior, 6 a.m. the day after** |
| **Hollywood Boulevard Frontage** | **14 days prior, 1 day after** | **Close of Business the day prior, 6 a.m. the day after** |
| **Production Access Area** | **28 days prior, 8 days after** | **21 days prior, 2 days after** |
| **Press Area** | **None.** | **12 days prior, 5 days after** |
| **Valet Parking Area** | **None.** | **10 days prior, 2 days after** |
| **Security Offices Area** | **None.** | **28 days prior, 8 days after** |

| License Area Sub Area | Partial Access | Exclusive Access |
|---|---|---|
| **Hotel Meeting Rooms** | **None.** | **9 days prior, 2 days after** |
| • **Business Center** | **None.** | **Close of Business the day prior, 6 a.m. the day after** |

In addition to such use during each Annual Use Period, Academy shall be permitted reasonable access to the Project for the purpose of laying power and communication cables, and making related connections to such cables, provided that (i) for such purposes, to the extent practicable, Academy shall use the dedicated cable ways installed in the Project for such purposes, (ii) except at the times and in the portions of the License Area that Academy has exclusive use, Academy shall not leave cable exposed and unattended without Licensor's prior approval, and (iii) such access shall not unreasonably interfere with the use of or access from or to other occupants or invitees of the Project.

9.2.1 Partial Access. **For the purposes of this License, "partial access" shall mean such access as is necessary to enable Academy to perform its preparatory work for the Presentation without unreasonably interfering with the use of or access of the Project or the License Area by other occupants or invitees of the Project. Notwithstanding the foregoing, with respect to (i) the portions of the Hollywood Boulevard Frontage and the Orchid Walk Area included in the Arrivals Area during the period commencing fourteen (14) days prior to the Presentation, and continuing through the date which is five (5) days after the Presentation, and (ii) the ballroom areas of the Governors Ballroom Area during the entire period of partial access to such areas prior to and after the Presentation, "partial access" shall mean such access as is necessary to enable Academy to prepare for the Presentation, including, if necessary, temporary prohibitions on other uses, or temporary closures, of all or portions of such Arrivals Area and Governors Ballroom Area; provided that in performing such work, Academy shall interfere with the use of or access to the Project or the License Area by other occupants or invitees of the Project as little as is practicable. Additionally, during the period of Academy's exclusive access to the Orchid Walk Area (as determined in accordance with the terms of Section 4.1.3 of the Operational Addendum), Academy shall allow the retail tenants whose stores line the Orchid Walk to use the Orchid Walk as an emergency exit from those stores, and shall not take any actions that would prevent such use (*i.e.*, by blocking such exitways), as necessary to allow such stores to remain open during such exclusive use period (not including the day of the Presentation).**

9.2.2 Initial Presentation Phase-In Period. Notwithstanding the time periods set forth above in this Section 9.2, and in Section 9.3, below, Licensor and Hotel Owner agree that, in connection with the Initial Presentation only, each such time period shall be increased by twenty-five percent (25%) (e.g., a twelve day period shall be extended to be a fifteen day period). Any partial days resulting from such 25% increase shall be "rounded up" to a full day. Notwithstanding the foregoing, in no event shall the time periods relating to (i) the closure of the project on the Presentation Date, as set forth in Section 9.5, below, be extended pursuant to this Section **[clause (ii) deleted]** or (iii) the period of Academy's use of the Press Area be extended to commence prior to the date which is fourteen (14) days prior to the date of the Presentation.

Additionally, with respect to the time periods for Academy's use of the Parking Areas, as set forth in Section 9.3.1, below, the twenty-five percent (25%) increase shall apply only to the time periods during which Academy is provided 720 or 1100 spaces (which time periods shall be increased to 10 days prior to the Presentation, and 3 days prior to the Presentation, respectively).

9.2.3 **Review of Required Annual Use Period. From time to time during the License Term, Academy will review the actual amount of time required for partial access and/or exclusive use of the various portions of the License Area and the Hawthorn Lot. If Academy reasonably determines that it requires less (or with respect to the partial access period of the Hollywood Boulevard Frontage only, more) time than the time periods granted by this License in order to adequately prepare for the Presentation without any material increase in costs or decrease in efficiency, Academy shall notify Licensor of such fact, and Academy and Licensor will mutually agree on a modified access schedule. With respect to the Hollywood Boulevard Frontage, the partial access period shall not be increased by more than five (5) days in the aggregate.**

9.3 Parking.

9.3.1 Parking Spaces Provided. During the Annual Use Period, Licensor shall provide Academy with parking spaces in the Parking Areas, in the amounts set forth below, at the lowest parking rate (which may include applicable taxes) then generally charged to any user of similar areas of the Project parking facilities. Notwithstanding the foregoing, Academy shall not be required to pay any amounts for any non-parking uses of the Parking Area as contemplated by the terms of this License (i.e., for the Security Offices Area).

| Period of Annual Use Period | Number of Parking Spaces Provided |
|---|---|
| Commencing 21 days prior to the Presentation Date | 50 |
| Commencing 14, days prior to the Presentation Date | 80 |
| Commencing 10 days prior to the Presentation Date | 130 |
| Commencing 7 days prior to the Presentation Date | 720 |
| Commencing 2 days prior to the Presentation Date | 1100 |
| During the 2 days after the Presentation Date | 175 |

Academy and Licensor shall cooperate reasonably and in good faith in order to minimize the aggregate number of parking spaces required in the Project by, for example, using valet parking and/or offsite parking arranged by Licensor and approved by Academy, which such approval shall not be unreasonably withheld or delayed. The costs of offsite parking areas used by Academy shall be paid by Academy or the persons utilizing such areas. Such costs shall be based on the prevailing parking rates charged in such areas.

9.3.2 Exclusive Use of Parking Areas. During the period commencing upon the close of business of all of the tenants of the Project on the day prior to the Presentation Date, and continuing until 2:00 a.m. on the day after the Presentation Date, Academy shall have the exclusive use and control of the Parking Areas, subject to the terms of Section 9.3.4, below, regarding the use of portions of the Parking Area by the owners of the Hotel, at no charge to Academy.

9.3.3 General Conditions. In connection with Academy's use of the Parking Area as set forth above, (but not in connection with Academy's use under Sections 9.2 or 9.3.2, above), Academy shall abide by all reasonable rules and regulations which are prescribed from time to time for the orderly operation and use of the Parking Area and shall cooperate in ensuring that Academy's employees and visitors also comply with such rules and regulations. Licensor specifically reserves the right to change the size, configuration, design, layout and all other aspects of the Parking Area at any time (provided that such changes do not materially interfere with the preparation and staging of the Presentation, and provided that no such work shall occur during the Annual Use Period) and Academy acknowledges and agrees that Licensor may, without incurring any liability to Academy, from time to time (but not during the Annual Use Period), close-off or restrict access to the Parking Area, for purposes of permitting or facilitating any such construction, alteration or improvements. Licensor may delegate its responsibilities hereunder to a parking operator in which case such parking operator shall have all the rights of control attributed hereby to the Licensor (provided that such operator shall be bound by all of the obligations of Licensor hereunder).

9.3.4 Hotel Parking Uses. Academy acknowledges that the Hotel Owner may not be able to reasonably procure parking areas outside of the Project, and may, therefore, be required to continue to use up to three hundred (300) spaces in the Parking Area on the day of the Presentation. Any such use shall be valet only, and members of the public shall not be allowed access to the Parking Areas in connection with such use. As a condition of such use of the Parking Area by the Hotel, Licensor and/or the Hotel Owner shall comply with and use the valet parking security plan implemented by Academy in Academy's sole, good faith discretion, which shall provide that any cars parked in the Parking Areas during the Presentation will be subject to inspection by Academy, including inspection of the trunk of such cars. Any incremental costs resulting from allowing such use of the Parking Area by the Hotel, including costs of additional valet or security personnel, shall be borne by Licensor.

9.3.5 Valet/VIP Parking. The first 130 parking spaces provided to Academy shall be provided on Level P2, in contiguous blocks of spaces. Academy shall have the right, at Academy's sole cost and expense, to temporarily mark such spaces as reserved spaces for the use of Academy, and to individually identify reserved "VIP" spaces within such areas.

9.4 Marketing Agreements.

9.4.1 Broadcast Agreements. In each of the broadcast agreements entered into by Academy with respect to the Presentation, Academy shall include a provision requiring broadcasters to describe the Presentation as the "Academy Awards from the [approved name of the Theater, e.g. Bob Hope Theatre] in the [approved name of the Theater Complex, e.g. Ford Center for the Performing Arts] from Hollywood and Highland, California," or such other description approved in writing by Licensor. Notwithstanding the foregoing, Academy may, at its option, omit the name of the Theatre, but not the name of the Theatre Complex or the Project, from the foregoing description.

9.4.2 Presentation Tickets. Academy shall allow Licensor to purchase, at face value and subject to the same restrictions imposed on other holders of tickets, (i) twenty (20) tickets to each Presentation held at the Project during the License Tenn, and, (ii) if the Theatre as finally constructed contains more than 3335 seats, ten (10) additional tickets to the Academy Awards Show, but not the Governors Ball, on the same terms. Academy shall provide such tickets to the Academy Awards Show in blocks of not less than two (2) contiguous seats (and shall endeavor to provide blocks of not less than four (4) contiguous seats), and shall provide such tickets to the Governors Ball in not more than three (3) tables. In no event shall Licensor sell such tickets, or give away such tickets in connection with any promotions or charitable event. Licensor may, however, invite sponsors, major tenants or advertisers at the Project to attend the Presentation using Licensor's tickets, provided that such individuals agree not to sell or otherwise give away the tickets, and further provided that all invitees shall remain subject to the same restrictions imposed on other holders of tickets. Additionally, Licensor may make certain of its tickets available to any permitted recipient of the naming rights of the Theatre Complex, subject to all of the limitations set forth herein.

9.4.3 Additional Events. Academy will entertain discussions regarding holding other ceremonies leading up to the Presentation, such as the nominee announcements, fashion shows and the Scientific and Technical Awards Dinner, at the Project, and in such context, Licensor shall be given the opportunity to purchase a reasonable allocation of additional tickets to such ceremonies.

9.5 Project Closure. Licensor shall maintain operational control of the Project throughout the Annual Use Period and Presentation Date, and shall cause other tenants and occupants of the Project, as well as the adjacent "Chinese Theatre," to close for business to the public from the normal closing business hours of the day preceding the Presentation, and to remain closed until such businesses' normal opening hours on the day after the Presentation Date. Other than in connection with (i) its general maintenance and security operations at the Project, and (ii) the operation of certain of the Project restaurants on the evening of the Presentation to serve Academy's invitees only, Licensor shall not use the Project for any purpose on the day of the Presentation without the prior approval of Academy, which approval may be withheld in Academy's sole discretion.

9.6 **Offsites. Licensor shall obtain, prior to the Initial Presentation as set forth in Section 1.3 of this License, the consents, permits and agreements from third parties identified on Exhibit D attached to this Amendment as Licensor's primary responsibility**

(the "Licensor Off-Site Conditions"). Academy shall use its best efforts to obtain the consents, permits and agreements from third parties identified on Exhibit D as Academy's primary responsibility (the "Academy Off-Site Conditions") for the Initial Presentation prior to January 1, 2002. If Academy is unable to satisfy the Academy Off-Site Conditions by such date, Academy shall have the right, within five (5) business days thereafter to notify Licensor of such failure and to stage the Initial Presentation at a Back-Up Venue. Such notification by Academy shall release Licensor from any obligation to make the Project available to Academy to stage the Initial Presentation at the Project. In the event Academy fails to deliver such notice by such date, the Academy Off-Site Conditions shall be deemed to have been satisfied. In no event shall Academy be entitled to recover Back-Up Venue Termination Costs or Termination Damages on account of a failure of an Academy Off-Site Condition within respect to the Initial Presentation.

With respect to any Presentation after March, 2002, each of the Licensor Offsite Conditions must be satisfied on or before the date which is nine (9) months prior to the date of the applicable Presentation, or Licensor must demonstrate to Academy on or before such date that such Conditions will be satisfied in a timely manner and so as not to cause any interference with the preparations for, and staging of the Presentation, and in any event prior to the commencement of the applicable Annual Use Period. All of the consents, permits and agreements required to satisfy the Licensor Offsite Conditions are subject to the prior approval of Academy, which approval shall not be withheld if, in the good faith opinion of Academy, they enable Academy to prepare for and present the Presentation within the Annual Use Period with (i) no material interference, other than as contemplated pursuant to the License during any period of partial access to a License Area, or that is inherent in the design of the Project as a mixed-use project and (ii) no material decrease in efficiencies from that currently contemplated. If Licensor is unable to satisfy the Licensor Offsite Conditions, as set forth herein, or Academy is unable to satisfy the Academy Offsite Conditions, in either instance as necessary to meet the requirements set forth above at least nine (9) months prior to the date of the applicable Presentation, Academy shall have the right to secure a Back-Up Venue in which to stage the applicable Presentation. If all such Offsite Conditions are not satisfied, as set forth herein, on or before the Outside Compliance Date, Academy shall have the right, within five (5) business days after the Outside Compliance Date, to notify Licensor of such failure to meet the Offsite Conditions, and to stage such Presentation at the Back-Up Venue. Such notification by Academy shall release Licensor from any obligation to make the Project available to Academy to stage the applicable Presentation. In the event Academy fails to deliver such notice within five (5) business days after the Outside Compliance Date, such Offsite Conditions shall be deemed to have been satisfied. In the event all such Conditions are satisfied, or deemed satisfied as set forth above, then, notwithstanding the terms of any agreement entered into by Academy with respect to the Back-Up Venue, Academy shall stage such Presentation at the Project and, if the condition leading to the securing of the Back-Up Venue was a Licensor Offsite Condition, Licensor shall reimburse Academy for its Back-Up Venue Termination Costs. Academy will use its best efforts to negotiate a fee structure for the Back-Up Venue that will enable Licensor to minimize the Back-Up Venue Termination Costs.

**Each party hereto shall reasonably cooperate with the party primarily responsible for obtaining a consent, permit or agreement hereunder, including under this Section 9.6, but at no third-party out-of-pocket cost to such cooperating party, in each instance to facilitate the Presentation.**

**In the event that an Offsite Condition prevents the staging of the Presentation at the Project for more than two (2) consecutive years, either party shall have the right to terminate this License by giving written notice of such termination to the other within thirty (30) days after the determination has been made, with respect to a particular Presentation, that an Offsite Condition prevents the staging of such Presentation at the Project. Upon termination of this License by either party pursuant to the terms of this Section 9.6 as a result of a failure of a Licensor Offsite Condition, Licensor shall pay to Academy the Termination Damages in accordance with the terms of Section 12.4 of the License. If either party terminates this License pursuant to the terms of this Section 9.6 as a result of a failure of an Academy Offsite Condition, Licensor shall not be required to pay the Termination Damages.**

9.6.1 **Hawthorn Lot. Academy agrees that the Licensor Offsite Condition originally identified as the "Hawthorn Lot" on Exhibit D to the License (the "Hawthorn Lot Condition") may be satisfied by Licensor arranging for the use of properties of suitable size and location to meet the Academy's needs for staging and operation of press and international broadcaster facilities, including satellite and microwave vehicles placed in an area suitable for satellite and microwave transmission, production trucks, trailers, support vehicles and tents, all as determined in Academy's reasonable discretion, and that the precise method of satisfying such Condition may differ from year to year. Notwithstanding the foregoing, Academy hereby agrees that the Hawthorn Lot Condition may be satisfied by Licensor with respect to any Presentation by Licensor arranging for Academy to have the exclusive use of any of the following groupings of properties for the exclusive access period of the applicable Annual Use Period; provided, however, that no such property, and no property adjacent thereto, has been altered or improved from its present condition, other than as contemplated in Section 9.6.1(D), below, in a manner that would prevent such property from being certified by National TeleConsultants, or other such consultant mutually agreed to by Licensor and Academy, as being suitable for microwave and satellite reception and broadcasting. For each Annual Use Period, Academy shall be entitled to use such property or properties for (i) nine (9) days prior, and two (2) days after, the Presentation with respect to the property to be used for the international broadcasters, and (ii) three (3) days prior, and one (1) day after, the Presentation with respect to the property to be used for satellite parking for press vehicles; increased, however, for the Initial Presentation as contemplated in Section 9.2.2 of the License; and subject to the provisions of Section 9.2.3 of the License Agreement, as amended hereby, with respect to subsequent Presentations.**

A. **Quality/CUNA/Hawthorn. The surface parking lot currently leased and operated by Quality Parking Service, Inc., as shown on Exhibit F (the "Quality Lot"), and the surface parking lot owned by CUNA Mutual Life Insurance Company, as shown on Exhibit F attached (the "CUNA Lot"), together with a closure by the City of Hawthorn Avenue between Highland Avenue and Orange Avenue, subject to a fire lane**

**remaining open, together with the granting of the right to park press vehicles on the closed portions of Hawthorn Avenue (the "Hawthorn Closure").**

**B. Grant/CUNA/Hawthorn. The use of the surface parking lot owned by Yorkburry Investments, Inc., operated by Grant Parking, as shown on Exhibit F (the "Grant Lot"), together with the use of the CUNA Lot and the Hawthorn Closure.**

**C. Hollywood ITC/Hawthorn. The use of a new parking structure constructed on the Quality Lot, CUNA Lot, and Grant Lot, suitable for use by Academy in accordance with the criteria set forth above (the "ITC Structure"), together with the Hawthorn Closure. For the one Annual Use Period during which the ITC Structure may be under construction, the Academy shall accept the use of the Hollywood High School athletic field as contemplated in the original Exhibit D to the License Agreement.**

**D. Highland Properties/CUNA/Hawthorn. The use of the Highland Properties (as defined below) together with the CUNA Lot and the Hawthorn Closure. "Highland Properties" shall mean the properties known as 1639 and 1651 Highland Avenue, provided that all structures located thereon, other that the existing billboard structure, shall have been demolished, and the properties shall have been properly paved for use as a parking lot.**

**E. Grant/Highland/Hawthorn. The use of the Grant Lot, the Highland Properties, and the Hawthorn Closure.**

**F. Quality/Highland/Hawthorn. The use of the Quality Lot, the Highland Properties, and the Hawthorn Closure.**

**G. Quality/Grant. The use of the Quality Lot and the Grant Lot.**

**Notwithstanding the foregoing, prior to satisfying the Hawthorn Lot Condition by the use of any option which includes the use of the Highland Properties, National TeleConsultants, or other such consultant mutually agreed to by Licensor and Academy, shall have certified that the properties used to make up such option, taken as a whole, shall have sufficient areas suitable for satellite and microwave transmission to enable Academy to use such properties for staging and operation of press and international broadcast facilities in a manner consistent with its historical configuration.**

9.6.2 **Cost. The out-of-pocket costs incurred by Licensor, exclusive of any amounts paid to any of its affiliates, in providing for the use of the properties in satisfaction of the Hawthorn Lot Condition (the "Parking Costs") shall be split equally between Academy and Licensor; provided, however, that Academy's share of the Parking Costs shall not exceed (i) $2,000 per day for the use of the CUNA Lot, (ii) $2,000 per day for the use of the Quality Lot, or (iii) $3,000 per day for the use of the Grant Lot; provided further, however, that each of such amounts may be increased by 5% per year following the March, 2002, Presentation. If at any time during the License Term, the Highland Properties are no longer owned or controlled by Licensor or any of its affiliates, or the ITC Structure is developed on one or more of the properties, the out-of-pocket costs incurred by**

**Licensor in making either of such properties available to Academy shall likewise be split equally between Academy and Licensor. Notwithstanding the foregoing, if Licensor has previously secured a long term right to use certain parking lots or other areas in satisfaction of the Hawthorn Lot Condition, for the time periods set forth in Section 9.6.1, above (the "Original Time-Periods"), then, notwithstanding any reduction of such time periods as set forth in Section 9.2.3, Academy shall continue to have the obligation to bear the portion of the costs of obtaining the rights to use such areas during the Original Time Periods.**

9.6.3 **Street Closures. As set forth in Exhibit D attached hereto, the Offsite Condition known as the "Street Closure Condition" is an Academy Offsite Condition, and, in accordance with the terms of Section 9.6, above, the failure of Academy to satisfy such condition may allow Academy to secure a Back-Up Venue, and, if applicable, stage a particular Presentation at a Back-Up Venue. Notwithstanding the foregoing, in the event that, at any time during the License Term, Licensor obtains an appropriate and binding Development Agreement from the City of Los Angeles to the effect that the City will provide either (i) a street closure plan which will allow the Academy to stage the Presentation at the Project within the Annual Use Period with (A) no material interference, other than as contemplated pursuant to the License during any period of partial access to the License Area, and (B) no material decrease in efficiencies from that currently contemplated, or (ii) a specific street closure plan for future Presentations which has been approved in advance by Academy, then, during any year of the License Term in which such agreement remains in effect, the Street Closure Condition will be deemed satisfied, and Academy shall have no right to secure a Back-Up Venue or stage the Presentation at a Back-Up Venue, in each case because of a failure of the Street Closure Condition.**

9.6.4 **Satisfied Conditions. The Offsite Conditions known as (i) "Madison Lot" and (ii) "Street Furniture," as listed in the original Exhibit D to the License Agreement, have been satisfied, and are no longer Offsite Conditions; and the Offsite Condition known as "Cable Pathways" has been satisfied except for the completion of a "signal interference" test to the satisfaction of Academy, and once such test has been so completed, the "Cable Pathways" Condition shall no longer be an Offsite Condition.**

9.7 Security Concerns. Licensor and Academy shall cooperate reasonably and in good faith to coordinate the provision of security and access control services during each Annual Use Period and in connection with each Presentation. Provided that Licensor is not denied access to the Project management and security offices, and except in the event of an emergency, Licensor shall require its security personnel to defer to those of Academy during the period the project is otherwise closed pursuant to Section 9.5.

9.8 Hotel Uses. If Hotel Owner provides to Academy an arrangement regarding the use of hotel rooms as favorable to Academy as its current arrangement with Hilton, then, provided that (i) Academy uses commercially reasonable efforts to promote the Hotel for use by the media attendees and other personnel or entities which participate in the Presentation, and (ii) Academy gives the Hotel a promotional mention at the end of the broadcast of the Presentation, Hotel Owner will provide Academy fifty (50) room nights at the Hotel free of charge, and one hundred fifty (150) room nights at the Hotel at half rates during the Presentation. If the

conditions in items (i) and (ii) above are not met by Academy, and irrespective of whether Hotel Owner provides Academy an arrangement regarding the use of hotel rooms as favorable to Academy as its current arrangement with Hilton, Hotel Owner will provide Academy with two hundred (200) room nights at the Hotel at rates no greater than the Hotel's standard prevailing rates. Additionally, if the Hotel Renovations have not been sufficiently completed to allow Hotel owner to provide the rooms required pursuant to this Section 9.8, Licensor and Hotel Owner shall use commercially reasonable efforts to obtain rooms at other hotels in the reasonable vicinity of the Project for the use of Academy and its invitees, at the prevailing rates generally charged by such other hotels.

9.9 **Billboards and Electronic Message Boards. During the seven (7) day period prior to the Presentation, neither (i) the vertical advertising billboard located on the corner of Hollywood Boulevard and Highland Avenue, (ii) the scrolling electronic message board to be located on the exterior of the Project, nor (iii) any billboard, electronic or other signs which are (a) located on or visible from the Hollywood Boulevard exterior of the Project or (b) on or visible from the Pathway, including elevator signs, shall be used to (x) advertise any movie, (y) advertise any motion picture company, or (z) advertise any theme park or similar attraction carrying the name of any motion picture company.**

## SECTION 10.

## RECONSTRUCTION

10.1 Destruction Due to Risks Covered by Insurance. In the event of damage to the License Area and/or the Project by peril fully covered by Licensor's or Hotel Owners insurance on the Project, exclusive of Licensor's self-insured retention, Licensor shall notify Academy, as soon as reasonably practicable, of the estimated period required to repair such damage, and shall, within a period of one hundred twenty (120) days after the date of such damage, commence repair, reconstruction and restoration of the License Area and prosecute the same diligently to completion, in which event this License shall continue in full force and effect. Notwithstanding the foregoing, in the event of any destruction to the Project to an extent of at least twenty percent (20%) of the then full replacement cost of the Project as of the date of destruction, Licensor shall have the option to terminate this License upon giving written notice to Academy of exercise thereof as soon as practicable and in any event within one hundred twenty (120) days after such destruction.

10.2 Destruction Due to Risks Not Covered by Insurance. In the event the License Area shall be damaged to any material extent as a result of any casualty not fully covered by Licensor's insurance, exclusive of Licensees self-insured retention, Licensor may, within one hundred twenty (120) days following the date of such damage, commence repair, reconstruction or restoration of the License Area and/or the Project and prosecute the same diligently to completion, in which event this License shall continue in full force and effect, or, within such one hundred twenty (120) day period, elect not to so repair, reconstruct or restore the License Area and/or the Project, in which event this License shall terminate. In either such event Licensor shall give Academy written notice of its intention as soon as practicable and in any event within such one hundred twenty (120) day period.

10.3 Improvements and Waiver of Termination. Notwithstanding anything to the contrary contained herein, in no event shall Licensor be required to restore, repair or reconstruct any alterations, additions or improvements made by Academy to the License Area. Academy waives any right to terminate this License under Sections 1932 and/or 1933(4) of the Civil Code of California or any similar or superseding law.

10.4 Mutual Release. Upon any termination of this License under this Section 10, the parties shall be released thereby without further obligations to the other party coincident with the surrender of possession of the License Area to Licensor, except for items which have accrued and are unpaid prior thereto.

10.5 Basic License Fee Abatement During Reconstruction. In the event that, in Academy's good faith determination, repair, reconstruction and restoration of the License Area or Project as herein provided will prevent Academy from using the License Area for the purposes set forth herein during the Annual Use Period, the Basic License Fee to be paid under this License shall be abated for the entire year of the License Term in which such Annual Use Period occurs (and, if previously paid, refunded to Academy), and Academy will be free to seek an alternative venue at which to stage the Presentation during such year. In the event that the repair, reconstruction and restoration of the License Area is reasonably likely to prevent Academy from staging the Presentation at the Project for more than two (2) consecutive years, Academy shall have the right to terminate this License. Academy shall not be entitled to any compensation or damages from Licensor for interference with Academy's ability to conduct its business or for loss in the use of the whole or any part of the License Area during the Annual Use Period, Academy's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

10.6 Disputes Over Amount of Damage. In the event of damage or destruction as identified in Section 10.1 and/or Section 10.2, Licensor shall estimate the extent of damage and notify Academy within thirty (30) days after the occurrence thereof. Should Academy dispute the accuracy of such estimate, and so notify Licensor within fifteen (15) days after receipt of Licensor's notice, Licensor shall retain, at Academy's cost and expense, a disinterested M.A.I. appraiser who shall evaluate the aforementioned damage. The determination of such appraiser shall be binding upon the parties.

## SECTION 11.

## EMINENT DOMAIN

11.1 Complete Taking. If the whole of the Project or the License Area is taken by condemnation, sale in lieu of condemnation, or in any other manner for any public or quasi-public use or purpose (collectively, "Eminent Domain"), this License shall terminate as of the earlier of the date of vesting of title on such taking or the date that the condemning purchasing authority takes possession (the "Date of the Taking").

11.2 Partial Taking. If only a portion of the Project or the License Area is taken by Eminent Domain, this License shall be unaffected by such taking, except that if (i) twenty percent (20%) or more of the Project or any material portion of the License Area shall be so

taken, Licensor may terminate this License by giving Academy notice to that effect as soon as practicable and in any event within one hundred twenty (120) days after the Date of the Taking and this License shall terminate as of the date that such termination notice is delivered. If a portion of the Project or the License Area is taken which will have a material negative impact on the image of the Academy or the Presentation or, in the good faith opinion of Academy, prevent Academy from preparing for and presenting the Presentation within the Annual Use Period with (i) no material interference, other than as contemplated pursuant to the License during any period of partial access to a License Area, or that is inherent in the design of the Project as a mixed-use project and (ii) no material decrease in efficiencies from that currently contemplated, then, in any such event, Academy may terminate this License by giving Licensor notice to that effect as soon as practicable and in any event within one hundred twenty (120) days after the Date of the Taking and this License shall terminate as of the date that such termination notice is delivered.

11.3 Award. Licensor and Hotel Owner, as applicable, shall be entitled to receive the entire award or payment in connection with any taking of the License Area, without deduction for any interest vested in Academy by this License. Academy hereby expressly assigns to Licensor all of its right, title and interest in and to every such award or payment, except that Academy shall be entitled to any award expressly granted for the taking of Academy's Personal Property.

11.4 Basic License Fee Abatement During Reconstruction. In the event that, in Academy's good faith determination, repair, reconstruction and restoration of the License Area or Project relating to a taking by Eminent Domain will prevent Academy from using the License Area for the purposes set forth herein during the Annual Use Period, the Basic License Fee to be paid under this License shall be abated for the entire year of the License Term in which such Annual Use Period occurs (and, if previously paid, refunded to Academy), and Academy will be free to seek an alternative venue at which to stage the Presentation during such year. In the event that such repair, reconstruction and restoration of the License Area is reasonably likely to prevent Academy from staging the Presentation at the Project for more than two (2) consecutive years, Academy shall have the right to terminate this License. Except as expressly set forth in Section 11.3, above, Academy shall not be entitled to any compensation or damages from Licensor for interference with Academy's ability to conduct its business or for loss in the use of the whole or any part of the License Area during the Annual Use Period, Academy's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

## SECTION 12.

## TERMINATION OF LICENSE

12.1 Definition of Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this License by Academy:

(i) The failure by Academy to make, any payment of License Fees hereunder, within ten (10) days after notice that the same is overdue;

(ii) The failure by Academy to observe or perform any of the express or implied covenants, promises, agreements or provisions of this License, where such failure continues for thirty (30) days after notice thereof; provided however, if the nature of the default is such that more than thirty (30) days are required for its cure, then Academy shall not be in default under this License if Academy commences such cure within such thirty (30) day period and thereafter diligently pursues the same to completion; or

(iii) Should Academy institute any proceedings under the Bankruptcy Act, or any similar or superseding statute, whether in such proceeding Academy seeks to be adjudicated a bankrupt or be discharged of its debts or to effect a plan of liquidation, composition or reorganization; or should any involuntary proceeding be filed against Academy under any such bankruptcy laws; or should Academy become insolvent or be adjudicated a bankrupt in any court of competent jurisdiction, or should a receiver or trustee be appointed of Academy's property, or should Academy make an assignment for the benefit of creditors.

12.2 Revocation of License. In the event of any default by Academy, as set forth in Section 12.1, above, Licensor may, in addition to any and all other rights or remedies available to Licensor hereunder, at law or in equity, immediately revoke this License upon written notification to Academy. No delay or omission of Licensor to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default.

12.3 Termination of License by Academy. Notwithstanding the terms of Section 2.1, above, and in addition to any other termination rights of Academy hereunder, Academy shall have the right to terminate this License as set forth in this Section 12.3.

12.3.1 Project Condition or Utility. In the event (i) the Project is not maintained in a first-class condition or otherwise in the manner set forth in Section 4.7, above, or (ii) the Theatre has become technically obsolete based on commercially reasonably standards (item (i) or (ii), the "Maintenance Failure"), Academy shall have the right to deliver written notice (the "Maintenance Failure Notice") to Licensor of such condition, which notice shall state with reasonable specificity the particular conditions causing such Maintenance Failure, and, if Licensor fails to cure such particular conditions within the twelve (12) month period following Licensor's receipt of the Maintenance Failure Notice, Academy shall have the right to terminate this License by written notice to Licensor.

12.3.2 Neighborhood Deterioration. In the event the immediate area surrounding the project, and bounded by La Brea Boulevard, Sunset Boulevard, Franklin Street, and Vine Street, shall deteriorate from its condition existing as of the date of completion of the Project, as demonstrated by a material decline in property values or business revenues, or a material increase in vacancy or crime rates in such area, Academy shall have the right to terminate this License by delivering twelve (12) months prior written notice to Licensor.

12.3.3 Image of the Academy. In the event that Academy, or a significant constituency of its board of governors, makes a good faith determination that its association with the Project has (i) had a negative impact on the Presentation, including the pre-production, production or telecast aspects thereof, or the experience of the Presentation by its participants or audience, or (ii) demeaned the image of Academy or the Presentation (item (i) or (ii), the "Image

problem"), Academy shall have the right to deliver twelve (12) months prior written notice (the "Image Problem Notice") to Licensor of such condition, which notice shall, in any event, not be effective prior to the expiration of the fifth (5th) year of the License Term. In the case of an Image Problem set forth in item (ii), above, this License shall terminate as of the effective date of such notice. With respect to an Image Problem set forth in item (i), above, Academy's notice shall state with reasonable specificity the particular condition or conditions causing such Image Problem and if Licensor fails to cure such condition or conditions within the twelve (12) month period following the effective date of such notice, Academy shall have the right to terminate this License by an additional written notice to Licensor. Academy's determination of an image Problem shall in no event be based on an opportunity to host the Presentation at a competing mixed-use venue or a new theater. The factors used by Academy in making its good faith determination of an Image Problem set forth in item (ii), above, may include, but shall not be limited to (a) a substantial increase in the incidence of non-sanctioned uses of the Trademarks for commercial purposes resulting from Academy's connection to the Project, or (b) significant incidence of publication, marketing or distribution of the Trademarks in connection with a negative connotation of the Project or the Hollywood area of Los Angeles.

12.3.4 Cessation of Presentation. If, at any time during the License Term, Academy no longer holds the Presentation, or the Presentation is no longer telecast by a national television network for any reason other than a voluntary decision by Academy not to continue to televise the Presentation, or to terminate any existing contract for such telecast, Academy shall have the right to terminate this License by delivering Licensor not less than twelve (12) months prior written notice of such termination.

12.3.5 General Termination Right. Academy shall have the further right to terminate this License on not less than two (2) years prior written notice effective any time after the tenth (10th) year of the License Term.

12.3.6 Licensor Default. Notwithstanding anything to the contrary set forth in this License, Licensor shall be in default in the performance of any obligation required to be performed by Licensor pursuant to this License if Licensor fails to perform such obligation, within a reasonable time period with the expenditure of diligent efforts, but in no event more than thirty (30) days after the receipt of written notice from Academy specifying in detail Licensor's failure to perform; provided, however, if the nature of Licensees obligation is such that more than thirty (30) days are required for its performance, then Licensor shall not be in default under this License if Licensor commences such performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

12.4 Limitation On Academy Remedies. In the event that this License is terminated based on (i) a failure by Licensor to cause the Substantial Completion of the Project and Hotel as required pursuant to the terms of Section 1.3, above, (ii) the failure to resolve any Known Conflict or New Conflict as set forth in Section 4.3, above, (iii) the failure to satisfy any Licensor offsite Condition as set forth in Section 9.6, above, or (iv) any default by Licensor under this License, Licensor shall pay to Academy, in addition to the Back-Up Venue Costs payable pursuant to the terms of Section 1.3.3, above, "Termination Damages" in an amount equal to the total, actual third party out-of-pocket costs incurred by Academy in connection with the negotiation of this License, including the letter of intent setting forth the general terms and

conditions hereof, and its approval of the Design Development Drawings, including preliminary drawings used to create the Design Development Drawings, and Final Construction Drawings. Notwithstanding the foregoing, in no event shall the sum of (i) the total amount of all Back-Up Venue Costs paid by Licensor under this License, and (ii) the Termination Damages, exceed One Million Dollars ($1,000,000). The payment of the Termination Damages and the Back-Up Venue Costs shall be Academy's sole remedy for the termination of this License, and neither Licensor nor Hotel Owner shall have any further liability whatsoever to Academy.

## SECTION 13.

## MISCELLANEOUS

13.1 Entry by Licensor. Provided that Licensor uses commercially reasonable efforts to minimize interference with Academy's use of the License Area, Licensor and its agents shall have the right to enter or pass through the License Area at reasonable times (i) to examine the License Area and (ii) to make repairs, alterations, additions and improvements in the License Area, or the Project and equipment. Provided that Licensor uses commercially reasonable efforts to minimize interference with Academy's use of the License Area, Licensor shall be allowed to bring materials and equipment into the License Area as required in connection with repairs, alterations, additions and improvements, without any liability to Academy and without any reduction of Academy's covenants and obligations. Any such entry which occurs during any period of exclusive use of a particular portion of the License Area shall be subject to reasonable prior notice to Academy, and Licensor's compliance with Academy's reasonable security requirements. Notwithstanding the foregoing, Licensor agrees that, except in the case of emergency, it shall not enter those portions of the License Area as to which Academy has exclusive use for the above purposes within the seven (7) day period prior to, and including the date of, the Presentation (provided that such seven (7) day period shall not work to extend any shorter period of exclusive use set forth in Section 9.2, above).

13.2 Project Name and Address. Subject to Academy's rights set forth in Section 6.4.1, above, Licensor reserves the right at any reasonable time, on reasonable prior notice to Academy, to change the Project's or Theatre Complex's name or address, and Licensor shall have no liability to Academy for any cost or inconvenience occasioned thereby.

13.3 **Alterations of Project. Provided that Licensor uses commercially reasonable efforts to minimize interference with Academy's use of the License Area, Licensor reserves the right, at any reasonable time, without incurring any liability to Academy therefor and without affecting or reducing any of Academy's covenants and obligations hereunder, to make such changes, alterations, additions and improvements (for purposes of this Section 13.3, collectively a "Change") in or to the Project and its systems and equipment, as well as in or to street entrances, doors, halls, passages, elevators, stairways, and other public parts of the Project, as Licensor shall deem necessary or desirable. Notwithstanding the foregoing, Academy shall have the right to approve, in a manner consistent with the notice and approval procedures set forth in the Work Letter, any material Change which (i) affects the License Area, (ii) has a material adverse impact on the quality or overall aesthetics of the Project or the exterior of the Hotel, or (iii) would have an impact on the manner in which Academy is able to prepare for and stage the Presentation, in any**

**instance without the prior consent of Academy, which consent shall not be unreasonably withheld or delayed. It shall not be unreasonable for Academy to withhold its consent to any Change, if, in the good faith opinion of Academy, the result of such Change is such that the Academy cannot prepare for and present the Presentation within the Annual Use Period with (A) no material interference other than as contemplated pursuant to the License during any period of partial access to a License Area or that is inherent in the design of the Project as a mixed-use project, and (B) no material decrease in efficiencies from that currently contemplated. Licensor shall not, except in the case of emergency, effect any Change in the License Area during the Annual Use Period. Licensor shall give Academy not less than eighteen (18) months prior notice of any Change that might affect Academy's preparation, for, and staging of, the Presentation. Without limiting the generality of the foregoing, Licensor will not make a Change which impacts the cable trays or pathways (or the areas of the Project which affect the use of such trays and pathways or the Presentation) or the Production Access Area (collectively, the "Critical Areas") in a manner which could adversely affect Academy's ability to prepare for and present the Presentation, without the prior approval of Academy, which approval shall not be unreasonably withheld or delayed. If Licensor and Academy cannot agree if a Change to a Critical Area is permitted hereunder, either party shall be entitled to have National TeleConsultants (or other such consultant mutually agreed to by Academy and Licensor) determine if such Change is consistent with the standards set forth in clauses (A) and (B) above.**

13.4 Notices. Whenever it shall be required or permitted that notice or demand be given or served by either party to this License to or on the other, such notice or demand must be in writing and must be given either by personal delivery or by mail, and if given by mail shall be deemed sufficiently given if sent by Registered or Certified Mail, postage prepaid, addressed to the addresses of the parties specified below. Notwithstanding anything to the contrary in this Section 13.4, either party may, by written notice to the other, specify a different address for notice purposes. Service of notice shall be deemed complete at the time of delivering the notice if delivered personally or by express or overnight mail or, if sent by registered or certified mail, two (2) days after mailing the same.

Licensor: TrizecHahn Hollywood LLC
4350 La Jolla Village Drive
Suite 700
San Diego, California 92212-1233
Attention: Legal Department

Academy: Academy of Motion Picture Arts and Sciences
Academy Foundation
8949 Wilshire Boulevard
Beverly Hills, CA 90211-1972
Attention: Executive Director

13.5 Estoppel Certificates. Academy agrees from time to time, within ten (10) days after a request by Licensor, to execute and deliver to Licensor an estoppel certificate, in a form reasonably satisfactory to Licensor.

13.6 Broker. Academy and Licensor each covenants, warrants, and represents that no broker was instrumental in bringing about or consummating this License and that it has had no conversations or negotiations with any broker concerning this License. Academy and Licensor each agrees to indemnify, defend and hold the other harmless against and from any claims for any brokerage commissions or finder's fees and all costs, expenses and liabilities, including attorneys' fees, incurred in connection with such claims, which arise by reason of the acts or alleged acts of the other.

13.7 Entire Agreement. This License contains all of the agreements and understandings of the parties and the respective obligations of Licensor, Hotel Owner and Academy in connection therewith. Neither Licensor nor Hotel Owner has made, nor are either of them making, and Academy, in executing and delivering this License, is not relying upon, any warranties, representations, promises or statements, except those that are expressly set forth in this License, including any exhibits hereto. All prior agreements and understandings between the parties have merged into this License, which alone fully and completely expresses the understanding of the parties.

13.8 Amendments. No agreement shall be effective to amend, change, modify or waive any of the provisions of this License, in whole or in part, unless such agreement is in writing, refers expressly to this License and is signed by Licensor and Academy.

13.9 Successors. Except as otherwise expressly provided herein, the obligations of this License shall bind and benefit the successors and assigns of the parties hereto; provided, however, that no assignment, sublease or other transfer in violation of the provisions of Section 8 shall operate to vest any rights in any putative assignee, sublessee or transferee of Academy.

13.10 Force Majeure. Licensor shall have no liability whatsoever to Academy on account of (i) the inability of Licensor to fulfill, or delay in fulfilling, any of Licensor's obligations under this License by reason of strike, other labor trouble, governmental preemption or priorities or other controls in connection with a national or other public emergency, or shortages of fuel, supplies or labor resulting therefrom, or any other cause, whether similar or dissimilar to the above, beyond Licensor's reasonable control; or (ii) any failure or defect in the supply, quantity or character of electricity or water furnished to the License Area, by reason of any requirement, act or omission of the public utility or others furnishing the Project with electricity or water, or for any other reason, whether similar or dissimilar to the above, beyond Licensor's reasonable control. If this License specifies a time period for performance of an obligation of Licensor (other than with respect to the periods set forth in Sections 1.3.2 and 1.3.3 hereof), that time period shall be extended by the period of any delay in Licensor's performance caused by any of the events of force majeure described above.

13.11 Governing Law. Irrespective of the place of execution or performance, this license shall be governed by and construed in accordance with the laws of the State of California.

13.12 Invalidity. If any provision of this License or the application thereof to any person or circumstances shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this License and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law.

13.13 Captions. The table of contents, captions, headings and titles of this License are solely for convenience of reference and shall not affect its interpretation.

13.14 Presumptions. This License shall be construed without regard to any presumption or other rule requiring construction against the party drafting a document. It shall be construed neither for nor against Licensor or Academy, but shall be given a reasonable interpretation in accordance with the plain meaning of its terms and the intent of the parties.

13.15 Independent Covenants. Each covenant, agreement, obligation or other provision of this License on Academy's part to be performed shall be deemed and construed as a separate and independent covenant of Academy, not dependent on any other provision of this License.

13.16 Time is of the Essence. Time is of the essence of this License and of each provision hereof in which a time of performance is established.

13.17 Submission of License. The submission of this License to Academy or its agent or attorney for review or signature does not constitute an offer to Academy to enter into this License or an option to do so. This instrument shall have no binding force or effect until its execution and delivery by both Licensor and Academy.

13.18 Licensing of the City of Los Angeles. The obligations of Academy under this License shall not be conditioned upon the receipt by Academy of any necessary licenses and approvals from the City of Los Angeles (other than as any such licenses or permits are required to be obtained by Licensor pursuant to the terms of Section 9.3, 9.5, or Exhibit D hereto).

13.19 Parties Relationship. Nothing contained in this License shall be deemed or construed by the parties hereto or by any third party to create the relationship of lessor and lessee, principal and agent or of partnership or of joint venture or of any association whatsoever between Licensor and Academy, it being expressly understood and agreed that none of the provisions contained in this License nor any act or acts of the parties hereto shall be deemed to create any relationship between Licensor and Academy other than the relationship of licensor and licensee.

13.20 Holding Over. In the event Academy remains in possession of the License Area after the expiration of the License Term, or after the expiration of any particular Annual Use Period, and without the execution of a new license, or other written agreement extending such particular Annual Use Period, Academy, at the option of Licensor, shall be deemed to be occupying the License Area as a tenant from month-to-month, subject to all of the terms and conditions, provisions, and obligations of this License insofar as the same are applicable to a month-to-month license, and, in such event Academy shall pay a monthly Basic License Fee equal to two twelfths (2/12ths) the annual Basic License Fee in effect at the time of such holdover. Licensor reserves the right to cancel such month-to-month license upon ten (10) days' notice in writing.

13.21 Exculpation. The obligations of Licensor and Hotel Owner under this License do not constitute personal obligations of the corporate or individual partners which constitute Licensor or Hotel Owner, and Academy shall look solely to the Project and Hotel and to no other assets of Licensor or Hotel Owner for satisfaction of any liability with respect to this License and

will not seek recourse against the corporate or individual partners which are Licensor or Hotel owner herein, nor against any of their personal or corporate assets for such satisfaction. Notwithstanding any contrary provision herein, neither Licensor nor Hotel Owner shall be liable under any circumstances for injury or damage to, or interference with, Academy's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

13.22 Attorneys' Fees. Should any litigation be commenced between the parties to this License concerning the License Area, this License, or the rights and duties of either in relation thereto, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted in the litigation, to a reasonable sum as and for its attorneys' fees in the litigation which fees shall be determined by the court in such litigation or in a separate action brought for that purpose, and such amounts shall not be subject to the terms of Section 12.4, above.

13.23 Disputes. IF ANY PARTY COMMENCES LITIGATION AGAINST ANOTHER FOR THE SPECIFIC PERFORMANCE OF THIS LICENSE, FOR DAMAGES FOR THE BREACH HEREOF OR OTHERWISE FOR ENFORCEMENT OF ANY REMEDY HEREUNDER, THE PARTIES HERETO AGREE TO AND HEREBY DO WAIVE ANY RIGHT TO A TRIAL BY JURY.

13.24 Nondiscrimination. There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, national origin, ancestry, sex, sexual preference/orientation, age, disability, medical condition, Acquired Immune Deficiency Syndrome (AIDS) - acquired or perceived, retaliation for having filed a discrimination complaint, or marital status in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the License Area, nor shall Academy itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the License Area.

13.25 Living Wage. Academy acknowledges that Licensor has informed Academy of the City of Los Angeles' "Living Wage Ordinance" and Licensor's support thereof, and that Licensor encourages Academy to pay its employees the "Living Wage" in accordance with such ordinance.

**14. Development Agreement. Certain of the Presentation Conflicts, including the Known Conflicts, and certain of the Offsite Conditions, and in particular the Licensor Offsite Condition known as the Street Closure Condition, are subject to annual agreements with the City of Los Angeles and other governmental agencies and the failure to resolve the same could, in any one year, prevent the staging of the Presentation at the Project. Accordingly, and while Licensor and Academy have agreed to use their best efforts to resolve such Conflicts and satisfy such Conditions, the parties will seek a longer-term solution to the resolution of such Conflicts and the satisfaction of such Conditions. Towards that end, Academy shall cooperate with Licensor in order to reach agreements with such City and other agencies which would enable such Conflicts and Conditions to either be satisfied on a longer term basis, in which event the License, as amended hereby, shall be further amended to reflect such solution(s) in satisfaction or partial satisfaction of**

**the applicable Conflict and/or Condition. In addition, and since Licensor has not yet resolved the Known Conflicts, Academy shall cooperate with Licensor in order to enable Licensor to include the resolution of such Conflicts in connection with obtaining the consents, permits and agreements from the City of Los Angeles and other governmental agencies necessary to satisfy the Licensor Offsite Condition known as the Street Closure Condition.**

**15. Operational Addendum. Each of the parties hereto recognize that the staging of the Presentation at the Project, and the preparation therefor, will evolve from time to time as Academy, Licensor and Hotel Owner, as well as the City of Los Angeles and other governmental agencies gain experience with the previous staging of Presentations at the Project. Further, Academy recognizes that Licensor and Hotel Owner want the Presentation, and the preparation therefor, to interfere with their and their respective tenants, invitees and guests' use of the Project as little as is practicable, and Licensor and Hotel Owner recognize that Academy desires to stage the Presentation, and prepare therefor, in as efficient and economical manner as is practicable. In order to capitalize on the experience to be gained in future Presentations and reconcile the competing objectives of the parties, the parties hereto have established the Operational Addendum attached hereto as Exhibit C which clarifies and expands upon certain of the obligations and rights contemplated under the License, as amended hereby, and directs the manner in which the parties will work together in order to reconcile their competing objectives, in particular in light of the need to create an "Arrivals Sequence" each year in cooperation with such City and other agencies. It is intended that the Operational Addendum will be revised from time to time to reflect the experience of the parties and further delineate methods whereby the competing objectives with respect to the Project may be reconciled.**

**16. Exhibits.**

**(i) Exhibit A to the License shall be replaced in its entirety and all references to Exhibit A in the License shall refer to Exhibit A as attached to this Amendment.**

**(ii) Exhibit D to the License shall be replaced in its entirety with Exhibit D attached to this Amendment.**

**17. Conflicts. Except as specifically amended hereby, the License shall continue to be in full force and effect and is hereby ratified and confirmed. Nothing contained in this Amendment shall in any manner limit or be deemed to limit any of the rights and remedies of the parties pursuant to the License, all of which rights and remedies are expressly reserved by the parties.**

**18. Execution in Counterparts. This Amendment may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.**

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*Attorneys for Plaintiff*
*H&H Retail Owner, LLC*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**
**COUNTY OF LOS ANGELES**

H&H RETAIL OWNER, LLC, a Delaware Limited Liability Company,

Plaintiff,

vs.

CITY OF LOS ANGELES, a municipal corporation; and DOES 1 through 25, inclusive

Defendants.

Case No. 22STCP03975
Assigned to the Hon. Anne Richardson
Department: 40

**FIRST AMENDED COMPLAINT FOR SPECIFIC PERFORMANCE, INJUNCTIVE RELIEF, DAMAGES AND DECLARATORY RELIEF FOR:**

1. **BREACH OF WRITTEN CONTRACT – THE DEVELOPMENT AGREEMENT;**
2. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING – DENIAL OF BENEFITS;**
3. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING – BAD FAITH EXERCISE OF DISCRETION;**
4. **VIOLATION OF 42 U.S.C. SECTION 1983 – SUBSTANTIVE DUE PROCESS;**
5. **VIOLATION OF 42 U.S.C. SECTION 1983 – PROCEDURAL DUE PROCESS;**
6. **VIOLATION OF 42 U.S.C. SECTION 1983 – EQUAL PROTECTION; AND**
7. **DECLARATORY RELIEF.**

**DEMAND FOR JURY TRIAL**

Complaint Filed: November 3, 2022
Trial Date: October 8, 2024

Plaintiff H&H Retail Owner, LLC ("**Plaintiff**" or "**H&H**"), in support of this First Amended Complaint against Defendant City of Los Angeles ("**Defendant**" or "**City**"), alleges as follows:

## SUMMARY OF PLAINTIFF'S ACTION

1. Beginning in or about 1986, the City and the Community Redevelopment Agency of the City of Los Angeles ("**CRA**") sought to address pervasive blight in the Hollywood area of the City. In 1999, CRA undertook to tackle the problem by working with a private developer to create a major, transformative project at the corner of Hollywood and Highland, which would involve construction of a 1.2 million square foot mixed-use complex that included an entertainment center, retail stores, restaurants and a public space. The project would become known as "Hollywood & Highland" (the "**Project**").

2. The Project proved successful at dramatically reducing blight in Hollywood and resulted in a rebirth of Hollywood economically. Today, it is one of the most visited tourist destinations in Los Angeles, as well as home to the Dolby (formerly Kodak) Theater where the Academy Awards are held each year.

3. From the outset of the Project, signage was crucial to its initial and continued success, both to make it attractive to tourists, shoppers and other visitors, and financially sustaining. To provide the original property owner (a predecessor in interest to H&H) assurances that it would have the ability to erect appropriate signage at the Project and replace, remodel and renovate such signage as necessary to keep the Project current and vital, in 2001, the City adopted the Site Specific Sign Ordinance. The Ordinance exempted signage at the Project from various sign related rules and regulations, froze in place the applicable rules and regulations, and provided a pathway for the approval of signage.

4. In addition, in 2002, the City entered into a Development Agreement ("**DA**") with the original property owner that gave the property owner and its successor "vested rights" to erect, construct, maintain, remodel, renovate, rehabilitate, rebuild and replace all types of signs at the Project ("**Vested Signage Rights**"). The initial term of the DA was 20 years from its effective date of November 5, 2002.

5. The DA, by its terms, can be enforced by specific performance and/or an injunction. Furthermore, the DA provided that its term is extended for any period in which one party prevents or interferes with the other party's exercise of its rights under the DA. The term of the DA can also be extended by mutual agreement of the parties.

6. The Project changed owners, and the retail portion of the Project came to be owned by H&H. In or about July 2019, Gaw Capital, LLC ("**Gaw**") and DJM Capital Partners, LLC ("**DJM**") purchased H&H for approximately $325 million, with plans to invest approximately $54 million to renovate, remodel, revitalize and rebrand the Project to keep it attractive and relevant to visitors and ensure its financial viability, so that it would remain a bulwark against blight in Hollywood. As part of its rebranding, "Hollywood & Highland" became "Ovation Hollywood."

7. As part of their plans to renovate, remodel and update the Project, beginning at least as early as in or about December 2020, H&H's new owners sought to exercise H&H's Vested Signage Rights under the DA and in accordance with the process and standards set forth in the Site Specific Sign Ordinance. In particular, H&H sought to replace several outdated static exterior, large format off-site signs and static directory signs with digital signs of the same or lesser dimensions (the "**Digital Replacement Signs**"). The Digital Replacement Signs were critical to the Project maintaining a modern, exciting look and to remaining financially viable.

8. After almost two years of delay, stalling and stonewalling by the City, and on the eve of the expiration of the DA, on or about September 28, 2022, and again on or about October 26, 2022, the City informed H&H that it was denying H&H's applications for Digital Replacement Signs (the "**Digital Sign Applications**").

9. In denying H&H's Digital Sign Applications and refusing to recognize H&H's Vested Signage Rights, or even process its Digital Sign Applications, the City, among other things:

a. Flouted H&H's property rights;

b. Refused to establish a process and/or pathway for approval of H&H's Digital Replacement Signs;

c. Refused to diligently and expeditiously process H&H's Digital Sign Applications;

d. Failed to analyze H&H's Digital Sign Applications under the standard established by the Site Specific Sign Ordinance;

e. Imposed sign related rules, regulations and requirements on H&H from which it was expressly exempt under the DA and Site Specific Sign Ordinance;

f. Exercised whatever discretion it possessed unfairly and in bad faith;

g. Reviewed H&H's Digital Sign Applications under an inapplicable standard;

h. Failed to articulate any legitimate factual, legal, or other basis for denying H&H's Digital Sign Applications;

i. Failed to provide a process for appealing the denial of H&H's Digital Sign Applications; and

j. Treated H&H differently than other similarly situated commercial property owners without any rational basis.

10. The City's actions and inaction constituted a breach of the express terms of the DA; breached the implied covenant of good faith and fair dealing in the DA; and violated H&H's constitutional rights to substantive due process, procedural due process and equal protection of the law.

11. H&H now brings this action (a) to enforce the DA by way of a decree of specific performance compelling the City to process, review and approve H&H's Digital Sign Applications and extend the term of the DA commensurate with the period of time during which the City has delayed in processing H&H's Digital Sign Applications, and (b) for damages for lost revenue and out of pocket expenses caused by the City's violation of H&H's constitutional rights to substantive due process, procedural due process and equal protection.

## THE PARTIES

12. Plaintiff is a Delaware limited liability company authorized to do, and doing, business in the County of Los Angeles, State of California.

13. Defendant is, and at all times relevant hereto was, a municipal corporation located in Los Angeles County, and duly organized and existing as a charter city under the Constitution and laws of the State of California.

14. Plaintiff is ignorant of the true names and capacities of the Defendants sued herein as Does 1 through 25, inclusive, and therefore sues these Defendants by such fictitious names. Plaintiff will amend this FAC if necessary to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the fictitiously named Defendants are responsible in some manner for the occurrences herein alleged. Plaintiff is informed and believes, and thereupon alleges, that, at all times mentioned herein, the named Defendant, and Does 1 through 25, inclusive, and each of them, were the agent, servant, or alter ego of each other, and were acting within the scope of their authority as such agents, servants, or alter egos and with the permission and consent, express or implied, of the other Defendants.

15. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants are in some manner legally responsible for the acts and omissions alleged herein, and actually and proximately caused and contributed to the injuries and damages suffered by Plaintiff, including as referred to herein.

## JURISDICTION AND VENUE

16. This Court has subject matter jurisdiction of this action under Code of Civil Procedure section 88, because the amount in controversy well exceeds $25,000, exclusive of interest and costs.

17. This Court has jurisdiction to render judicial determinations and to issue declarations under Code of Civil Procedure section 1060, and to order injunctive relief under Code of Civil Procedure sections 525 and 526.

18. This Court has concurrent jurisdiction over Plaintiff's claim for relief under 42 U.S.C. section 1983 ("**section 1983**"). *See Williams v. Horvath*, 16 Cal.3d 834 (1976).

19. Venue is appropriate in this Court pursuant to Code of Civil Procedure section 394 because the City is a local agency in the County of Los Angeles. Venue is also appropriate in this Court pursuant to Code of Civil Procedure section 395 because the causes of action alleged in this FAC arose in the County of Los Angeles and the Property is located in the County of Los Angeles.

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## GENERAL ALLEGATIONS

### A. Background: The Hollywood and Highland Project.

#### *1. The Community Redevelopment Agency of Los Angeles.*

20. After World War II, the California Legislature passed the Community Redevelopment Law to authorize redevelopment agencies "to help local governments revitalize blighted communities." By 2011, those agencies had become "a principal instrument of economic development, mostly for cities, with nearly 400 redevelopment agencies [active in the state]." *California Redevelopment Ass'n v. Matosantos*, 53 Cal. 4th 231, 245-46 (2011) (internal citations omitted).

21. Typically, redevelopment agencies were governed by the sponsoring community's own legislative body. *Id.* at 246. CRA functioned differently; it was a separate body with its own Board whose actions were reviewed by the City Council.

#### *2. The Hollywood Redevelopment Plan.*

22. In the 1980s, Hollywood was beset with serious blight. Despite the glitz and glam image of Hollywood as the entertainment capital of the world, the reality on the ground was a stark contrast: Hollywood was suffering from rampant crime, growing homelessness and depreciating property values. Faced with these challenges, the City and CRA selected Hollywood for redevelopment.

23. In 1986, CRA "formulated and prepared" the Redevelopment Plan for the Hollywood Redevelopment Project (the "**Hollywood Redevelopment Plan**"), which the City approved and adopted in City Ordinance No. 161202. The City's expressed purpose and intent for the Hollywood Redevelopment Project was to "encourage economic revitalization and redevelopment"; "[s]upport and promote Hollywood as the center of the entertainment industry and a tourist destination through the retention, development and expansion of all sectors of the entertainment industry"; and "[e]liminate the conditions of blight." *Id.*

24. CRA was granted the "powers, duties and obligations to implement and further the program generally formulated in [the Hollywood Redevelopment Plan] for the redevelopment, rehabilitation, and revitalization of the Project Area." As part of that authority,

CRA was permitted to take action to address and eliminate the problem of blight, including acquiring properties that could then be developed by private companies.

***3. The Hollywood and Highland Project is Conceived.***

25. Although it had been under redevelopment authority for over a decade, there remained a high level of blight in Hollywood in the late 1990s, including pervasive prostitution, drug-dealing, thefts and assaults; high rates of homelessness; and depreciating property values. CRA had taken steps to address the blight in Hollywood, but the limited scope and scale of those actions resulted in minimal gains, which the *Los Angeles Times* ("***LA Times***") described in 1998 as "less than stellar results."

26. To address this situation, CRA determined to undertake a larger, more transformative project on nine acres of land at the corner of Hollywood Boulevard and Highland Avenue, which CRA would later describe as a "catalytic, flagship project." The approximately 1.2 million square-foot development was to include a commercial center, hotel, theater, MTA station, parking facility and retail center.

27. As CRA later observed, the Hollywood and Highland Project "a unique development, even for Hollywood," as "[t]here is no other development in Hollywood with quite the same scope or purpose as this Project."

28. As reported by the *LA Times* in 1998, "urban blight and suburban flight have decimated many town squares and downtown theater and shopping districts," but projects like the one proposed at Hollywood and Highland with "tree-lined 'streets' and park benches are providing people with a substitute."

29. As reported by the *LA Times* in 2000: "Public officials hope the projects will rejuvenate urban centers. Hollywood & Highland is also predicted to be a strong draw for tourists, perhaps enticing them to lengthen their visits." The *LA Times* also cited the thinking of Jack Kyser, Chief Economist of Los Angeles County Economic Development Corporation, who stated that the Hollywood and Highland project was a "very, very critical project."

**B. CRA Enters Into the Disposition and Development Agreement.**

30. On February 10, 1999, CRA entered into a Disposition and Development

Agreement (the "**DDA**") with TrizecHahn Hollywood, LLC ("**TrizecHahn**") to redevelop the location at the corner of Hollywood and Highland for the Project, "a mixed-use, entertainment/retail destination project and public space." The Project included a retail center, the Kodak Theater (now the Dolby Theater), a hotel, and a public parking facility that would be controlled by and generate revenue for the City.

31. The DDA made the Project possible by stating the terms and conditions by which the Project would be developed, "to further the redevelopment purposes and goals of the [Hollywood] Redevelopment Plan for the Project . . . by eliminating blight and encouraging redevelopment in the surrounding areas." Critical to the Project's success and to CRA entering into the DDA was bringing the Academy Awards ceremony back to Hollywood, specifically, to the Kodak Theater.

32. The City, CRA and TrizecHahn envisioned the Project to become the "Times Square of Los Angeles," and intended that it would be updated, remodeled and revitalized periodically to keep it an attractive and relevant destination for tourists and other visitors and a bulwark against blight.

33. From the outset, signage at the Project was a crucial component to its success as it was important to the branding, attractiveness and financial viability of the Project.

34. The DDA set forth standards applicable to the Project that would ensure its compliance with the Hollywood Redevelopment Plan. Attachment 1, entitled "Project Design Guidelines," to Exhibit 3 of the DDA, entitled "Scope of Development," specifically permitted off-site signs at the Project. It provided, in relevant part, as follows:

> **Signage**
>
> Based on existing and historic development, commercial, and public signage in Hollywood is a creative tradition that is a visual hallmark of the District. All signs shall comply with these standards, unless the Agency modifies these standards based on an approved signage program for the Project. The Project may incorporate one or more of the following types of signs . . .
>
> Off-Premise signs: Creative off-premise signs may be incorporated into the Project if they are consistent with standards approved by the Agency for the Project. Nothing herein shall prohibit the Developer from obtaining permits in the future for other types of off-premise

> signs that are consistent with the City's Sign Ordinance, the Hollywood Redevelopment Plan, or other applicable codes and standards.

(emphasis added).

**C. Approval of the 2001 Sign Plan.**

35. On or about February 15, 2001, CRA approved TrizecHahn's proposed "Sign and Graphics Plan" for the Project (the "**2001 Sign Plan**"), approving the following off-site signs at the Project, among others:

a. The "Tower Sign" on the landmark tower located at the corner of Hollywood Boulevard and Highland Avenue, containing two advertising display areas, one facing north and one facing south;

b. The "Dyptych [sic] Sign" on Highland Avenue;

c. A "Portal Sign" facing Hollywood Boulevard; and

d. Elements of a proposed "Media Exhibit Network," which included a digital "'Zipper' [S]ign proposed to be located at the corner of Hollywood Boulevard and Highland Avenue" and a digital "[Interior] Panorama Sign" to "be located on the fifth level parapet overlooking [the interior courtyard]," subject to a sightline study. Both of these approved digital signs included "a significant amount of 'off-site' advertising." The proposed "Media Exhibit Network" also included LCD interactive terminals and LED full color and motion video screens.

36. In approving the 2001 Sign Plan, CRA found that "elements [of it] . . . represent a creative, dynamic, and sophisticated prototype for other developers and designers to consider when developing plans for project in Hollywood."

37. In approving the 2001 Sign Plan, CRA relied on the April 9, 1998 Certificate of Final Environmental Impact Report (the "**Final EIR**"), noting that it "analyzed the impacts based on a conceptual design of the Project," and the Project Design Guidelines "that would guide the continued development of the Project." CRA also determined that "[b]ecause the Project would be developed according to the Project Design Guidelines, the Final EIR found that there would no significant impacts with respect to urban design because 'the design of the proposed Project will promote the project's compatibility with the existing urban design character of Hollywood

Boulevard.'"

38. CRA also noted that TrizecHahn "intend[ed] to request that the City Council approve the sign and graphics program by the adoption of a development agreement that will permit those signs currently prohibited by the City's Sign Code."

**D. Adoption of the Site Specific Sign Ordinance.**

39. Following CRA's approval of the 2001 Sign Plan, on or about June 28, 2001, the City approved and adopted City Ordinance No. 174063, entitled, "A Draft Ordinance Establishing Signage Provisions for the TrizecHahn Mixed-Use Project Located at Hollywood Boulevard and Highland Avenue in the Hollywood Redevelopment Area" (the "**Site Specific Sign Ordinance**" or "**Sign Ordinance**"), a true and correct copy of which is attached hereto as **Exhibit A**.

40. As stated in the Sign Ordinance, its purpose was to: (a) exempt the Project from a host of Los Angeles Ordinances and Municipal Code sections; (b) freeze in place the sign rules and regulations for the Project to those that existed as of the effective date of the Sign Ordinance; and (c) give the Administrator of CRA the authority to approve signs for the Project that were consistent with the Hollywood Redevelopment Plan. To effectuate these purposes, Section 1 of the Sign Ordinance provided that:

> **Section 1. Establishment of Project Signage Provisions.** This ordinance establishes the signage provisions for the Hollywood and Highland properties which are located in that portion of the City as depicted on the map in Exhibit 1, within the heavy black lines. Notwithstanding: (i) Ordinance Nos. 173,562, 173,681, 173,988; (ii) Los Angeles Municipal Code (LAMC) Sections 91.6201 through 91.6204; (iii) LAMC Sections 91.6205.11, except for Subparagraph 3, and Sections 91.6206 through 91.6218, except for Sections 57.12.01, 57.12.04, 91.6207.3, 91.6208.6, 91.6209.6. 91.6210.6, 91.6211.3, 91.6211.4, 91.6211.5, 91.6212.6, 91.6213.5, 91.6215.3, and Paragraph 1 of Section 91.6218.9; (iv) and any other moratoria or interim control ordinances regulating signs in effect as of the effective date of this Ordinance, the Administrator of the Community Redevelopment Agency shall have authority to approve any signs for the Project that are consistent with both the Hollywood Redevelopment Plan and any standards set for signage in any overlay zone adopted by City Council for this area, relative to location, size, area, height, projection over building lines, orientation, spacing, method of placement and height to width ratio of pole signs. Where materials for signs are not specified in the Code, materials shall be jointly approved by the Departments of Building and Safety and Fire.

41. The Sign Ordinance also included instructions on how it was to be interpreted.

Section 3 declared that it "shall be ***construed liberally*** to carry out the purpose of providing signage appropriate to the uses of the Project." (emphasis added).

42. Additionally, the Sign Ordinance outlined the process for how determinations effecting signage at the Project were to be made. Section 3 required that: "Whenever any ambiguity or uncertainty exists related to the signs permitted by this Ordinance or the application of this Ordinance so that it is difficult to determine the precise application of these provisions, the Administrator of the Community Redevelopment Agency shall, upon application by any person, issue written determinations on the requirements of the Ordinance consistent with the purpose and intent of this Ordinance."

43. Finally, the Sign Ordinance created a process for appealing CRA Administrator's determination. Section 3 instructed that: "The applicant, or any other aggrieved person, may appeal the determination of the Administrator to the Board of Commissioners of the Community Redevelopment Agency.

**E. The Development Agreement.**

44. Following CRA's approval of the 2001 Sign Plan, the City's adoption of the Site Specific Sign Ordinance and completion of the Project, on or about November 5, 2002, the City entered into the DA with TrizecHahn, a true and correct copy of which is attached hereto as **Exhibit B**.

***1. The California Development Agreement Act.***

45. The DA was entered into pursuant to the California Development Agreement Act (the "**Act**"), which is codified at Government Code section 65864 *et seq.* The Act empowers municipalities to enter into agreements for the development of property. In enacting the Act, the State Legislature found and declared that:

a. "The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public."

b. "Assurance to the applicant for a development project that upon approval of

the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."

Gov't Code § 65864.

46. The Act further provides that the "burdens of the [development] agreement shall be binding upon, and the benefits of the [development] agreement shall inure to, all successors in interest to the parties to the agreement." *Id.*, § 65868.5.

47. As the California Court of Appeal has explained:

> A development agreement is an enforceable contract between the municipality and the developer. In essence, the statute allows a city or county to freeze zoning and other land use regulation applicable to specified property to guarantee that a developer will not be affected by changes in the standards for government approval during the period of development.

*Center for Community Action and Environmental Justice v. City of Moreno Valley*, 26 Cal. App. 5th 689, 696-97 (2018) (internal quotation marks and citations omitted).

***2. The Development Agreement Ordinance.***

48. On or about September 30, 2002, the City approved and adopted City Ordinance No. 174843, entitled, "An Ordinance Authorizing the Execution of the Development Agreement by and Between the City of Los Angeles and TrizecHahn Hollywood LLC Relating to Real Property Located Generally at the Intersection of Hollywood Boulevard and Highland Avenue, in Los Angeles."

49. In adopting Ordinance No. 174843, the City determined that the proposed DA (a) "is consistent with the City's General Plan and with the objectives, policies and programs specified in the Hollywood Community Plan"; (b) "encourages the retention of a major entertainment center on the site and encourages the retention of the Academy of Motion Pictures and Sciences annual Academy Awards Presentation at site"; (c) "will not be detrimental to the public health, safety and general welfare since it encourages the utilization of a project that is desirable and beneficial to the public"; and (d) "is necessary to strengthen the public planning

process and to reduce public and private costs of development uncertainty."

***3. The Development Agreement's Objectives.***

50. On or about November 5, 2002, the City entered into the DA.

51. The DA granted certain "vested rights" to TrizecHahn and its successors in interest to the Project for an initial period of 20 years, to ensure the long-term success of the Project.

52. Given the significance of the Project to the elimination of blight in Hollywood and the amount of capital invested to build and operate the Project, the DA recognized the need to provide TrizecHahn and its successors in interest with certainty concerning the rules and processes that would govern approval of signage at the Project. Accordingly, the introductory recitals to the DA states, in part:

> WHEREAS, the City and Developer recognize that construction and development of the Project will create significant opportunities for economic growth in the City, the Southern California region and the State of California, and will generate significant economic benefits to the State, the region, the City and Developer; and
>
> WHEREAS, the Project will provide opportunities for growth in the City which will provide new general fund revenues intended to offset incremental City costs associated with such growth; and
>
> WHEREAS, the City has approved and adopted Ordinance No. 174063 [the Site Specific Sign Ordinance] . . . establishing requirements for the design, construction, installation and maintenance of various signs on or around the Project; and
>
> WHEREAS, in order to provide for the orderly development of the Project and render development of the Project more feasible in light of the large amount of capital investment necessary to implement the Project, ***Developer requires assurance from the City that signs will be permitted to be installed and maintained in various areas of the Project as approved pursuant to the Signage Ordinance*** . . .

(emphasis added).

53. The intent of the parties in entering into the DA is further reflected in Section 2 of the DA, which provides, in relevant part, as follows:

> **2.2.3. Mutual Objectives.** A development agreement for the Project will eliminate uncertainty in planning for and securing the orderly development and operation of the Project and the broadcast of the Academy Awards Presentation, thereby achieving the goals and purposes for which the Development Agreement Act was enacted. ***The Parties believe that such orderly implementation will provide***

> ***many public benefits to the City through the imposition of development standards and requirements under the provisions and conditions of this Agreement, including without limitation, increased tax revenues and job creation.*** Additionally, although implementation of this Agreement may restrain the City's land use or other relevant police powers, the Agreement provides the City with sufficient reserved powers during the Term hereof to remain responsible and accountable to its residents. ***In exchange for these and other benefits to the City, Developer will receive assurance that the Project may be implemented during the Term of this Agreement in accordance with the Reserved Powers and subject to the terms and conditions of this Agreement.***

(emphasis added).

***4. Exemption From Future Sign Related Rules, Regulations and Requirements.***

54. The DA makes clear that the Sign Ordinance dictates what rules and processes apply to signage at the Project, exempting the Project from a host of Los Angeles ordinances and Municipal Code sections and freezing in place the sign regulations applicable to the Project as they existed as of the effective date of the Sign Ordinance (as explained earlier in paragraph 22, above). Section 2 of the DA thus declares, in part:

> **2.2. Purpose of this Agreement.**
>
> **2.2.1. Developer Objectives.** In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, Developer wishes to obtain reasonable assurances with respect to its ability to implement the Project in accordance with the Applicable Rules and subject to the terms of this Agreement and the City's Reserved Powers. In the absence of this Agreement, Developer would have no assurance that it can implement the Project as set forth in this Agreement. ***This Agreement, therefore, is necessary to assure Developer that Developer will not be subjected to different rules, regulations, ordinances or official policies or delays which are not permitted by this Agreement, the Applicable Rules, or the Reserved Powers.***

(emphasis added).

***5. Vested Signage Rights Under the DA.***

55. Critical to the accomplishment of its objectives, the DA granted TrizecHahn and its successors in interest the "vested rights" to erect, construct, maintain, remodel, renovate, rehabilitate, rebuild and replace signs at the Project, the Vested Signage Right**s**. In particular, Sections 3.1.1.1 and 3.1.1.2 of the DA declare that:

> **3.1.1.1. Signage Ordinance.** During the Term of this Agreement, ***Developer has the vested right to erect, construct and maintain signs on the Project in accordance with the Signage Ordinance***, subject to the terms and conditions of this Agreement, the Applicable Rules, and the Reserved Powers.
>
> **3.1.1.2. Right to Rebuild or Replace.** ***Developer's vested rights under this Agreement shall include, without limitation, the right to remodel, renovate, rehabilitate, rebuild or replace any signs erected on Development Site*** or any portion thereof that are consistent with the Signage Ordinance throughout the applicable Term for any reason including without limitation, in the event of damage, destruction or obsolescence of such signs or any portion thereof, subject to the terms and conditions of this Agreement, the Applicable Rules, and the Reserved Powers.

(emphasis added).

56. The DA defines "Applicable Rules" in Section 1.6 as:

> [T]he rules, regulations, ordinances and officially adopted plans and policies of the City ***in force as of the Effective Date of this Agreement***, including the Ordinance. Notwithstanding the language of this Section or any other language in this Agreement, Applicable Rules shall mean and include this Agreement, the Existing Development Approvals, and the Fees in effect as of the Effective Date of this Agreement.

(emphasis added).

57. The DA defines "Reserved Powers" in Section 1.39 as:

> [T]he rights and authority excepted from this Agreement's restrictions on the City's police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date that may be in conflict with the Applicable Rules, but: (1) prevent or remedy conditions which the City has found to be injurious or detrimental to the public health or safety; (2) are Uniform Codes; (3) are necessary to comply with state and federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a court order or judgment of a state or federal court; or (4) are agreed to or consented to by Developer; and (4) which include any signage ordinance/overlay zone, as reserved in the Signage Ordinance.

58. The DA does not define "erect, construct and maintain signs," as those terms are used in Section 3.1.1.1 or "remodel, renovate, rehabilitate, rebuild or replace any signs," as those terms are used in Section 3.1.1.2 of the DA. Plaintiff is informed and believes, and on that basis alleges, that these terms were intended to have their plain, ordinary and commonly understood meaning, and to be read and applied in conjunction with the directive in Section 3 of the Sign

Ordinance that they "shall be construed liberally to carry out the purpose of providing signage appropriate to the uses of the Project."

***6. Limits on the City's Ability to Impose New Rules, Regulations and Requirements for the Approval of Signage at the Project.***

59. Under the DA, the Vested Signage Rights granted to TrizecHahn and its successors in interest were generally exempt from any changes to Applicable Rules after the DA's Effective Date of November 5, 2002. To that end, Section 3.1.4 states as follows:

> **3.1.4. Nonapplication of Changes in Applicable Rules.** ***Any change in, or addition to, the Applicable Rules****, including, without limitation, any change in the General Plan, zoning ordinance or building regulation adopted or becoming effective after the Effective Date . . .* ***shall not be applied to the Project*** *unless such changes represent an exercise of the City's Reserved Powers or are otherwise expressly allowed by this Agreement.*

(emphasis added).

60. Under the DA, the City also could not unreasonably withhold or condition its approvals or permits for signs. Specifically, Section 3.1.6 states:

> **3.1.6. Subsequent Development Review**. ***The City shall not require Developer to obtain any approvals or permits for the implementation of the Project in accordance with this Agreement other than those permits or approvals which are required by the Applicable Rules or the Reserved Powers. Moreover, the City hereby agrees that it will not unreasonably withhold or unreasonably condition any approvals or permits for the implementation of the Project which must be issued by the City****,* provided that the Developer satisfactorily complies with all City-wide standard procedures and policies of the City for processing any such approvals or permits and pays any applicable Processing Fees and Charges. No change to the Project which is consistent with the Applicable Rules shall require an amendment of this Agreement, and in the event any such change is approved, the references in this Agreement to the Project shall be deemed to refer to the Project as so changed.

(emphasis added).

***7. The City's Obligation to Diligently and Expeditiously Process Sign Requests.***

61. Under the DA, the City is required to diligently and expeditiously process requests relating to Vested Signage Rights, as set forth in Sections 7.10.1 and 7.10.12:

> **7.10.1. Processing.** Upon satisfactory completion by Developer of all required preliminary actions, applications and payment of appropriate Processing Fees and Charges, including the fee for processing this

> Agreement, ***the City and Developer shall commence and diligently process all required steps necessary for the implementation of this Agreement and the implementation of the Project in accordance with the terms of this Agreement***. Developer shall, in a timely manner, provide the City with all documents, plans, fees and other information necessary for the City to carry out its processing obligations.
>
> **7.10.1.2. Time frames and Staffing for Processing and Review.** The City agrees that expeditious processing of Ministerial Permits and Approvals, Inspections, and any other approvals or actions required for the implementation of the Project are critical. ***The City and Developer agree that all requests for Ministerial Permits and Approvals shall be reviewed and/or completed by the City as expeditiously as possible following the submittal of full and complete applications for such Ministerial Permits and Approvals.*** The City further agrees to expeditiously respond to requests for Inspections by Developer.

(emphasis added).

***8. Duration of the DA.***

62. The DA has an initial term of 20 years from its Effective Date of November 5, 2002, meaning that, absent an extension, it was due to expire on November 5, 2022.

63. By its own terms, however, the DA is extended for any period during which one party prevents or interferes with the other party's exercise of its rights under the DA. In particular, Section 7.4 states as follows:

> **7.4. Enforced Delay; Extension Of Time Of Performance.** In addition to specific provisions of this Agreement**,** whenever a period of time, including a reasonable period of time, is designated within which either Party hereto is required to do or complete any act, matter or thing, ***the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of Party to be excused, including*****:** war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs such as the Annual review); ***any approval required by the City (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs)***; restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; the exercise of the City's Reserved Powers; or similar bases for excused performance which is not within the reasonable control of the Party to be excused (financial inability excepted). This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of Developer or, if not dismissed within ninety (90) days, by any third parties against Developer. If

> written notice of such delay is given to either Party within thirty (30) days of the commencement of such delay, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon; in the event no such notice is given, such claim of delay from that cause shall be deemed waived and no extension shall be granted on that basis.

(emphasis added).

***9. The Vested Signage Rights "Run with the Land."***

64. Under Section 7.9, "Covenants," the benefits and burdens of the DA, including Vested Signage Rights, "run with the land." Specifically, Section 7.9 states in relevant part:

> **7.9. Covenants.** The provisions of this Agreement shall constitute covenants which ***shall run with the land*** comprising the Development Site for the benefit thereof and as a burden thereon, and the burdens and ***benefits hereof shall bind and inure to the benefit of all assignees, transferees, and successors*** to the Parties hereto. . . .

(emphasis added).

***10. Specific Performance and Declaratory Relief.***

65. Section 7.5 of the DA expressly provides that specific performance and declaratory relief are available remedies for breach of the DA:

> **7.5. Legal Action.** Subject to the limitation on remedies imposed by this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, or enforce by ***specific performance*** the obligations and rights of the Parties hereto or seek ***declaratory relief*** with respect to its rights, obligations and interpretations of this Agreement or pursue other remedies under applicable law.

(emphasis added).

**F. Initial Success of the Project.**

66. Upon its completion in or about 2001, the Project's 1.2 million square feet of improvements consisted of the following, as pictured in the site map below:

a. Commercial retail, including numerous shops, restaurants and bars;

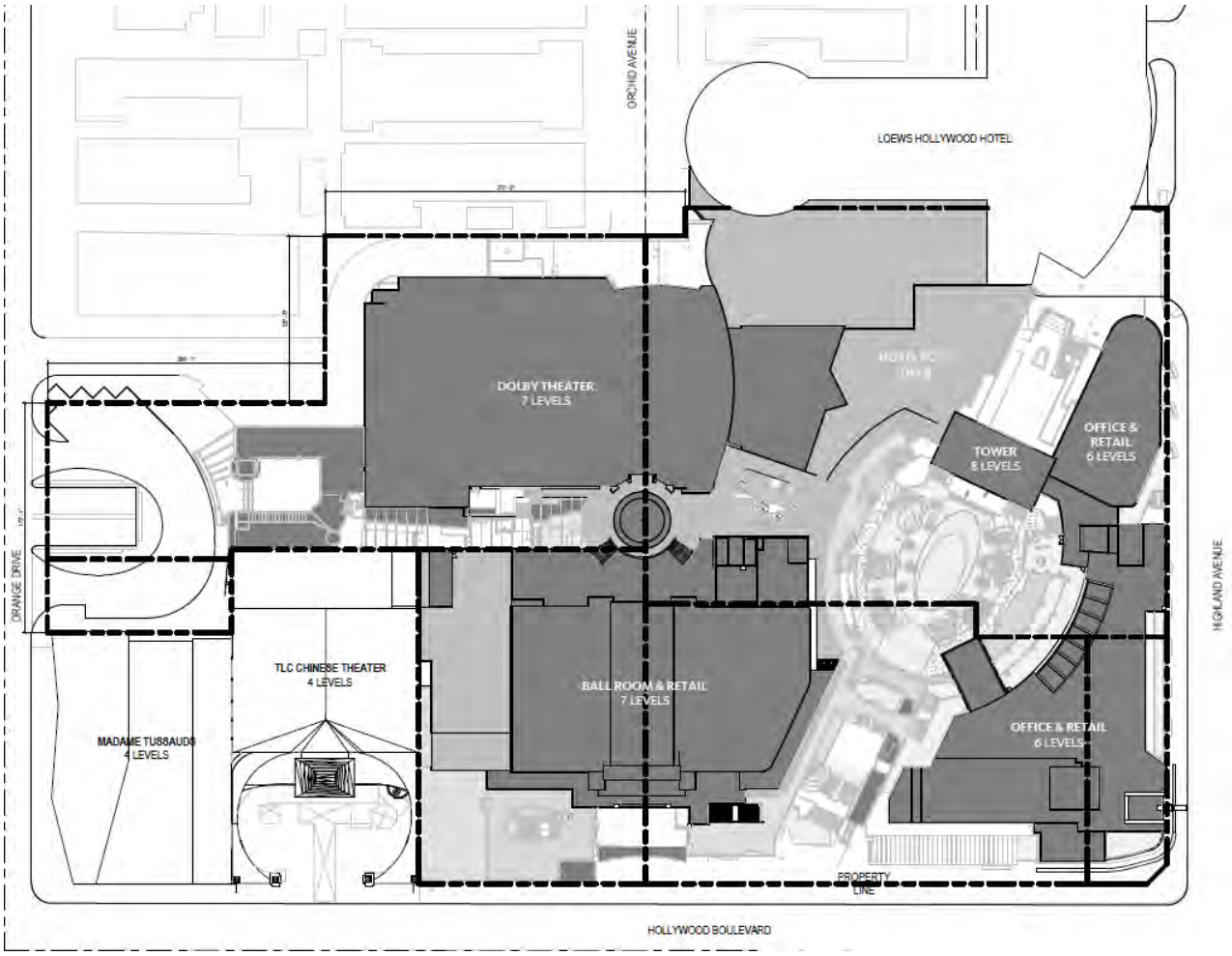
b. A six-theater cinema complex, containing approximately 1,500 seats;

c. Live entertainment and broadcast studios;

d. A 640-room hotel;

e. The Kodak (now Dolby) Theater; and

f. A 3,000-space public parking garage.




67. Upon its opening in or about November 2001, the Project was hailed by the *LA Times* as being a catalyst for an economic boom in Hollywood:

a. "The new, cleaner Hollywood is set to emerge this week when TrizecHahn . . . throws open the doors to Hollywood & Highland, named after the intersection on which it stands and destined, some say, to be the catalyst for an economic boom not seen since the days of Cecil B. DeMille."

b. "If it succeeds, and many people believe it will, Hollywood & Highland will do for Hollywood what the Disney-led urban renewal did for New York's Times Square: transform an iconic American place from degradation to decency."

c. "In fact, the change appears well underway. Where prostitutes and drug dealers once gathered, families were out strolling Saturday night, drawn to Hollywood Boulevard by two Disney attractions on either end of a still-scruffy retail strip: "The Lion King" musical at the Pantages Theatre and, a dozen blocks away, the new animated movie "Monsters Inc." at the El Capitan Theatre, directly across from Hollywood & Highland."

d. "Hollywood draws millions of tourists each year. The new TrizecHahn project will employ about 2,500 people, at least 70% of them from the surrounding neighborhoods."

**G. CIM/H&H Retail, LP Acquires the Project from TrizecHahn.**

68. Plaintiff is informed and believes, and on that basis alleges, that in or about March 2004, TrizecHahn sold its interest in the Project and assigned all of its rights under the DA, including the Vested Signage Rights, to CIM/H&H Retail, LP and/or CIM Management, Inc. (collectively, "**CIM**").

***1. Establishment of the Hollywood Signage Supplemental Use District.***

69. After CIM's purchase of the project, effective October 4, 2004, the City established the Hollywood Signage Supplemental Use District ("**HSSUD**") with the adoption of City Ordinance 176172.

70. As the HSSUD was adopted well after the November 5, 2002 Effective Date of the DA, pursuant to Section 3.1.4 of the DA, it does not govern or otherwise apply to the approval of signs at the Project.

***2. CRA's May 2005 Approval of the Sign Program for the Virgin Megastore.***

71. In or about May 2005, CRA approved CIM's proposed "Sign Program for the Virgin Megastore," which included wall signs, window signs and 450 square feet of electronic messaging signs capable of displaying full motion animation (the "**Virgin Megastore Sign Program**").

72. In approving the Virgin Megastore Sign Program, CRA found, among other things, that "[n]either the Amended Sign [Design for Development] nor the City's Sign [Supplemental Use District] were intended to change the standards permitted for the Hollywood & Highland

project by the Site Specific Ordinance," and that "[t]he Site Specific Ordinance exempts the Applicant from the required approval by the City Planning Department."

73. CRA also concluded that "[t]he Final [Environmental Impact Report] was prepared on a description for the Hollywood & Highland Project that included the concept of a creative sign program," finding that "[t]he amount and nature of the signage proposed Virgin Megastore Sign Program is less than, and consistent with, the scope of signage considered for the Site Specific Ordinance, and as such, was covered by the environmental review undertaken at that time."

74. In addition, CRA noted that it had "approved the Disposition and Development Agreement for the Hollywood & Highland Project that contemplated a creative sign program which final scope and standards were approved by the Board on February 15, 2001."

***3. CRA's July 2005 Approval of the Supergraphic and Roof Panel Signs.***

75. In or about July 2005, CRA approved CIM's request to erect a Supergraphic Sign and a Roof Panel Sign at the Project. The signs approved by CRA included, without limitation, the "Supergraphic Sign" located at the corner of Hollywood Boulevard and Highland Avenue.

76. In approving the Supergraphic Sign, CRA found, among other things, that:

a. "The Hollywood + Highland Project is a unique development, even for Hollywood. It is the subject of a special, site specific sign ordinance and was designed as a catalytic, "flagship" project. There is no other development in Hollywood with quite the same scope or purpose as this Project."

b. "The applicant has indicated that the revenue generated by the Supergraphic and additional roof sign panel will help offset a portion of the approximately $23 million the owner of Hollywood + Highland is spending to upgrade the retail/entertainment center . . . ."

***4. The State of California Dissolves All Community Redevelopment Agencies.***

77. Effective February 1, 2012, the California Legislature, by enactment of Assembly Bill 1X26, codified in Health and Safety Code section 34170, *et seq.*, dissolved all redevelopment agencies in the state, including CRA, declaring that: "All redevelopment agencies and redevelopment agency components of community development agencies . . . are hereby dissolved and shall no longer exist as a public body, corporate or politic."

78. Per its options under AB1X26, the City formed CRA/LA, a Designated Local Authority (the "**CRA/LA-DLA**") to succeed CRA's land use approval authority for redevelopment projects, including approval of signage at the Project, and to wind-down CRA's redevelopment functions.

***5. CIM Creates and Sells Its interest in the Project to H&H Retail Owner, LLC.***

79. In or about 2013, CIM formed H&H as a Delaware limited liability company.

80. Plaintiff is informed and believes, and on that basis alleges, that on or about June 18, 2013, CIM sold, and H&H purchased, CIM's rights, title and interest in the Project, including the Vested Signage Rights. As a result, thereafter the Vested Signage Rights belonged to and were held by H&H.

81. Plaintiff is further informed and believes, and on that basis alleges, that from in or about 2004 to in or about 2019, the Project faced challenges as it aged, including deferred maintenance, a changing retail leasing and operating environment, newer retail shopping center competitors (such as The Grove, Americana at Brand, Century City and the Beverly Center), and a lack of extensive capital improvements and needed upgrades. As a result, the Project suffered in its ability to retain retail tenants, attract tourists and other visitors, and to serve as a continuing bulwark against blight in Hollywood.

**H. Gaw Capital, LLC and DJM Capital Partners, LLC Purchase H&H Retail Owner, LLC.**

82. In or about July 2019, Gaw and DJM purchased H&H from CIM. Gaw and DJM paid approximately $325 million to purchase H&H, with plans to invest approximately $54 million to renovate, remodel and revitalize the Project and rebrand as "Ovation Hollywood."

83. As part of the plan to renovate, remodel, revitalize and rebrand the Project, H&H developed a sign program in accordance with its Vested Signage Rights as successor in interest to TrizecHahn and CIM, which included replacing existing, outdated and obsolete exterior facing large format and directory static signs with digital signs, the Digital Replacement Signs. The Digital Replacement Signs were absolutely crucial to the success the Project, specifically to update and revitalize the Project's appearance consistent with the plan to renovate, remodel, revitalize and

rebrand it, increase H&H's diminishing revenue and avoid retrenchment of blight.

84. Following Gaw and DJM's purchase of H&H, the City issued all of the permits for H&H to carry out its multi-million dollar renovation, remodel, revitalization and rebranding of the Project, including, without limitation, Building, Electrical, Demolition, Fire (Fire, Life, Safety), Mechanical (HVAC), Plumbing and Sign permits—***except***, as described below, the Digital Replacement Signs, notwithstanding H&H's Vested Signage Rights.

**I. The City Adopts the Transfer Ordinance.**

85. Effective November 11, 2019, the City adopted City Ordinance No. 186325, entitled, "An ordinance adding Sections 11.13 and 11.5.14 . . . of the Los Angeles Municipal Code" (the "**Transfer Ordinance**"). Pursuant to the Transfer Ordinance, the City terminated CRA/LA-DLA's authority to grant land use entitlements. Instead, "the City shall review and take action regarding any Redevelopment Plan Amendment or land use approval or entitlement pursuant to Section 11.5.14 and other applicable provisions [of the Los Angeles Municipal Code]."

86. Los Angeles Municipal Code ("**LAMC**") section 11.5.14 provides that the Director of City Planning is the decision maker with respect to land use approvals in Redevelopment Plan areas.

87. According to CRA/LA-DLA's website, "[t]he Department of City Planning is now responsible for implementing land use provisions in active redevelopment project areas and the permitting process." Similarly, the website for the City's Planning Department ("**City Planning**") states as follows:

> City Planning established the Redevelopment Plan Unit (RPU) to implement the land use plans and functions of the unexpired Redevelopment Plans that were transferred from the former Community Redevelopment Agency of Los Angeles to the City. If a project is in a Redevelopment Plan Area (RPA), it must conform to the land use regulations of the associated Redevelopment Plan. The RPU provides increased protection for communities and more certainty for development projects. It has also increased efficiency by avoiding a duplicative review process and the need for sign-offs from multiple government agencies, resulting in quicker turnaround times for project approvals.

88. As a result of the adoption of the Transfer Ordinance, the authority to approve signs for the Project was transferred from CRA/LA-DLA to the Director of City Planning.

**J. The City Refuses to Recognize H&H's Vested Signage Rights.**

89. Soon after Gaw and DJM's purchase of H&H, beginning in or about July 2019, H&H and its legal counsel entered into discussions with the City concerning H&H's sign program and its Vested Signage Rights.

90. On or about July 15, 2020, H&H's legal counsel sent an email with attachments to Jane Choi, Principal City Planner for City Planning, proposing a sign plan in accordance with H&H's Vested Signage Rights, including the following specific proposals, among others:

a. "[T]he Applicant seeks to update the on-site, off-site, tenant and media signage throughout the complex set forth in the original Signage Plan and approved by CRA in accordance with the Site-Specific Ordinance."

b. "Interior and exterior identity signage will also be removed and replaced with new identity and wayfinding signage."

c. "The Applicant proposes to remove and/or update certain Existing Signage that now, after almost 20 years, suffers from outdated designs and antiquated technology."

d. "Commercial and public signage has a creative tradition and represents a visual hallmark of the Hollywood Community Plan . . . ."

91. Despite follow up by H&H and its legal counsel, the City never recognized or even acknowledged that the proposed signs were part of and in accordance with H&H's Vested Signage Rights.

92. On or about September 4, 2020, Jane Choi emailed H&H and its legal counsel, stating that H&H's proposed signs would require "approval under the provisions of the Hollywood Sign Supplemental Use District," and "a new Sign District filing." The City's position flouted the express provisions of the DA and the Site Specific Sign Ordinance, which provided that the Project would not be subject to new signage rules, regulations, or requirements, such as the HSSUD. The City's position also contradicted CRA's finding in 2005 that the HSSUD did not "change the standards permitted for the Hollywood & Highland project by the Site Specific Ordinance."

93. On or about September 9, 2020, Jane Choi met with H&H and indicated that the City would not approve H&H's request to amend the 2001 Sign Plan to permit new signs at the

Project, notwithstanding H&H's Vested Signage Rights.

94. On or about September 16, 2020, H&H's legal counsel emailed Terry Kaufmann Macias, Managing Senior Assistant in the Los Angeles City Attorney's Office (the "**LACAO**"), stating, in part, that "Section 3.1.1.2 of the Development Agreement provides that 'Developer's vested right under this Agreement shall include, without limitation, the right to remodel, renovate, rehabilitate, rebuild or replace any signs erected on the Development Site or any portion thereof that are consistent with the Signage Ordinance.'"

95. On or about September 16, 2020, Terry Kaufmann Macias replied to H&H's legal counsel, notifying them that the matter has been assigned to Deputy City Attorney Kenneth Fong in the LACAO, whom she described as the City's "sign guru."

96. On or about October 5, 2020, the City continued to disregard H&H's Vested Signage Rights, instead asserting that the Project was subject to rules, regulations and requirements that, under the express provisions of the DA and the Site Specific Sign Ordinance, had no application to the Project. On or about that date, Brian Carr, a City Planning Associate, wrote to H&H in a Case Management letter that:

> The approval of a new Sign District (SN) pursuant to LAMC section 13.11 will be required to allow for digital sign rights, and /or to allow for any modification to the existing sign program. Entitlements for this project will be processed by the City Planning Major Projects Units. Contact information if provided herein.

97. On or about October 16, 2020, Jane Choi directed that H&H bifurcate its proposed signs into those that could proceed under the 2001 Sign Plan approved by CRA and those that would require an amendment to the 2001 Sign Plan, although no such amendment was required under the DA or the Sign Ordinance.

98. On or about October 30, 2020, H&H sent Brian Carr responses to his October 5, 2020 Case Management letter. On or about November 24, 2020, H&H emailed Kevin Keller, an Executive Officer at City Planning, Jane Choi and Brian Carr to advise them that no formal reply to H&H's responses to Brian Carr's October 5, 2020 Case Management letter had been received by H&H from the City.

99. Despite repeated follow up by H&H's legal counsel between October 2 and

November 13, 2020, on or about November 13, 2020, Kenneth Fong emailed H&H's legal counsel, stating that he (Kenneth Fong) was still waiting on City Planning to get back to him so that he could reply to legal counsel's email sent on or about October 2, 2020.

100. On or about December 15, 2020, H&H's representative sent Jane Choi a Memorandum prepared by H&H's legal counsel, outlining H&H Vested Signage Rights and stating, in part, that:

> Any attempt by the City to apply any changes to the standards for approval of Project signage that are not consistent with the Site-Specific Sign Ordinance, such as a requirement that the proposed signage modifications be subject to approval of a new supplemental use district, would accordingly constitute a breach of the City's contractual obligations under the DA.

101. Plaintiff is informed and believes, and on that basis alleges, that City Planning ignored the Memorandum, as it never responded to it.

102. On or about December 15, 2020, H&H's legal counsel sent Terry Kaufmann Macias a letter, which reiterated H&H's Vested Signage Rights, and which also stated, in part, that:

> Any attempt by the City to apply any changes to the standards for approval of Project signage that are not consistent with the Site-Specific Sign Ordinance, such as a requirement that the proposed signage modifications be subject to approval of a new supplemental use district, would accordingly constitute a breach of the City's contractual obligations under the DA.

103. Plaintiff is informed and believes, and on that basis alleges, that LACAO ignored the letter, as it never responded to it.

104. From in or about April 2021 through at least in or about December 2021, H&H's legal counsel had numerous meetings with Kenneth Fong to discuss H&H's Vested Signage Rights and its requests for Digital Replacement Signs.

105. In or about May 2021, H&H modified its proposals for replacing existing large format and directory static signs with digital signs, such that the proposed Digital Replacement Signs were limited in design to signs of the exact same or lesser dimensions of existing approved and permitted signs.

106. From in or about August 2021 through at least in or about September 2021, H&H's

legal counsel and Susan Wong, City Planner at City Planning, had numerous discussions about H&H's Vested Signage Rights. Despite the express terms of the DA and the Site Specific Sign Ordinance, Susan Wong refused to commit to a pathway for substantive review by City Planning of H&H's requests for Digital Replacement Signs, and instead communicated to H&H's legal counsel words to the effect that, "more internal meetings at Planning are needed."

107. In or about December 2021, Kenneth Fong stated that he understood the entitlement pathway for H&H's Vested Signage Rights under the DA. Nevertheless, the City continued in its refusal to recognize H&H's Vested Signage Rights, and instead insisted that H&H comply with the requirements of the HSSUD.

108. From in or about March 2022, H&H's legal counsel and Minye Pak, Chief of Development Services Case Management at the Los Angeles Department of Building and Safety ("**LADBS**"), had numerous discussions about H&H's Vested Signage Rights. In the end, however, Minye Pak, advised H&H that LADBS could not process H&H's sign requests as it needed to follow instructions from City Planning.

109. On or about March 31, 2022, H&H's legal counsel sent a letter to Minye Pak, Kenneth Fong and Susan Wong, explaining how the DA created H&H's Vested Signage Rights and that "the DA and the Site-Specific Ordinance are the only applicable documents governing approval of signs for the Project." The City nonetheless continued to refuse to recognize H&H's Vested Signage Rights and refused to process its requests for Digital Replacement Signs or even commit to a pathway for their processing.

110. On or about April 1, 2022, Minye Pak emailed H&H's legal counsel, stating that "LADBS will keep the existing clearances for Redevelopment, as well as the two Sign Districts for all sign permits per instructions from Planning." The City's position continued to flout H&H's Vested Signage Rights, as well as the express provisions of the DA and the Sign Ordinance exempting the Project from the Sign Districts referenced in Minye Pak's email.

111. On or about April 19, 2022, in a meeting with H&H's legal counsel, Susan Wong instructed H&H to submit some sign applications to the City Planning portal (a website where applicants upload application materials for City Planning approval) and some by email.

112. On or about April 19, 2022, in an email to H&H's legal counsel, Susan Wong requested that H&H provide "a site plan of where all the signs are going on site – perhaps they could be called out by number or permit number and 4 different colors to represent the 4 categories of signs."

**K. H&H's Applications for Digital Replacement Signs.**

113. At the request of City Planning, in or about May 2022, H&H divided its proposed signs into four separate groups of applications and resubmitted them to the City. The four groups that City Planning requested applications for and how they were submitted were as follows:

a. Mall interior signs, to be submitted through the Planning portal ("**category (1)**");

b. Replacement of exterior static signs with updated static signs, also to be submitted through the Planning portal ("**category (2)**");

c. Replacement of static signs with digital signs, to be emailed to City Planning to determine the method of processing ("**category (3)**"); and

d. New exterior signs, also to be emailed to City Planning to determine the method of processing ("**category (4)**").

114. With respect to Category 3—the Digital Replacement Signs—H&H sought approval to replace the following existing large format, off site static signs with digital signs:

a. The Portal Sign

b. The Supergraphic Sign

c. The Zipper Sign

d. The Tower Sign

e. The Dyptch Sign

115. With respect to Category 3—the Digital Replacement Signs—H&H also sought approval to replace the following existing directory static signs with digital signs:

a. Freestanding Directory & Ad Panels (Two Sided)

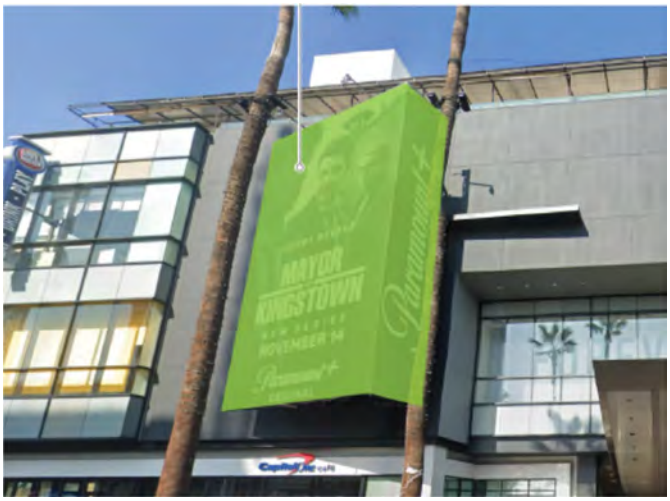
b. Wall Mounted Media Display Case (south facing)

c. Wall Mounted Combo Directional Sign and Directory

d. Freestanding Directory & Ad Panels (Two Sided)

116. In particular, H&H applied to replace the following existing static signs with digital signs of like or lesser dimensions, as pictured below:

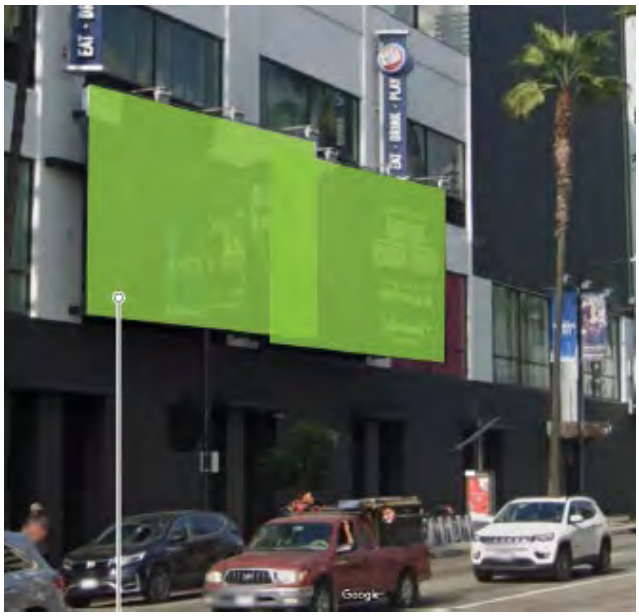
a. Façade Mounted Digital Media Display (west facing), which would replace the Portal Sign approved by CRA in 2001:



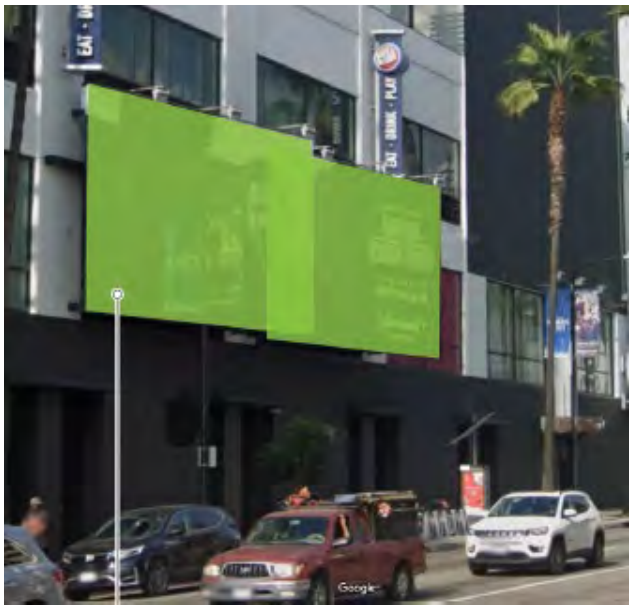

b. Panorama (wrapping) Digital Media Display (street corner), which would replace two signs, the Zipper Sign approved by CRA in 2001 and the Supergraphic Sign approved by CRA in 2005:

c. Tower Mounted Digital Media Display (south facing only), which would replace one of the faces on the Tower Sign approved by CRA in 2001:

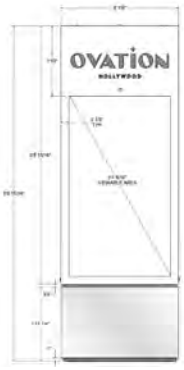

d. Façade Mounted Digital Media Display (south facing), which would replace the first of two of the Dyptych Sign approved by CRA in 2001:



e. Façade Mounted Digital Media Display (south facing), which would replace the second of two of the Dyptych Sign approved by CRA in 2001:



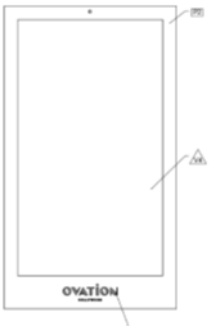
f. Two Freestanding Directory and Ad Panels (two sided), which would replace two existing Directory Signs that were approved by CRA in 2001.

| Existing Sign | Replacement Sign |
|---|---|
|   |   |

g. Two Wall Mounted Media Display Case (south facing), which would replace two existing Directory Signs that were approved by CRA in 2001.

/ / /

/ / /

| Existing Sign | Replacement Sign |
|---|---|
|   |   |

h. Wall Mounted Combo Static Directional Sign and Directory, which would replace an existing Directory Sign approved by CRA in 2001.

| Existing Sign | Replacement Sign |
|---|---|
|   |  |

i. Freestanding Directory and Ad Panels (two sided), which would replace an existing Directory Sign approved by CRA in 2001.

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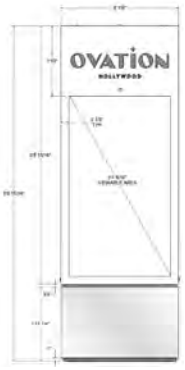
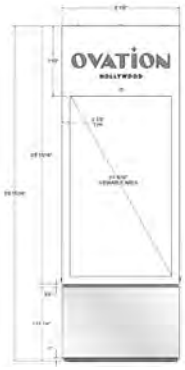
| Existing Sign | Replacement Sign |
|---|---|
|  |  |

j. Freestanding Directory and Ad Panels (two sided) which would replace an existing Directory Sign approved by CRA in 2001.

| Existing Sign | Replacement Sign |
|---|---|
|  |  |

117. Replacing these existing static signs with the proposed digital signs would not add any new square footage to the existing signage at the Project. To the contrary, the replacement of existing static directory signs with digital directories would reduce the square footage of signage at the Project by more than 300 square feet.

118. Furthermore, none of the Digital Replacement Signs would be visible to the residents in any of the surrounding neighborhoods, and as the City would later concede, none of the Digital Replacement Signs were opposed by any nearby businesses or any residents in any of the surrounding neighborhoods.

119. On or about January 20, 2022, H&H paid the City $9,129.68 in plan check fees for processing its application to replace existing static directories with digital directories.

120. On or about September 23, 2022, H&H paid the City $38,165.66 in plan check fees for processing its application to replace existing large format static signs with digital signs.

121. On or about September 26, 2023, H&H paid the City an additional $19,087.83 in fees to the City for expedited plan checks.

122. Thus, H&H paid the City a total of $66,383.17 in fees for the expedited processing of the Digital Sign Applications. But, as described below, the City continued in its refusal to recognize H&H's Vested Signage Rights or process its Digital Sign Applications.

123. In addition, H&H incurred substantial costs in its efforts to satisfy all of City Planning's demands relating to the exercise of its Vested Signage Rights, including, without limitation, sums paid to design, engineering, permit expeditor and sign consultants. By way of example, H&H paid:

a. $46,932.62 to Daktronics, Inc. and $86,810.00 to Gensler Architecture to design and engineer the replacement of the static large format signs with digital signs;

b. $9,147.44 to Permit Advisors to assist with the applications to replace the static large format signs with digital signs;

c. $62,500.00 to Francis Krahe & Associates, Inc. to conduct a lighting study relating to the replacement of the static large format signs with digital signs;

d. $36,102.00 to Dimensional Innovations, Inc. to design and engineer the replacement of the static directories with digital directories;

e. $70,500.00 to RSM Design to prepare application materials; and

f. $85,800.00 to Consumer Experience Group, LLC to prepare application materials.

124. From in or about May 2022 to the present, the City has continued in its refusal to recognize H&H's Vested Signage Rights by refusing to process or otherwise act on H&H's Digital Sign Applications, notwithstanding H&H's payment of all required fees to the City and its unceasing efforts to satisfy all of City Planning's demands.

**L. The City's Refusal to Process H&H's Application to Extend the DA.**

125. On or about July 20, 2022, H&H submitted an application to the City to amend the DA to extend its term by three years.

126. H&H's application to extend the DA was originally assigned case number CPC-2001-1940-DA-ZV-M1 by City Planning.

127. On or about July 20, 2022, Louis Ortega, a Planning Assistant at City Planning, emailed H&H's legal counsel, stating, "I have processed the DA Amendment and the associated case number is [sic]. The payment instructions for invoice number 81838 have been sent to your email address . . . . Please let me know when the fees are paid so I can have the case finalized and routed."

128. On or about July 22, 2022, H&H paid $38,467.02 for the initial application fee to amend and extend the DA.

129. On or about July 25, 2022, Louis Ortega emailed H&H's legal counsel regarding the DA Amendment, confirming: "I finalized the case and it will be routed to Major Projects via courier either tomorrow or Wednesday. The project has an updated case number: CPC-2022-5315-DA and the associated fees paid under Invoice [No.] 81838 have been transferred to the updated case number."

130. On or about July 29, 2022, instead of routing the DA Amendment to Major Projects, as it should have been and Louis Ortega said it would be, City Planning assigned case number CPC-2022-5315-DA to it, which routed the application to Jane Choi instead of Major Projects. Plaintiff is informed and believes, and on that basis alleges, that thereafter Jane Choi took no action on H&H's application to extend the DA, knowing or deliberately ignoring the fact that, as a result of this inaction, it would expire before H&H could obtain approval and permits for the Digital Replacement Signs.

131. The City's delay and failure to process H&H's application to extend the DA deprived H&H of any ability to seek to address City Planning's inaction.

**M. The City Approves Signs at the Project, Just None of the Digital Replacement Signs.**

132. On or about September 15, 2022, City Planning cleared for the issuance of permits

by LADBS the category (2) signs, that is, the replacement of exterior static signs with updated exterior static signs. In the Clearance Summary Worksheets, City Planning wrote: "The proposed sign is not subject to the HSSUD pursuant to the Disposition and Development Agreement dated 5/15/1998, the Site-Specific Sign Plan (Ordinance 174,063), and the Development Agreement (Ordinance 174,843) dated 11/5/2002."

133. On or about October 6, 2022, City Planning cleared for the issuance of permits by LADBS the category (1) signs, that is, mall interior signs, including the replacement of static directories with digital directories and enlarging an existing interior-facing digital LED display. In the Clearance Summary Worksheets, City Planning wrote: "The proposed sign is not subject to the HSSUD pursuant to the Disposition and Development Agreement dated 5/15/1998, the Site-Specific Sign Plan (Ordinance 174,063), and the Development Agreement (Ordinance 174,843) dated 11/5/2002."

134. On or about October 31, 2022, City Planning cleared the issuance for permits by LADBS more category (1) signs, that is, more mall interior signs, including a new digital off-site sign. In the Clearance Summary Worksheets, City Planning wrote: "The proposed sign is not subject to the HSSUD pursuant to the Disposition and Development Agreement dated 5/15/1998, the Site-Specific Sign Plan (Ordinance 174,063), and the Development Agreement (Ordinance 174,843) dated 11/5/2002," and that the proposed category (1) signs were "CONSISTENT WITH ORD. 174063, DA SEC. 3.1.1.2 ADOPTED ON 11/05/2002, & CRA/LA DDA ADOPTED ON 05/15/1998. PURSUANT TO SECTIONS 502 AND 506.2, THE PROPOSED (N) EXTERIOR STATIC SIGNS ARE PERMITTED WITHIN THE COMMERCIAL AREA; THEREFORE, COMPLY WITH THE HOLLYWOOD REDEVELOPMENT PLAN." (capitalization in original)

135. On or about November 4, 2022, City Planning cleared for the issuance of permits by LADBS more category (1) signs, that is, more mall interior signs, including the replacement of an off-site static sign with a digital sign for the mall interior. In the Clearance Summary Worksheets, City Planning wrote: "The proposed sign is not subject to the HSSUD pursuant to the Disposition and Development Agreement dated 5/15/1998, the Site-Specific Sign Plan (Ordinance 174,063), and the Development Agreement (Ordinance 174,843) dated 11/5/2002," and that the

replacement of a static sign with a digital sign was "CONSISTENT WITH THE HOLLYWOOD REDEVELOPMENT PLAN, DDA ADOPTED ON (ADD DATE) [sic], DA ADOPTED ON (ADD DATE) [sic], SIGN ORDINANCE NO 174,063 AND THE 2001 CRA SIGN APPROVAL DATED FEBRUARY 15, 2001. PER THE 2001 CRA SIGN APPROVAL AND THE DDA, THE LED PANORAMIC SIGN SHALL NOT BE VISIBLE TO RESIDENTS LIVING IN THE HOLLYWOOD HILLS AS EVIDENCED BY A SIGHTLINE STUDY DATED 11/01/2022." (capitalization in original)

136. In issuing these clearances, the City conceded that the HSSUD did not govern signage at the Project, and instead, as H&H had maintained for the past three years, that it was governed by the DA and the Site Specific Sign Ordinance. Furthermore, the City conceded that the replacement of off-site static signs with digital signs was consistent with the Hollywood Redevelopment Plan, the DDA, the DA, the Site Specific Sign Ordinance and CRA's approval of the 2001 Sign Plan. Nevertheless, at the same time, the City arbitrarily, capriciously, irrationally and unreasonably denied H&H's Digital Sign Applications, continuing to refuse to recognize H&H's Vested Signage Rights and to impose sign related rules, regulations and requirements inapplicable to the Project under the express terms of the DA and Site Specific Sign Ordinance.

**N. Despite Never Providing H&H With a Process for Approval, City Planning Denies H&H's Digital Sign Applications on the Eve of the Expiration of the DA.**

137. On or about September 28, 2022, less than six weeks before the expiration of the DA, Lisa Webber, Deputy Director of City Planning, had a telephone call with H&H's legal counsel, during which she stated that City Planning was denying H&H's Digital Sign Applications.

138. On or about September 28, 2022, Lisa Webber emailed H&H's legal counsel to advise that:

> [R]egarding the Hollywood & Highland digital signage request, the modification of entitlement for redevelopment plan project was determined not to be a viable entitlement pathway because the Department has taken the position that the request does not substantially conform to the original approval and therefore does not meet the applicability. It is our position that the proposed digital signage in lieu of the approved static signs goes far beyond what was contemplated.

139. Plaintiff is informed and believes, and on that basis alleges, that in sending this email and denying H&H's Digital Sign Applications, Lisa Webber was acting pursuant to a delegation of authority from the Director of Planning.

140. In denying H&H's Digital Sign Applications for the reasons Lisa Webber stated in her September 28, 2022 email, City Planning breached the DA, acted in violation of the Site Specific Sign Ordinance, continued to flout H&H's Vested Sign Rights, exercised any discretion it possessed in bad faith and deprived H&H of due process in the following respects, among others:

a. City Planning altogether failed to acknowledge or even mention H&H's Vested Signage Rights, as established by Sections 3.1.1.1 and 3.1.1.2 of the DA;

b. City Planning reviewed the Digital Sign Applications as seeking a "modification of entitlement," when, in fact, the Applications should have been reviewed under Sections 3.1.1.1 and 3.1.1.2 of the DA;

c. City Planning applied a "substantial conformance" standard to the Digital Sign Applications, when, in fact, no such standard applied and the Applications should have been reviewed for conformity with Sections 3.1.1.1 and 3.1.1.2 of the DA;

d. City Planning failed to analyze the Digital Sign Applications under the requirements of the Sign Ordinance and in accordance with its purpose and intent;

e. City Planning failed to construe liberally the language and application of Sections 3.1.1.1 and 3.1.1.2 of the DA and the Site Specific Sign Ordinance, and consistent with the purpose of providing signage appropriate to the uses of the Project;

f. City Planning failed and refused to give H&H notice of the correct process and standards that H&H needed to follow in applying for permits for the Digital Replacement Signs; and

g. City Planning failed and refused to provide a process for H&H to follow to appeal the denial of the Digital Sign Applications, as required by Section 7.3 of the DA, Section 3 of the Site Specific Sign Ordinance and due process.

141. In response to her September 28, 2022 email, on or about October 3, 2022, H&H's legal counsel emailed Lisa Webber, stating, among other things, that:

a. "As you know, we have been working with the City for a year and a half on behalf of our client to utilize its contractual rights for signage under the DA and have been delayed and denied at every turn. We still have not even been provided a pathway to utilize those rights that is consistent with what is set forth in the DDA, DA, approved sign plan and Site Specific Sign Ordinance (Project Approvals)."

b. "We have never been provided a viable pathway to seek the City's consideration of sign replacements we believe are entirely consistent with the Project Approvals that have been in place for over 20 years. We proposed a variety of potential options under the transfer of land use ordinance that transfers the land use powers of the former CRA to the Director of Planning and have had multiple discussions with the City Attorney and Planning about them, to no avail. As you know, under the Project Approvals, the CRA Administrator was responsible for sign approvals, and that authority has been transferred to the Director of Planning."

c. "We disagree strongly with your assessment and conclusion that our proposed sign modifications, which we have vested rights to under the DA, do not substantially conform to the original sign plan approval. As we have discussed multiple times, this project already has approved static signage in these locations and its approved signage plan allows digital signage. How can it be that replacing approved static signs with allowed digital signs is so far beyond the bounds of the existing approvals that the City cannot even process a request, particularly where our Project Approvals allow sign replacements?"

d. "We keep finding ourselves hitting a wall every time we try to even request the ability to gain the benefit of the Project Approvals that, by their terms, allow us to do what we are requesting, with appropriate City permits and approvals."

e. "At minimum, we believe some appropriate pathway for consideration of our request must be provided by the City."

142. Lisa Webber never responded to H&H's legal counsel's October 3, 2022 email, and the City never provided the requested "appropriate pathway" for H&H to obtain approval of its Digital Sign Applications.

143. Accordingly, on or about October 5, 2022, H&H's legal counsel sent a Notice of

Default to the City, addressed to Vincent Bertoni, the Director of City Planning, stating, among other things, that:

a. "With respect to Owner's application for the replacement of static signs with digital signs and new signs, the City unreasonably delayed in accepting Owner's formal application for over a year and a half. It was not until just recently, on September 28, 2022, that the City informed Owner via email and a phone call that the City would not process certain of Owner's signage requests consistent with the terms of the Development Agreement and Sign Ordinance. Instead, the City indicated it may require Owner to submit to a new, legislative discretionary process that is outside of the rules and regulations applicable to the Site under the Development Agreement and Signage Ordinance. This action by the City breaches the terms and violates the vested rights of the Owner under the Development Agreement, DDA and Signage Ordinance."

b. "This letter serves as written notice of the City's default under the Development Agreement pursuant to Section 5.2.2, for: (1) denying [H&H's] vested right to replace and rebuild signage under Section 3.1.1.2; (2) denying Owner's ability to modify signage under Section 3.2.1; and (3) failing to expeditiously process certain Owner's signage applications in violation of Section 7.10.1.2 of the Development Agreement . . . ."

144. The October 5, 2022 Notice of Default further stated that the City was in "default under Section 403 of the DDA," reciting that, "[p]ursuant to Section 403(3) of the DDA, Developer is entitled to submit changes to its plans to the City for approval, which approval must be granted if such changes are a Logical Evolution from previously approved items."

145. The October 5, 2022 Notice of Default referenced Section 403 of the DDA ("**Section 403**") out of an abundance of caution for several reasons:

a. In recognition that the City had previously approved the category (1) and (2) signs "pursuant to" the DA, the Sign Ordinance and the DDA without distinguishing between the Section 403 and the "Project Design Guidelines" attached to the DDA;

b. Because the City refused and failed to confirm to H&H exactly what process and/or standards it was applying in reviewing H&H's Digital Sign Applications; and

c. As this was a legal document, so that the City could not later contend that H&H waived any claim against the City for breach of the DDA.

146. On or about October 26, 2022, just days before expiration of the DA, Lisa Webber sent a letter to H&H's legal counsel, responding to the Notice of Default, stating, in part that:

a. "As you know, a number of factors has made this task extremely difficult, including the paucity of specific signage regulation in the Los Angeles Community Redevelopment Agency and City of Los Angeles documents that apply to the Site, including the Development Agreement, the site-specific sign ordinance, the Hollywood Redevelopment Plan, and the Disposition and Development Agreement."

b. "With respect to the proposed sign in category (3) [replacement of static large format and directory signs with digital signs], per Sec.3.2.1 of the Development Agreement, the applicant may request to 'modify the design, configuration, elements, and content of the 2001 Signage Plan with the written consent of the City.' Pursuant to Section 403(3) of the DDA, Developer is entitled to submit changes to its plans to the City for approval, which approval must be granted if such changes are a Logical Evolution from previously approved items."

c. "Per the Disposition and Development Agreement, the term 'Logical Evolution' is defined as 'a refinement or amplification of the Concept Design Drawings into subsequently approved architectural drawings and design material which flow naturally and foreseeably therefrom which reflect good architectural and engineering design consistent with a 'First-Class Project' (as defined below) and local construction practices, code requirements, applicable plan check and permit conditions and the timely availability of materials."

d. "City Planning finds that the requested signs under category (3) are not a Logical Evolution from the previously approved items and does not consent to the proposed static-to-digital sign conversion with the exception of the replacement of the LED Zipper sign which was previously approved as part of the 2001 Sign and Graphics Plan."

e. "The Sign and Graphics Plan approved by CRA in 2001 included some allowances for digital signage, such as the LED Zipper sign, but did not allow for digital signage as currently proposed."

f. "The City has not interfered with any vested sign rights that your client may have, either for existing signs, or for new signs under a vested discretionary process."

147. Plaintiff is informed and believes, and on that basis alleges, that in sending this letter and denying H&H's Digital Sign Replacement Applications, Lisa Webber was acting pursuant to a delegation of authority from the Director of City Planning.

148. In denying H&H's Digital Sign Applications for the reasons Lisa Webber stated in her October 26, 2022 letter, City Planning breached the DA, acted in violation of the Site Specific Sign Ordinance, continued to flout H&H's Vested Sign Rights, exercised any discretion it possessed in bad faith and deprived H&H of due process in the following respects, among others:

a. City Planning mischaracterized H&H's Digital Sign Applications as seeking a modification of the 2001 Sign Plan, instead of reviewing the Applications as falling within H&H's Vested Signage Rights, as established by Sections 3.1.1.1 and 3.1.1.2 of the DA;

b. City Planning applied the "Logical Evolution" provision from the DDA, which (as the City later conceded) had expired two decades earlier, to H&H's Digital Sign Applications as seeking a modification of the 2001 Sign Plan, instead of reviewing the Applications as falling within H&H's Vested Signage Rights, as established by Sections 3.1.1.1 and 3.1.1.2 of the DA;

c. City Planning altogether failed to acknowledge CRA had approved other signs at the Project in 2005;

d. City Planning failed to analyze H&H's Digital Sign Applications under the requirements of the Site Specific Sign Ordinance and consistent with its purpose and intent;

e. City Planning failed to construe liberally the language and application of Sections 3.1.1.1 and 3.1.1.2 of the DA and the Sign Ordinance, as required by the Site Specific Sign Ordinance;

f. City Planning failed and refused to give H&H notice of the correct process and standards that H&H needed to follow in applying for permits for the Digital Replacement Signs; and

g. City Planning failed and refused to provide a process for appealing the

denial of the Digital Sign Applications, as required by Section 7.3 of the DA, Section 3 of the Sign Ordinance and due process.

149. On or about October 31, 2022, H&H's legal counsel replied to Lisa Webber in a letter, pointing out all of the errors in her October 26, 2022 letter and how City Planning lacked any basis in fact or law to refuse to recognize and deprive H&H of it Vested Signage Rights and deny H&H's Digital Sign Applications, including the following:

a. "Simply because the Project Design Guidelines are simple does not obviate the City's express obligation to comply with the DDA and Development Agreement."

b. "[Y]our response letter fails to acknowledge critical provisions of the Development Agreement that clearly set forth vested rights to signage."

c. "City has unreasonably delayed in processing Owner's signage requests for years beginning shortly after Owner purchased the Site in July 2019, and Owner first contacted the City regarding signage at the Site."

d. "[Y]our contention that Owner has waived its claim of delay misinterprets the facts. Owner has not waived any of its rights under the Development Agreement because you did not inform Owner that the City would not process certain signage requests until September 28, 2022."

e. "[Y]our letter conveniently ignores provisions in the Development Agreement that unequivocally give Owner vested rights to erect, construct, and maintain signs, as well as to rebuild and replace any signs on the Site during the term of the Development Agreement."

f. "To reiterate the background amongst the approval documents that govern signage at the Site: the DDA outlined a pathway for the approval of a future creative sign program specific to the Site and provided Project Design Guidelines to facilitate achieving this approval. The Project Design Guidelines set forth the specific signage regulations in an easy to follow and straightforward manner. Simply because the Project Design Guidelines are simple does not obviate the City's express obligation to comply with the DDA and Development Agreement."

g. "The myriad of sign regulations and restrictions in the Los Angeles

Municipal Code or the Hollywood Signage Supplemental Use District are irrelevant here and do not govern signage at the Site."

h. "[T]he Development Agreement vested all such rights of Owner to construct, erect, repair, or replace signage during the term of the Development Agreement for any reason in conformance with the Signage Ordinance."

150. The City never responded to H&H's legal counsel's October 31, 2022 letter.

151. On or about November 3, 2022, just prior to the expiration of the DA, H&H filed this action.

**O. The City's Inconsistent Positions in This Litigation.**

***1. H&H's Petition and Complaint and the City's Answer.***

152. Having not received a response to H&H's October 31, 2022 letter, on or about November 3, 2022, H&H filed a Verified Petition for Writ of Mandate and Complaint against the City (the "**Complaint**") in Los Angeles Superior Court, thereby initiating this legal action. The Complaint stated the following causes of action:

a. Petition of Writ of Mandate Pursuant to Code of Civil Procedure section 1085;

b. Specific Performance of Express Duties and Obligations under the Development Agreement;

c. Specific Performance of Express Duties and Obligations under the DDA;

d. Violation of First Amendment and Equal Protection Rights, 42 U.S.C. section 1983; and

e. Declaratory Relief.

153. The cause of action alleging breach of the DDA (the "**DDA Cause of Action**") alleged that H&H's Replacement Digital Sign Applications were "consistent with the Signage Ordinance and the DDA," and "constitute a 'Logical Evolution' from previously approved items as contemplated by Section 403(3) of the DDA."

154. H&H included the DDA Cause of Action in the Complaint as an additional and/or alternative claim for specific performance to the cause of action for breach of the DA specifically

because Lisa Webber's October 26, 2022 letter to H&H's legal counsel denied H&H's Digital Sign Applications based on Section 403's "Logical Evolution" language.

155. In response to the Complaint, the City *did not* seek dismissal of the DDA Cause of Action on the ground that Section 403 had terminated upon completion of construction of the Project in or about 2001, and therefore was inapplicable to H&H's Replacement Digital Sign Applications.

156. Instead, the City filed an Answer to the Complaint on or about December 16, 2022, which was signed by Kenneth Fong, the City's "sign guru," on behalf of the City. In its Answer, the City *did not* deny or dispute that Section 403 applied or allege that Section 403 had terminated long before H&H submitted its Digital Sign Applications. To the contrary, the City merely alleged as an affirmative defense that H&H's "proposed replacement of static signs with digital signs is not a 'Logical Evolution' as set forth in Section 403(3) of the Disposition and Development Agreement."

***2. H&H's Government Claim and the City's Denial of It.***

157. On or about November 15, 2022, H&H filed a Claim for Damages with the City, pursuant to the Government Claims Act, Government Code section 810 *et seq.*, alleging that "[t]he City of Los Angeles continuously delayed, without justification, processing and approving [H&H's] signage applications, and has failed [or] refused to approve certain requests, in breach of the City's express contractual obligations pursuant to two written agreements, causing damages to Claimant." In its Statement of Factual Allegations, H&H stated that the "two written agreements" were the DDA and the DA. H&H filed the Government Claim so that it could seek monetary damages from the City for breaching the DDA.

158. On or about June 15, 2023, the City denied H&H's Government Claim in a letter signed by Kenneth Fong on behalf of the City. In its letter, the City neither denied nor disputed that Section 403 applied to the review of H&H's Digital Sign Applications. Instead, the letter indicated that H&H had six months from the date of the letter to file a state court action if it wanted to pursue its claim for monetary damages for breach of the DDA.

***3. The City's Verified Discovery Responses.***

159. As stated above, in her October 26, 2022 letter, Lisa Webber relied upon Section 403 as the principal ground for denying the Digital Sign Applications, stating:

a. "Pursuant to Section 403(3) of the DDA, Developer is entitled to submit changes to its plans to the City for approval, which approval must be granted if such changes are a Logical Evolution from previously approved items"; and

b. "City Planning finds that the requested signs under category (3) are not a Logical Evolution from the previously approved items and does not consent to the proposed static-to-digital sign conversion."

160. In dramatic contrast, however, in its verified discovery responses, the City stated, for the first time, that Section 403 had terminated years ago. Specifically, the City responded to Plaintiff's written discovery requests, which were verified under penalty of perjury by Susan Wong on behalf of the City, that "the DDA was terminated according to its own terms when the development was completed," which would have been in or about 2001. In so stating, the City admitted that Lisa Webber applied the wrong standard in denying the Digital Sign Applications. In so stating, the City further admitted that Lisa Webber not only applied the wrong standard, but one that she had no authority to apply.

161. The City also stated in its written discovery responses, which were verified under penalty of perjury by Susan Wong and Valentina Knox-Jones on behalf of the City, that "the duties, responsibilities and obligations of the Community Redevelopment Agency under the DDA were not transferred to the City."

***4. Omission of the DDA Cause of Action in This First Amended Complaint.***

162. Based on the City's verified admissions in its written discovery responses that Section 403 terminated long ago and therefore the Logical Evolution standard had no application to H&H's Digital Sign Applications, and given that the DDA Cause of Action was an additional and/or alternative claim to the breach of the DA cause of action in the Complaint, H&H has omitted the DDA Cause of Action in this First Amended Complaint.

/ / /

**FIRST CAUSE OF ACTION**

**(For Breach of Written Contract – The Development Agreement)**

(Against Defendant and DOES 1-25)

163. Plaintiff repeats and realleges paragraphs 1 through 148 of this First Amended Complaint as if fully set forth herein.

164. Under Sections 3.1.1.1 and 3.1.1.2 of the DA, H&H had "the vested right to erect, construct and maintain signs on the Project in accordance with the Signage Ordinance," and "vested rights . . . to remodel, renovate, rehabilitate, rebuild or replace any signs erected on the Development Site or any portion thereof that are consistent with the Signage Ordinance through the applicable Term for any reason."

165. In or about May 2022, during the term of the DA, H&H applied to the City to replace the existing static large format and directory signs with digital signs of the same or lesser dimensions as follows:

a. Façade Mounted Digital Media Display (west facing), which would replace the Portal Sign approved by CRA in 2001;

b. Panorama (wrapping) Digital Media Display (street corner), which would replace two signs, the Zipper Sign approved by CRA in 2001 and the Supergraphic Sign approved by CRA in 2005;

c. Tower Mounted Digital Media Display (south facing only), which would replace one of the faces on the Tower Sign approved by CRA in 2001;

d. Façade Mounted Digital Media Display (south facing), which would replace the first of two of the Dyptych signs approved by CRA in 2001;

e. Façade Mounted Digital Media Display (south facing), which would replace the second of two of the Dyptych signs approved by CRA in 2001;

f. Two Freestanding Directory and Ad Panels (Two Sided), which would replace two existing Directory Signs that were approved by CRA in 2001;

g. Two Wall Mounted Media Display Case (south facing), which would replace two existing Directory Signs that were approved by CRA in 2001;

h. Wall Mounted Combo Static Directional Sign and Directory, which would replace an existing Directory Sign approved by CRA in 2001;

i. Freestanding Directory and Ad Panels (Two Sided), which would replace an existing Directory Sign approved by CRA in 2001; and

j. Freestanding Directory and Ad Panels (Two Sided) which would replace an existing Directory Sign approved by CRA in 2001.

166. H&H's applications to replace these static signs with digital signs fell squarely within its Vested Signage Rights as established by the DA, and were consistent with the Site Specific Sign Ordinance.

167. On or about September 28, 2022, and again on or about October 26, 2022, the City defaulted on and materially breached its obligations to H&H under the DA by depriving H&H of its Vested Signage Rights, when Lisa Webber, the Deputy Director of City Planning, advised H&H that the City was denying its Digital Sign Applications.

168. H&H has performed all conditions, covenants and obligations that it was required to perform in accordance with the terms of the DA, except those conditions, covenants and promises that it was and is excused from performing as a result of the City's breaches of the DA.

169. The DA, by its terms, can be enforced by specific performance and injunction, and is sufficiently specific to be enforced pursuant to Civil Code sections 3384, *et seq*. Specifically, Section 7.5 of the DA provides that, "either Party may . . . institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, or enforce by specific performance the obligations and rights of the Parties hereto . . . ."

170. Under Section 7.4 of the DA, the term of the DA is extended by its own terms for any period where one party prevents or interferes with the other party's exercise of its rights under the DA.

171. In defaulting on and breaching its obligations to H&H under the DA by denying H&H's Digital Sign Applications and depriving H&H of its Vested Signage Rights, the City prevented and interfered with H&H's exercise of its rights under the DA.

172. Accordingly, Plaintiff seeks a judicial decree of specific performance and/or a

permanent injunction:

a. Compelling the City's specific performance of its duties and obligations to approve H&H's Digital Sign Applications; and

b. Extending the DA commensurate with the period of time during which the City has delayed in processing H&H's Digital Sign Applications, as determined at trial.

**SECOND CAUSE OF ACTION**

**(For Breach of the Implied Covenant of Good Faith and Fair Dealing in the Development Agreement – Denial of Benefits)**

(Against Defendant and DOES 1-25)

173. Plaintiff repeats and realleges paragraphs 1 through 148 of this First Amended Complaint as if fully set forth herein.

174. Plaintiff alleges this cause of action in the alternative to the First Cause of Action, above, for Breach of Written Contract.

175. Under California law, "[t]here is an implied covenant of good faith and fair dealing in every contract that neither party will do anything which will injure the right of the other to receive the benefits of the agreement." *Comunale v. Traders & General Ins. Co*., 50 Cal. 2d 654, 658 (1958) (internal citation omitted).

176. Under Sections 7.10.1 and 7.10.12 of the DA, the City was required to diligently and expeditiously process H&H's Digital Sign Applications.

177. Beginning in or about May 2022, and continuing until the present, the City has breached the implied covenant of good faith and fair dealing by interfering with H&H's right to receive the benefits of the DA, including, in particular, the benefits of H&H's Vested Signage Rights. Among other things:

a. The City unfairly, in bad faith and without legitimate justification or excuse, has refused to recognize H&H's Vested Signage Rights;

b. The City unfairly, in bad faith and without legitimate justification or excuse, has refused to diligently and expeditiously process H&H's Digital Sign Applications;

c. H&H and its legal counsel have been passed from one City Planning

representative to another, similar to a shell game, preventing H&H from obtaining the notice and clarity that it sought, that it needed and to which it was entitled concerning the process to be followed and/or the standards to be met to obtain approval of its Digital Sign Applications;

d. H&H has paid all required fees for its Digital Sign Applications to be processed (and processed on an expedited basis), which totaled $66,383.17, but having accepted the fees, the City never processed H&H's Digital Sign Applications;

e. H&H paid the City $38,467.02 to process its application to extend the DA by three years, but having accepted those fees, the City never processed H&H's application, and, in fact, re-routed it so that it would not even be considered before the DA expired;

f. The City failed and refused to timely establish a clear and certain pathway for H&H's Digital Sign Applications to be reviewed and acted on by City Planning before the DA was due to expire;

g. The City imposed sign related rules, regulations and requirements on H&H from which H&H was exempt under the DA and Site Specific Sign Ordinance;

h. After more than three years of delay, stalling and stonewalling, the City advised H&H that it was denying H&H's Digital Sign Applications just days before the DA was due to expire;

i. The City failed to provide a written determination for its denial of H&H's Digital Sign Applications, as required by Section 3 of the Site Specific Sign Ordinance; and

j. The City failed to provide a process or mechanism for H&H to appeal the denial of its Digital Replacement Sign Application, as required by Section 7.3 of the DA and Section 3 of the Site Specific Sign Ordinance.

178. As a direct and proximate result of these acts and omissions, the City denied and deprived H&H of the benefits to which it a entitled under the DA.

179. H&H has performed all conditions, covenants and obligations that it was required to perform in accordance with the terms of the DA, except those conditions, covenants and promises that it was and is excused from performing as a result of the City's breaches.

180. Accordingly, Plaintiff seeks a judicial decree of specific performance and/or a

permanent injunction:

a. Compelling the City's specific performance of its duties and obligations to process and approve H&H's Digital Sign Applications; and

b. Extending the DA commensurate with the period of time during which the City has delayed in processing H&H's Digital Sign Applications, as determined at trial.

**THIRD CAUSE OF ACTION**

**(For Breach of the Implied Covenant of Good Faith and Fair Dealing in the Development Agreement – Bad Faith Exercise of Discretion)**

(Against Defendant and DOES 1-25)

181. Plaintiff repeats and realleges paragraphs 1 through 148 of this First Amended Complaint as if fully set forth herein.

182. Plaintiff alleges this cause of action in the alternative to the First Cause of Action for Breach of Written Contract, above.

183. "The covenant of good faith finds particular application in situations where one party is invested with a discretionary power affecting the rights of another. Such power must be exercised in good faith." *Carma Devs. (Cal.), Inc. v. Marathon Dev. California, Inc.*, 2 Cal. 4th 342, 372 (1992).

184. To the extent the City contends that it had discretion to deny H&H's Digital Sign Applications, it exercised that discretion unfairly and in bad faith, in breach of the implied covenant of good faith and fair dealing. Among other things:

a. The City mischaracterized H&H's Digital Sign Applications as seeking a "modification of entitlement," instead of reviewing them as falling within H&H's Vested Signage Rights, as established by Sections 3.1.1.1 and 3.1.1.2 of the DA;

b. The City applied a "substantial conformance" standard to H&H's Digital Sign Applications, instead of reviewing them as falling within H&H's Vested Signage Rights, as established by Sections 3.1.1.1 and 3.1.1.2 of the DA;

c. The City applied the "Logical Evolution" standard to H&H's Digital Sign Applications, even though that provision of the DDA expired 20 years ago and the City now

concedes in this litigation that it had no authority to apply that standard;

d. The City failed to acknowledge that CRA had approved other signs at the Project in 2005, wrongly relying solely on CRA's approval of the 2001 Sign Plan;

e. The City failed and refused to analyze H&H's Digital Sign Applications under the requirements of the Site Specific Sign Ordinance and in accordance with its purpose and intent;

f. The City failed and refused to liberally construe the language and application of Sections 3.1.1.1 and 3.1.1.2 of the DA and the Site Specific Sign Ordinance to H&H's Digital Sign Applications, as required by the Site Specific Sign Ordinance;

g. The City imposed sign related rules, regulations and requirements on H&H from which H&H was exempt under the DA and Site Specific Sign Ordinance;

h. In approving the replacement of exterior static signs with updated static signs, permitting mall interior signs and new signs and approving the replacement of a static sign with a digital sign for the mall interior at the Project, the City acknowledged that H&H's proposed signs were not subject to the HSSUD, but nonetheless insisted that H&H's Digital Sign Applications be reviewed under the HSSUD; and

i. The City approved other categories of signs at the Project by applying provisions of the DA and Site Specific Sign Ordinance, but then refused to apply those provisions to H&H's Digital Sign Applications.

185. As a direct and proximate result of these acts and omissions, the City denied and deprived H&H of a fair and lawful process for obtaining approvals and permits for its Digital Replacement Signs.

186. H&H has performed all conditions, covenants and obligations that it was required to perform in accordance with the terms of the DA, except those conditions, covenants and promises that it was and are excused from performing as a result of the City's breaches.

187. Accordingly, Plaintiff seeks a judicial decree of specific performance and/or permanent injunction:

a. Compelling the City to review and process H&H's Digital Sign

Applications fairly, diligently, expeditiously and in accordance with the standards established by the DA and Site Specific Sign Ordinance; and

b. Extending the DA commensurate with the period of time during which the City has delayed in processing H&H's Digital Sign Applications, as determined at trial.

**FOURTH CAUSE OF ACTION**

**(For Violation of Title 42, United States Code, Section 1983 – Substantive Due Process)**

(Against Defendant and DOES 1-25)

188. Plaintiff repeats and realleges paragraphs 1 through 148 of this First Amended Complaint as if fully set forth herein.

189. Section 1983 provides a cause of action against any person who, under color of state law, deprives any other person of rights, privileges, or immunities secured by the Constitution or laws of the United States.

190. Section 1983 "was enacted 'to deter state actors from using the badge of their authority to deprive individuals of their federally guaranteed rights and to provide relief to victims if such deterrence fails.'" *Modacure v. B & B Vehicle Processing, Inc.*, 30 Cal. App. 5th 690, 693 (2018). "A claim under [section 1983] may be based on a showing that the defendant, acting under color of state law, deprived the plaintiff of a federal protected right." *Id.* at 694.

191. Municipalities are "persons" subject to liability under section 1983. *See Monell v. Dep't of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978).

192. Under the Fifth and Fourteenth Amendments of the United States Constitution, H&H has a constitutional right not to be deprived of its vested land-use property rights "without due process of law." *See, e.g., Palacio De Anza v. Palm Springs Rent Rev. Com.*, 209 Cal. App. 3d 116, 120 (1989) (finding deprivation of owner's vested land-use property rights constituted denial of due process); *City of Santa Barbara v. Mod. Neon Sign Co.*, 189 Cal. App. 2d 188, 200 (1961) (finding impairment of owner's vested right to have moving signs constituted denial of due process).

193. The City is a municipal government.

194. H&H has a vested property right to erect, construct, maintain, remodel, renovate,

rehabilitate, rebuild and replace any signs at the Project, or any portions thereof, including the replacement of existing static signs with digital signs, by virtue of H&H's Vested Signage Rights.

195. Beginning at least as early as in or about May 2022, and continuing to the present, the City has violated H&H's right to substantive due process by arbitrarily, capriciously, irrationally and unreasonably, and for purposes wholly unrelated to the public health, safety, morals, or general welfare, denying H&H's Digital Sign Applications and depriving H&H of its Vested Signage Rights, as described above.

196. In wrongfully depriving H&H of its constitutional right to substantive due process:

a. The City was acting, or purporting to act, under color of state law in the performance of its official duties as a municipal government;

b. Officials and employees of City Planning, the LACAO and LADBS were acting pursuant to the City's longstanding practice or custom, which constitutes the City's standard operating procedure;

c. Certain City officials and/or employees, including Lisa Webber, had or was delegated, final policy-making authority on behalf of the City, such that their acts constituted official City policy; and

d. The City's wrongful conduct was ratified by City officials with final policy-making authority on behalf of the City, including Vincent Bertoni and Lisa Webber.

197. As a direct and proximate result of the City's violation of H&H's constitutional right to substantive due process, H&H has been damaged in an amount to be determined at trial, including, but not necessarily limited to:

a. Out-of-pocket losses of approximately $500,000;

b. Past lost revenue through the time of trial, which H&H estimates will be approximately $8 million to $20 million; and

c. Future lost revenue, which H&H estimates will be approximately $4.4 million to $13 million per year.

198. In addition, pursuant to 42 U.S.C. sections 1988, subdivision (b), Plaintiff may recover its reasonable attorney's fees and costs.

## FIFTH CAUSE OF ACTION

**(For Violation of Title 42, United States Code, Section 1983 - Procedural Due Process)**

(Against Defendant and DOES 1-25)

199. Plaintiff repeats and realleges paragraphs 1 through 148 of this First Amended Complaint as if fully set forth herein.

200. H&H had a vested property right to erect, construct, maintain, remodel, renovate, rehabilitate, rebuild and replace any signs at the Project, or any portions thereof, including the replacement of existing static signs with digital signs, by virtue of H&H's Vested Signage Rights.

201. Beginning at least as early as in or about May 2022, and continuing until the present, the City violated H&H's right to procedural due process under the Fifth and Fourteenth Amendments of the United States Constitution by denying H&H's Digital Sign Applications and depriving H&H of its Vested Signage Rights without due process of law. Among other things, the City:

a. Refused to recognize H&H's Vested Sign Rights;

b. Refused to diligently and expeditiously process H&H's Digital Sign Applications;

c. Charged and accepted fees from H&H to process (and process on an expedited basis) H&H's Digital Sign Applications, but never processed those Applications;

d. Charged and accepted fees from H&H to process its application to extend the DA, but never processed that application, and, in fact, re-routed it so that it would not even be considered before the DA expired;

e. Refused to give H&H timely notice of a clear and certain pathway for processing and review of H&H's Digital Sign Applications before the DA was due to expire;

f. Imposed sign related rules, regulations and requirements on H&H from which H&H was exempt under the DA and Site Specific Sign Ordinance;

g. Applied the wrong standard in denying H&H's Digital Sign Applications;

h. Failed to liberally construe H&H's Vested Signage Rights;

i. After years of delay, stalling and stonewalling, advised H&H that it was

denying its Digital Sign Applications just weeks before the DA was due to expire; and

j. Failed and refused to provide H&H with a process by which it could appeal the denial of its Digital Sign Applications and deprivation of its Vested Signage Rights.

202. In wrongfully depriving H&H of its constitutional right to procedural due process:

a. The City was acting, or purporting to act, under color of state law in the performance of its official duties as a municipal government;

b. Officials and employees of City Planning, the LACAO and LADBS were acting pursuant to the City's longstanding practice or custom, which constitutes the City's standard operating procedure;

c. Certain City officials and/or employees, including Lisa Webber, had or was delegated, final policy-making authority on behalf of the City, such that their acts constituted official City policy; and

d. The City's wrongful conduct was ratified by officials with final policy-making authority on behalf of the City, including Vincent Bertoni and Lisa Webber.

203. As a direct and proximate result of the City's violation of H&H's constitutional right to procedural due process, H&H has been damaged in an amount to be determined at trial, including, but not necessarily limited to:

a. Out-of-pocket losses of approximately $500,000;

b. Past lost revenue through the time of trial, which H&H estimates will be approximately $8 million to $20 million; and

c. Future lost revenue, which H&H estimates will be approximately $4.4 million to $13 million per year.

204. In addition, pursuant to 42 U.S.C. sections 1988, subdivision (b), Plaintiff may recover its reasonable attorney's fees and costs.

## SIXTH CAUSE OF ACTION

**(For Violation of Title 42, United States Code, Section 1983 – Equal Protection)**

(Against Defendant and DOES 1-25)

205. Plaintiff repeats and realleges paragraphs 1 through 148 of this First Amended

Complaint as if fully set forth herein.

206. On or about February 15, 2001, CRA approved TrizecHahn's proposed "Sign and Graphics Plan" for the Project, which included off-site digital signs, namely, the Zipper Sign and the Interior Panorama Sign.

207. In or about May 2005, CRA approved CIM's Virgin Megastore Sign Program.

208. In or about April 2015, CRA/LA-DLA approved a 1,105 square foot digital sign, which replaced a static sign, for a similarly situated commercial property owner at Sunset + Vine, a project similar to the Project.

209. H&H has a constitutional right to equal protection of the laws under the Fourteenth Amendment of the United States Constitution.

210. Beginning at least as early as in or about May 2022, and continuing to the present, both as the City and as the successor in interest to the land-use authority of CRA and/or CRA/LA-DLA, the City denied H&H its constitutional right to equal protection under the laws by, among other things:

a. Refusing, without a rational basis, to an approval process for signs that had been followed in similar situations at the Project under the prior ownership of TrizecHahn and CIM and at other similar projects, including, without limitation, Sunset + Vine;

b. Refusing, without a rational basis, to recognize H&H's Vested Signage Rights, while recognizing the signage rights of other similarly situated commercial property owners, including TrizecHahn, CIM and the owner of Sunset + Vine;

c. Denying, without a rational basis, H&H's Digital Sign Applications, while approving similar applications by similarly situated commercial property owners, including TrizecHahn, CIM and the owner of Sunset + Vine;

d. Failing to articulate any legitimate factual, legal, or other basis for denying H&H's Digital Sign Applications; and

e. Denying, without a rational basis, H&H's Digital Sign Applications based on a standard that the City has conceded in this litigation has no application.

211. By treating H&H differently than other similarly situated commercial property

owners without any rational basis, the City has violated H&H's rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.

212. In wrongfully depriving H&H of its constitutional right to equal protection:

a. The City was acting, or purporting to act, under color of state law in the performance of its official duties as a municipal government;

b. Officials and employees of City Planning, the LACAO and LADBS were acting pursuant to the City's longstanding practice or custom, which constitutes the City's standard operating procedure;

c. Certain City officials and/or employees, including Lisa Webber, had or was delegated, final policy-making authority on behalf of the City, such that their acts constituted official City policy; and

d. The City's wrongful conduct was ratified by officials with final policy-making authority on behalf of the City, including Vincent Bertoni and Lisa Webber.

213. As a direct and proximate result of the City's violation of H&H's constitutional right to equal protection, H&H has been damaged in an amount to be determined at trial, including, but not necessarily limited to:

a. Out-of-pocket losses of approximately $500,000;

b. Past lost revenue through the time of trial, which H&H estimates to be approximately $8 million to $20 million; and

c. Future lost revenue, which H&H estimates to be approximately $4.4 million to $13 million per year.

214. In addition, pursuant to 42 U.S.C. sections 1988, subdivision (b), Plaintiff may recover its reasonable attorney's fees and costs.

**SEVENTH CAUSE OF ACTION**

**(For Declaratory Relief Pursuant to Code of Civil Procedure Section 1060)**

(Against Defendant and DOES 1-25)

215. Plaintiff repeats and realleges paragraphs 1 through 148 of this First Amended Complaint as if fully set forth herein.

216. Under Code of Civil Procedure section 1060, "[a]ny person interested . . . under a contract, or who desires a declaration of his or her rights or duties with respect to another, or in respect to, in, over or upon property . . . may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action . . . in the superior court for a declaration of his or her rights and duties . . . , including a determination of any question of construction or validity arising under the . . . contract."

217. The DA, by its terms, can be enforced by declaratory relief. Specifically, Section 7.5 of the DA provides in part, that, "either Party may . . . seek declaratory relief with respect to its rights, obligations and interpretations of this Agreement . . . ."

218. An actual controversy has arisen and now exists between H&H and the City relating to the parties' legal rights and duties under the DA, Site Specific Sign Ordinance and Due Process and Equal Protection Clauses of the United States Constitution, such that there is a present justiciable dispute between H&H and the City.

219. Specifically, Plaintiff seeks a judicial declaration that:

a. H&H owned and held Vested Signage Rights under the DA;

b. The Project is not subject to the HSSUD;

c. H&H's Digital Sign Applications were submitted to the City during the term of the DA;

d. The City had a duty and obligation to review and process H&H's Digital Replacements Sign Applications diligently and expeditiously;

e. The City must approve H&H's Digital Sign Applications;

f. The DA should be extended commensurate with the period of time during which the City has delayed in processing H&H's Digital Sign Applications;

g. Section 403 terminated after the issuance of the Final Certificate of Completion was issued for the Project in or about 2001;

h. Lisa Webber's October 26, 2022 letter applied the wrong standard—the "Logical Evolution" standard in Section 403—to H&H's Digital Sign Applications; and

i. H&H's Digital Sign Applications should have been reviewed, and should be

reviewed, as falling within H&H's Vested Signage Rights to erect, construct, maintain, remodel, renovate, rehabilitate, rebuild and replace signs at the Project, as set forth in Sections 3.1.1.1 and 3.1.1.2 of the DA.

**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against Defendant and Does 1 through 25, and each of them, as follows:

**As to the First Cause of Action for Breach of Written Contract:**

1. A decree of specific performance and/or permanent injunction compelling the City to approve and issue permits for H&H's Digital Replacement Signs, subject to any necessary ministerial structural, electrical and/or mechanical review by LADBS; and

2. A decree of specific performance extending the DA commensurate with the period of time during which the City has delayed in processing H&H's Digital Sign Applications.

**As to the Second Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing:**

1. A decree of specific performance and/or permanent injunction compelling the City to approve and issue permits for H&H's Digital Replacement Signs, subject to any necessary ministerial structural, electrical and/or mechanical review by LADBS; and

2. A decree of specific performance extending the DA commensurate with the period of time during which the City has delayed in processing H&H's Digital Sign Applications.

**As to the Third Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing:**

1. A decree of specific performance and/or permanent injunction compelling the City to exercise any discretion it may possess in the processing, reviewing and approving of H&H's Digital Sign Applications in good faith, diligently, expeditiously and consistent with the terms and purposes of the DA and Site Specific Sign Ordinance; and

2. A decree of specific performance extending the DA commensurate with the period of time during which the City has delayed in processing H&H's Digital Sign Applications.

/ / /

**As to the Fourth Cause of Action for Violation of 42 U.S.C. Section 1983 – Substantive Due Process:**

1. Compensatory damages in an amount to be proven at trial;
2. Plaintiff's attorney's fees and costs; and
3. Pre-judgment interest to the maximum extent allowed by law.

**As to the Fifth Cause of Action for Violation of 42 U.S.C. Section 1983 – Procedural Due Process:**

1. Compensatory damages in an amount to be proven at trial;
2. H&H's attorney's fees and costs; and
3. Pre-judgment interest to the maximum extent allowed by law.

**As to the Sixth Cause of Action for Violation of 42 U.S.C. Section 1983 – Equal Protection:**

1. Compensatory damages in an amount to be proven at trial;
2. H&H's attorney's fees and costs; and
3. Pre-judgment interest to the maximum extent allowed by law.

**As to the Seventh Cause of Action for Declaratory Relief:**

1. For a judicial declaration determining the rights and obligations of the parties as set forth in Plaintiff's Seventh Cause of Action.

**For All Causes of Action:**

1. For such other and further relief as the Court may deem just and proper.

DATED: January 3, 2024

**ISAACS | FRIEDBERG LLP**

Jeffrey B. Isaacs, Esq.
Amy Yeh, Esq.
Glenn Kimball, Esq.

*Attorneys for Plaintiff H&H Retail Owner, LLC*

## DEMAND FOR JURY TRIAL

Plaintiff H&H Retail Owner, LLC hereby demands a trial by jury as to each and every issue to which it is so entitled.

DATED: January 3, 2024

**ISAACS | FRIEDBERG LLP**

Jeffrey B. Isaacs, Esq.
Amy Yeh, Esq.
Glenn Kimball, Esq.

*Attorneys for Plaintiff H&H Retail Owner, LLC*

# EXHIBIT A

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
ALLEN MATKINS LECK GAMBLE
& MALLORY LLP
515 South Figueroa Street, Seventh Floor
Los Angeles, California 90071-3398
Attention: Jerold B. Neuman, Esq.
(Space Above For Recorder's Use)

# DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE CITY OF LOS ANGELES

AND

TRIZECHAHN HOLLYWOOD LLC

DATED AS OF

11/5/02

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DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF LOS ANGELES AND
TRIZECHAHN HOLLYWOOD LLC

This Development Agreement ("Agreement") is made and entered into this 5th day of [illegible], 2002, by and between THE CITY OF LOS ANGELES, a charter city and a municipal corporation duly organized and existing under the Constitution and the laws of the State of California ("City") and TRIZECHAHN HOLLYWOOD LLC, a Delaware limited liability company ("Developer") pursuant to the authority set forth in Article 2.5 of Chapter 4 of Division 1 of Title 7 (Sections 65864 through 65869.5) of the California Government Code (the "Development Agreement Act") and the City's inherent power as a charter city.

RECITALS:

WHEREAS, the Community Redevelopment Agency of the City of Los Angeles ("Agency"), and Developer have entered into that certain Disposition and Development Agreement dated as of February 10, 1999 (the "DDA"), pursuant to which the Agency and Developer made certain agreements and established certain procedures with respect to the development of a mixed-use, entertainment/retail destination project and public space as further defined here ("Project") on that certain property depicted in Exhibit A attached hereto (the "Development Site"); and

WHEREAS, the City and Developer recognize that construction and development of the Project will create significant opportunities for economic growth in the City, the Southern California region and the State of California, and will generate significant economic benefits to the State, the region, the City and Developer; and

WHEREAS, the Project will provide opportunities for growth in the City which will provide new general fund revenues intended to offset incremental City costs associated with such growth; and

WHEREAS, the City has approved and adopted Ordinance No. 174063 (the "Signage Ordinance") establishing requirements for the design, construction, installation and maintenance of various signs on or around the Project; and

WHEREAS, in order to provide for the orderly development of the Project and render development of the Project more feasible in light of the large amount of capital investment necessary to implement the Project, Developer requires assurance from the City that signs will be permitted to be installed and maintained in various areas of the Project as approved pursuant to the Signage Ordinance; and

WHEREAS, the Project includes an approximately 3,300 seat live broadcast theater ("Theater") on the Development Site, which is intended, in part, to be utilized for the presentation of the annual Academy Awards Presentation ; and

WHEREAS, Developer and the Academy of Motion Picture Arts and Sciences ("Academy") have entered into that certain license agreement dated as of April 20, 1999, and amended on October 15, 2001 ("License Agreement"), pursuant to which the Theater is intended to be the venue for the broadcast of the annual "Academy Awards

Presentation" which is sponsored by the Academy for a period of 20 years commencing with the March, 2002 Academy Awards Presentation; and

WHEREAS, the terms of the License Agreement, the Academy is obligated to use the Theater as the venue for the broadcast of the annual Academy Awards Presentation only if certain contingencies, which are specified in the License Agreement, are met by both the Developer and by the Academy; and

WHEREAS, because preparations for the annual Academy Awards Presentation will affect public streets and sidewalks, and may necessitate the closures of certain streets and sidewalks adjacent to and beyond the Theater as well as related accommodations to facilitate the production and broadcast of the annual Academy Awards Presentation, one of the contingencies of the License Agreement requires the permission of the City to temporarily close certain streets and sidewalks; and

WHEREAS, by entering into this Agreement and agreeing to allow certain street closures, the City is assisting in the performance of one of the contingencies of the License Agreement, and therefore, eliminating one of the reasons permitted under the License Agreement for the Academy to seek another venue for the annual Academy Awards Presentation; and

WHEREAS, this Agreement will benefit the City and the Developer by making it easier for the Academy to hold the annual Academy Awards Presentation at the Theater, which will, in turn, provide financial benefits to the Developer and the City; and

WHEREAS, by entering into this Agreement, the City is reserving to the City the legislative powers necessary to remain responsible and accountable to its residents; and

WHEREAS, for the foregoing reasons, the Parties desire to enter into a development agreement for the Project pursuant to Government Code Section 65864 et seq. and the City's charter powers upon the terms set forth herein:

## AGREEMENT

NOW, THEREFORE, pursuant to the authority contained in the Development Agreement Act, as it applies to the City, and the City's inherent powers as a charter city, and in consideration of the premises and mutual promises and covenants herein contained and other valuable consideration the receipt and adequacy of which the Parties hereby acknowledge, the Parties hereto agree as follows:

### 1. DEFINITIONS.

For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

**1.1. "Academy"** means the Academy of Motion Picture Arts and Sciences, a California non-profit corporation.

**1.2. "Academy Awards Presentation"** means the annual Academy Awards ceremony to be produced and broadcast by the Academy at the Theater.

**1.3. "Agency"** means the Community Redevelopment Agency of the City of Los Angeles, a public entity duly organized under the laws of the State of California particularly Sections 33000 et seq. of the California Health and Safety Code.

**1.4. "Agreement"** means this Development Agreement and all amendments and modifications thereto.

**1.5. "Annual Review"** means the annual review process as described in Section 4 of this Agreement.

**1.6. "Applicable Rules"** means the rules, regulations, ordinances and officially adopted plans and policies of the City in force as of the Effective Date of this Agreement, including the Signage Ordinance. Notwithstanding the language of this Section or any other language in this Agreement, Applicable Rules shall mean and include this Agreement, the Existing Development Approvals, and the Fees in effect as of the Effective Date of this Agreement.

**1.7. "CEQA"** means the California Environmental Quality Act ("CEQA") (Cal. Public Resources Code Sections 21000 et seq.) and the State CEQA Guidelines (Cal. Code Regs., Title 14, Sections 15000 et seq.).

**1.8. "City Agency"** means each and every agency, department, board, commission, authority, employee, and/or official acting under the authority of the City, including without limitation the City Council, the Planning Commission and the Agency.

**1.9. "City Attorney"** means the City Attorney of the City.

**1.10. "City Council"** means the City Council of the City, the legislative body of the City pursuant to Section 65867 of the California Government Code.

**1.11. "City"** means the City of Los Angeles, a municipal corporation of the State of California exercising municipal home rule powers pursuant to a charter approved and issued by the State of California.

**1.12. "Counsel"** shall mean the counsel retained by Developer to represent Developer and to assist the City in connection with any Litigation.

**1.13. "DDA"** means that certain Disposition and Development Agreement entered into by and between the Agency and Developer, providing for the financial arrangements between Developer and the Agency with regard to the funding and construction of the Project.

**1.14. "Developer"** means TrizecHahn Hollywood LLC, a Delaware limited liability company.

**1.15. "Development Agreement Act"** means Article 2.5 of Chapter 4 of Division I of Title 7 (Sections 65864 through 65869.5) of the California Government Code.

**1.16. "Development Site"** means that certain real property located at the northwest quadrant of the intersection of Highland Avenue and Hollywood Boulevard in the City, as shown on the Development Site Map attached hereto as Exhibit A.

**1.17. "Discretionary Action"** means an action which requires the exercise of judgment, deliberation or a decision on the part of the City and/or any City Agency in the process of approving or disapproving a particular activity, as distinguished from an activity, including issuance of ministerial permits and approvals, which merely requires the City and/or any City Agency to determine whether there has been compliance with statutes, ordinances or regulations.

**1.18. "Effective Date"** shall have the meaning ascribed in Section 7.1 of this Agreement.

**1.19. "EIR"** means the Final Environmental Impact Report for the Project certified by the Agency and/or the City in accordance with the requirements of CEQA.

**1.20. "Existing Development Approvals"** means those certain land use and building permits and entitlements, as amended, issued by the City for the Project on or before the Effective Date and which are listed in Exhibit B attached hereto.

**1.21. "Fees"** means Impact Fees, Processing Fees and Charges and any other fees or charges imposed or collected by the City.

**1.22. "General Plan"** means the General Plan of the City.

**1.23. "Impact Fees"** means impact fees, linkage fees, exactions, assessments or fair share charges or other similar impact fees or charges imposed on and in connection with new development by the City pursuant to rules, regulations, ordinances and policies of the City set forth in the Applicable Rules. Impact Fees do not include (I) Processing Fees and Charges or (ii) other City-wide fees or charges of general applicability, provided that such City-wide fees or charges are not imposed on impacts of new development.

**1.24. "Inspections"** means all field inspections and reviews by City officials during the course of construction of the Project and the processing of certificates of occupancy (permanent or temporary).

**1.25. "LAMC"** means the Los Angeles Municipal Code.

**1.26 "License Agreement"** means that certain license agreement dated April 20, 1999, as amended October 15, 2001, made and entered into among the Developer, Academy, and TrizecHahn Hollywood Hotel, LLC for the Academy Awards Presentation a composite copy of which is attached as Exhibit C, and a full copy of which is contained in Los Angeles City Council File No. 98-1766, S-2.

**1.27. "Litigation"** shall mean any lawsuit (including any cross-action) filed against the City and/or Developer to the extent such lawsuit challenges the validity, implementation or enforcement of, or seeks any other remedy directly relating to, all or any part of this Agreement. Litigation also means the lawsuit entitled "Hollywood Heights Association v. City of Los Angeles, TrizecHahn, Real Party in Interest, Los Angeles Superior Court Case No. BS070774.

**1.28. "Ministerial Permits and Approvals"** means the permits, approvals, plans, inspections, certificates, documents, licenses, and all other actions required to be taken by the City in order for Developer to implement the Project in accordance with the Applicable Rules. Ministerial Permits and Approvals shall not include any Discretionary Actions.

**1.29. "Mortgage"** means any mortgage, deed of trust, pledge, encumbrance, sale leaseback, or other security interest granted to a lender not affiliated with Developer, made in good faith and for fair value, encumbering all or any part of the Development Site or Developer's interest in this Agreement, given by Developer for the purpose of obtaining financing for the acquisition of land within the Development Site or any portion thereof, or the construction of any improvements thereon.

**1.30. "Mortgagee"** means any mortgagee, beneficiary under any deed of trust, and/or, with respect to any parcel which is the subject of a sale-leaseback transaction, the person acquiring fee title under a Mortgage.

**1.31. "Parties"** means collectively Developer and the City.

**1.32. "Party"** means any one of Developer or the City.

**1.33. "Plaintiff"** means any party seeking relief or compensation through Litigation whether as plaintiff, petitioner, cross-complainant or otherwise.

**1.34. "Planning Commission"** means the Planning Commission of the City and the planning agency of the City pursuant to Section 65867 of the California Government Code.

**1.35. "Planning Director"** means the Planning Director for the City.

**1.36. "Processing Fees and Charges"** means all processing fees and charges required by the City including, but not limited to, fees for land use applications, project permits, building applications, building permits, grading permits, encroachment permits, tract or parcel maps, lot line adjustments, air right lots, street vacations, certificates of occupancy and other similar permits. Processing Fees and Charges shall not include Impact Fees.

**1.37. "Project"** means the development of a mixed-use, entertainment/retail destination project and public space on the Development Site as more particularly described in the Existing Development Approvals.

**1.38. "Redevelopment Plan"** means that certain Redevelopment Plan for the Hollywood Redevelopment Project Area approved and adopted by the City Council by Ordinance No. 161202 pursuant to the Community Redevelopment Law (Cal. Health & Safety Code Sections 33000 et seq.).

**1.39. "Reserved Powers"** means the rights and authority excepted from this

Agreement's restrictions on the City's police powers and which are instead reserved to the City. The Reserved Powers include the power to enact and implement rules, regulations, ordinances and policies after the Effective Date that may be in conflict with the Applicable Rules, but: (1) prevent or remedy conditions which the City has found to be injurious or detrimental to the public health or safety; (2) are Uniform Codes; (3) are necessary to comply with state and federal laws, rules and regulations (whether enacted previous or subsequent to the Effective Date) or to comply with a court order or judgment of a state or federal court; or (4) are agreed to or consented to by Developer; and (4) which include any signage ordinance/overlay zone, as reserved in the Signage Ordinance.

**1.40. "Signage Ordinance"** means Ordinance No. 174063, approved and adopted by the City, establishing requirements for the design, construction, installation, and maintenance of various signs on and around the Project.

**1.41. "Term"** means the applicable period of time during which this Agreement shall be in effect and shall bind the City and Developer, as described in Section 7.2.

**1.42. "Theater"** means that approximately 3,300 seat live broadcast theater constructed by Developer as part of the Project and for which Developer has granted the Academy a license to broadcast the Academy Awards Presentation for a period of twenty years.

**1.43. "Uniform Codes"** means those building, electrical, mechanical, fire and other similar regulations of a City-wide scope which are based on recommendations of a multi-state professional organization and become applicable throughout the City, such as, but not limited to, the Uniform Building Code, the Uniform Electrical Code, the Uniform Mechanical Code, or the Uniform Fire Code (including those amendments to the promulgated uniform codes which reflect local modification to implement the published recommendations of the multi-state organization and which are applicable City-wide).

## 2. RECITALS OF PREMISES, PURPOSE AND INTENT.

**2.1. State Enabling Statute.** To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted the Development Agreement Act which authorizes any city to enter into binding development agreements establishing certain development rights in real property with persons having legal or equitable interests in such property. Section 65864 of the Development Agreement Act expressly provides as follows:

"The Legislature finds and declares that:

"(a) The lack of certainty in the approval of development projects can result in a waste of resources, escalate the cost of housing and other development to the consumer, and discourage investment in and a commitment to comprehensive planning which would make maximum efficient utilization of resources at the least economic cost to the public.

"(b) Assurance to the applicant for a development project that upon approval of the project, the applicant may proceed with the project in accordance with existing policies, rules and regulations, and subject to conditions of approval, will strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic costs of development."

Notwithstanding the foregoing, to ensure that the City remains responsive and accountable to its residents while pursuing the benefits of development agreements contemplated by the Legislature, the City: (1) accepts restraints on its police powers contained in development agreements only to the extent and for the duration required to achieve the mutual objectives of the Parties; and (2) to offset such restraints, seeks public benefits which go beyond those obtained by traditional City controls and conditions imposed on development project applications.

**2.2. Purpose of this Agreement.**

**2.2.1. Developer Objectives**. In accordance with the legislative findings set forth in the Development Agreement Act, and with full recognition of the City's policy of judicious restraints on its police powers, Developer wishes to obtain reasonable assurances with respect to its ability to implement the Project in accordance with the Applicable Rules and subject to the terms of this Agreement and the City's Reserved Powers. In the absence of this Agreement, Developer would have no assurance that it can implement the Project as set forth in this Agreement. This Agreement, therefore, is necessary to assure Developer that Developer will not be subjected to different rules, regulations, ordinances or official policies or delays which are not permitted by this Agreement, the Applicable Rules, or the Reserved Powers.

**2.2.2 City Objectives.** A development agreement for the Project will provide assurances to the City that its investment in the Project will be better protected, that the Academy Awards Presentation is more likely to be held at the Theater, and that the City will be protected from monetary liability for its actions in approving the Project and granting the Existing Development Approvals

**2.2.3. Mutual Objectives.** A development agreement for the Project will eliminate uncertainty in planning for and securing the orderly development and operation of the Project and the broadcast of the Academy Awards Presentation, thereby achieving the goals and purposes for which the Development Agreement Act was enacted. The Parties believe that such orderly implementation will provide many public benefits to the City through the imposition of development standards and requirements under the provisions and conditions of this Agreement, including without limitation, increased tax revenues and job creation. Additionally, although implementation of this Agreement may restrain the City's land use or other relevant police powers, the Agreement provides the City with sufficient reserved powers during the Term hereof to remain responsible and accountable to its residents. In exchange for these and other benefits to the City, Developer will receive assurance that the Project may be implemented during the Term of this Agreement in accordance with the Reserved Powers and subject to the terms and conditions of this Agreement.

**2.3. Applicability of the Agreement**. This Agreement does not: (1) grant density, intensity or uses in excess of that otherwise established in the Applicable Rules; (2) eliminate future Discretionary Actions otherwise required; or (3) amend the City's General Plan.

## 3. AGREEMENT AND ASSURANCES.

**3.1. Agreement and Assurances on the Part of the City.** In consideration for Developer entering into this Agreement, and as an inducement for Developer to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the purposes and intentions set forth in Section 2 of this Agreement, the City hereby agrees during the Term as follows:

**3.1.1. Entitlement to Implement the Signage Ordinance.**

**3.1.1.1. Signage Ordinance.** During the Term of this Agreement, Developer has the vested right to erect, construct and maintain signs on the Project in accordance with the Signage Ordinance, subject to the terms and conditions of this Agreement, the Applicable Rules, and the Reserved Powers.

**3.1.1.2. Right to Rebuild or Replace.** Developer's vested rights under this Agreement shall include, without limitation, the right to remodel, renovate, rehabilitate, rebuild or replace any signs erected on the Development Site or any portion thereof that are consistent with the Signage Ordinance throughout the applicable Term for any reason including without limitation, in the event of damage, destruction or obsolescence of such signs or any portion thereof, subject to the terms and conditions of this Agreement, the Applicable Rules, and the Reserved Powers.

**3.1.2. Entitlement to Implement the Existing Development Approvals.** During the Term of this Agreement, Developer has 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.

**3.1.3. Street Closures.** The purpose of the Street Closure Provision is to facilitate the production and broadcast of the Academy Awards Presentation by making certain public street and sidewalk areas available for the use of the Academy in connection with the Academy Awards Presentation Presentation, as provided in the License Agreement.

**3.1.3.1. Entitlement to Street Closures.** The City shall, during the term of this Agreement, secure appropriate closures of certain streets and sidewalks (including traffic and bus rerouting) adjacent to and beyond the Theatre, as well as related facilities, sufficient to accommodate the production and broadcast of an Academy Awards Presentation of a scope, size and function consistent with the March 2002 Presentation.

**3.1.3.2. Base Street Closure Plan.** The City shall each year

cooperate with the Academy and other appropriate governmental agencies in formulating a street closure plan, and shall, in conjunction with such parties, develop as soon as practicable, a base plan for future right-of-way closures based upon the information and experience derived from the prior Presentations (the "Base Plan"). The Base Plan shall be an evolving plan which is updated in each successive year commencing with the 2003 street closure plan which shall evolve from the Initial Plan (as defined below). The Base Plan from the immediately preceding year shall be utilized by the City and the Academy in the event a dispute ever arises relative to the appropriate street closures in any year. In working with the Developer and the Academy to implement the requested street closures, the City shall cause any agreed-upon street closure plan to include the complete closure of Orchid Alley beginning twenty-one (21) days prior to the Presentation and ending seven (7) days thereafter, and the complete closure of Hawthorn Avenue from 2:00 a.m. two (2) days prior to the date of the Presentation until at least 6:00 a.m. on the day following the Presentation. Any of the Base Plans shall not materially interfere with, or decrease the efficiencies of, the Academy Awards Presentation relative to: (a) set-up and tear-down of press, arrivals and production facilities and use of Project areas as contemplated in the License Agreement; (b) distances of travel from the area provided for drop-off and pick-up of Academy Awards Presentation attendees to the Theater; (c) timing and location of street closures on the day of the Academy Awards Presentation; (d) ability to accommodate the volume and types of vehicles and timely access to the Academy Awards Presentation; and (e) space provided by the City in City rights-of-way, including cabling, for production facilities.

**3.1.3.3. Academy's Right to Utilize Street Closure Plans.** The City agrees to allow the Academy to utilize the street closure plan which was adopted by the City Council on February 22, 2002 (Council File No. 00-0269) for the March 2002 Presentation (the "Initial Plan") or the Base Plan (collectively "Street Closure Plans") for future Academy Awards Presentations during the term of this Agreement, subject to the City's right to modify those Plans for any of the reasons set forth in section 3.1.3.4 and provided that, unless and to the extent waived by the City Council: (a) customary fees charged by the City for implementation and processing of the street closure plan must be paid, and the Academy pays those fees, in an amount to be determined by the City; and (b) prior to the removal of any City structures, fixtures, traffic devices or signals requested by the Academy to be removed, the Academy agrees in writing to reimburse the City for the removal and replacement of such structures, fixtures, traffic devices or signals.

**3.1.3.4. Limitations on Right to Utilize Street Closure Plans.** The City reserves the right to modify the Street Closure Plans for the following reasons, as determined to be necessary by the City acting through its Department of Transportation:

a. The need to exercise the Reserved Powers with respect to the Street Closure Plans; and

b. The failure by any jurisdiction other than the City or a department, bureau or agency of, or controlled by, the City, to cooperate in closing rights-of-way or facilities under their authority or control when such closures are part of any Base Plan.

The Parties acknowledge that the Community Redevelopment Agency of Los Angeles is

developing a parking garage to be located between Highland Avenue and Orange Drive on the north side of Hawthorn Avenue (commonly known as the "Parkade Project") in a manner which, as contemplated in the above-referenced License Agreement, may meet the Academy's needs for staging and operation of press and international broadcaster facilities, including satellite and microwave vehicles placed in an area suitable for satellite and microwave transmission, production trucks, trailers, support vehicles and tents, all as determined in Academy's reasonable discretion. In the event the Parkade Project is developed and utilized by the Academy, the Developer, Academy and City shall determine the extent, if any, to which the City might be released of its obligation to provide a complete closure of Hawthorn Avenue as described above, and during the time in which the Parkade Project is being constructed, to the extent that Hawthorn Avenue is not available due to that construction, the City shall also be released from the foregoing obligation to provide a closure of Hawthorn Avenue.

**3.1.3.5 Agreement to Cooperate in Implementation of Modifications to Street Closure Plans.**

Without limiting the generality of the foregoing, the City , acting through its Department of Transportation, will cooperate with the Academy and other appropriate governmental agencies in formulating the Street Closure Plans as may be adopted for any succeeding presentation. The City acknowledges that it is its intention to cooperate with such parties to implement, for each Academy Awards Presentation, a Street Closure Plan that will accomplish the objectives set forth above in a manner that will incorporate the experience gained from prior Presentations.

**3.1.3.6 Survival of Obligations Regarding Street Closure Plans.**

Notwithstanding anything to the contrary herein, including, without limitation, Section 7.2.2 hereof, no termination of this Agreement shall void the obligations of the City under this Section 3.1.3 until the expiration of six (6) months following notice from City to Developer of such termination.

**3.1.4 Nonapplication of Changes in Applicable Rules.** Any change in, or addition to, the Applicable Rules, including, without limitation, any change in the General Plan, zoning ordinance or building regulation adopted or becoming effective after the Effective Date, including, without limitation, any such change by means of ordinance, City Charter amendment, initiative, referendum, resolution, motion, policy, order or moratorium, initiated or instituted for any reason whatsoever and adopted by the Mayor, City Council, Planning Commission or City Agency, or by the electorate, as the case may be, which would, absent this Agreement, otherwise be applicable to the Project and which would conflict with the Applicable Rules or this Agreement, shall not be applied to the Project unless such changes represent an exercise of the City's Reserved Powers or are otherwise expressly allowed by this Agreement.

**3.1.5 Agreed Changes and Other Reserved Powers.** This Agreement shall not preclude application to the Project of rules, regulations, ordinances and officially adopted plans and policies in conflict with the Applicable Rules where such additional rules, regulations, ordinances and officially adopted plans and policies (I) are mutually agreed to in writing by Developer and the City in accordance with the requirements of Section 7.7 of this Agreement or (ii) result from the Reserved Powers.

**3.1.6 Subsequent Development Review.** The City shall not require Developer to obtain any approvals or permits for the implementation of the Project in accordance with this Agreement other than those permits or approvals which are required by the Applicable Rules or the Reserved Powers. Moreover, the City hereby agrees that it will not unreasonably withhold or unreasonably condition any approvals or permits for the implementation of the Project which must be issued by the City, provided that Developer satisfactorily complies with all City-wide standard procedures and policies of the City for processing any such approvals or permits and pays any applicable Processing Fees and Charges. No change to the Project which is consistent with the Applicable Rules shall require an amendment of this Agreement, and in the event any such change is approved, the references in this Agreement to the Project shall be deemed to refer to the Project as so changed.

**3.1.7. Moratoria.** In the event an ordinance, resolution or other measure is enacted, whether by action of the City, by initiative, or otherwise, which relates to the implementation of the Project, City agrees that such ordinance, resolution or other measure shall not alter the terms of this Agreement, unless such changes are adopted pursuant to the City's exercise of its Reserved Powers or other applicable provision of this Agreement.

**3.1.8. Environmental Review.** The Agency has conducted extensive environmental review of the Project and has certified the EIR pursuant to the requirements of CEQA. The City intends that the approval of the Signage Plan and this Agreement is not an action subject to requirements for further environmental review pursuant to CEQA. Consistent with the provisions of Section 3.1.5, the City further agrees to use its good faith efforts to consult with Developer regarding any approvals necessary for the implementation of the Project to avoid any unnecessary or unreasonable delays due to requirements for additional documentation pursuant to CEQA.

**3.2. Agreement and Assurance on the Part of Developer**. In consideration for the City entering into this Agreement, and as an inducement for the City to obligate itself to carry out the covenants and conditions set forth in this Agreement, and in order to effectuate the premises, purposes and intentions set forth in Section 2 of this Agreement, Developer hereby agrees as follows:

**3.2.1. Implementation of the Signage Ordinance**. Developer shall ensure that all signs erected on the Project shall comply with the requirements set forth in the Applicable Rules. Developer may modify the design, configuration, elements and content of the signage plan that was approved by the Agency and the City in conjunction with the adoption of the Signage Ordinance only with the written consent of the City.

**3.2.2 .Employee Transit Program**. Developer shall make commercially reasonable efforts to implement an employee transit program to provide a range of transportation alternatives for Project employees, including but not limited to such alternatives as providing public transit passes to eligible employees and providing incentives for employee vanpooling and ridesharing. Notwithstanding any provision of this Agreement or the Existing Development Approvals to the contrary, Developer shall not be required to spend more than $16,680 per month in connection with the implementation of the employee parking program.

**3.2.3 Commitment that Academy Awards Presentation Will be Presented at the Theater.**

The Developer agrees to fulfill its obligations under the License Agreement to ensure that the Academy Awards Presentation will be held at the Theater for the duration of the License Agreement. Failure of the Academy to conduct the Academy Awards Presentation at the Theater due to a default by Developer under the License Agreement shall constitute a default of the Developer under section 5.1.1 of this Agreement. Additionally, (i) the Developer shall provide written notice to the City within ten days of receiving notification from the Academy that the Academy will seek an alternate venue for the Academy Awards Presentation each time Developer receives such notification from the Academy, and (ii) upon receiving notification from the Academy that the Academy will seek an alternate venue for the Academy Awards Presentation, Developer shall take all steps within its power that are necessary to enforce the Academy's obligation under the License Agreement to conduct the Academy Awards Presentation at the Theater.

**3.2.4 Developer Indemnification of City for Development Agreement Litigation.**

The Developer agrees to indemnify the City for any costs of Litigation, including attorneys fees incurred by the City whether paid to another party and whether incurred by the City for costs of representation in the Litigation. This section shall not apply to Litigation brought by the Developer against the City or brought by the City against the Developer.

**3.2.5 Commitment and Promise by Developer To Fulfil All Conditions of the Existing Development Approvals.**

The Developer agrees to comply with all conditions, rules and requirements that are part of the Existing Development Approvals. Failure of the Developer to satisfy this section 3.2.5 shall constitute, among other things, a default of the Developer under section 5.1.1.

**3.2.6 Notice of Transfer or Assignment of Rights**. Developer agrees to provide prior written notice to the City of its intent to transfer any of the Developer's rights or obligations under this Development Agreement to a third party, as provided by section 7.8 of this Agreement.

## 4. ANNUAL REVIEW

**4.1. Annual Review.** During the Term of this Agreement, the City shall review annually Developer's compliance with this Agreement. Such Annual Review shall be limited in scope to good faith compliance with the provisions of this Agreement as provided in the Development Agreement Act and Developer shall have the burden of demonstrating such good faith compliance.

**4.2. Pre-Determination Procedure**. Developer's submission of compliance with this Agreement, in a form which the Director of Planning may reasonably establish, shall be made in writing and transmitted to the Director of Planning not later than sixty (60) days prior to the yearly anniversary of the Effective Date. The public shall be afforded an opportunity to submit written comments regarding compliance to the Director of Planning at least sixty (60) days prior to the yearly anniversary of the Effective Date. All such public comments shall, upon receipt by the City, be made available to Developer

**4.3. Director's Determination**. On or before the yearly anniversary of the Effective Date of the Agreement, the Director of Planning shall make a determination regarding whether or not Developer has complied in good faith with the provisions and conditions of this Agreement. This determination shall be made in writing with reasonable specificity, and a copy of the determination shall be provided to Developer in the manner prescribed in Section 7.15. Copies of the determination shall also be available to members of the public.

**4.4. Appeal By Developer**. In the event the Director of Planning makes a finding and determination of non-compliance, Developer shall be entitled to appeal that determination to the Planning Commission. After a public hearing on the appeal, the Planning Commission shall make written findings and determinations, on the basis of substantial evidence, whether or not Developer has complied in good faith with the provisions and conditions of this Agreement. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245. (City Council review of Commission and Board actions).

**4.5. Period To Cure Non-Compliance.** If, as a result of this Annual Review procedure, it is found and determined by the Planning Director or the Planning Commission, on appeal, that Developer has not complied in good faith with the provisions and conditions of this Agreement, the City, after denial of any appeal or, where no appeal is taken, after the expiration of the appeal period described in Section 7.3, shall submit to Developer, by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 7.15, stating with specificity those obligations of Developer which have not been performed. Upon receipt of the notice of default, Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than sixty (60) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), by mutual consent of the City and the Developer provided that Developer shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

**4.6. Failure To Cure Non-Compliance Procedure**. If the Director of Planning finds and determines that Developer, or its successors, transferees, and/or assignees, as

the case may be, has not cured a default pursuant to this Section, and that the City intends to terminate or modify this Agreement or those transferred or assigned rights and obligations, as the case may be, the Director of Planning shall make a report to the Planning Commission. The Director of Planning shall then set a date for a public hearing before the Planning Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after such public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Developer, or its successors, transferees, and/or assignees, as the case may be, has not cured a default pursuant to this Section, and that the City shall terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the finding and determination shall be appealable to the City Council in accordance with Section 7.3. In the event of a finding and determination of compliance, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council review of Commission and Board actions).

**4.7. Termination Or Modification Of Agreement**. The City may terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, after such final determination of the City Council or, where no appeal is taken, after the expiration of the appeal periods described in Section 7.3. There shall be no modification of this Agreement unless the City Council acts pursuant to Government Code Sections 65867.5 and 65868.

**4.8. Reimbursement Of Costs**. Developer shall reimburse the City for its actual costs, reasonably and necessarily incurred, to accomplish the required annual review.

## 5. DEFAULT PROVISIONS.

### 5.1. Default by Developer.

**5.1.1 Default.** In addition to the Annual Review process set forth in Section 4, in the event Developer does not perform its obligations under this the Agreement in a timely manner, the City shall have all rights and remedies provided for in this Agreement, compelling the specific performance of the obligations of Developer under this Agreement, or modification or termination of this Agreement, provided that the City has first complied with the procedure in Section 5.1.2, including without limitation, Section 7.5; provided that the City shall have no right to monetary damages under this Development Agreement as a result of any default by Developer unless the default of the Developer relates to any requirement in this Development Agreement that the Developer pay money to the City or reimburse the City for any expenditures. Nothing in this Section 5.1.1 shall limit the City's right to terminate this Agreement in accordance with Section 4.7.

**5.1.2 Notice Of Default.** With respect to a default pursuant to this Agreement, the City, through the Planning Director shall submit to Developer, by registered or certified mail, return receipt requested, a written notice of default in the manner prescribed in Section 7.15, identifying with specificity those obligations of Developer which have not been performed. Upon receipt of the notice of default, Developer shall promptly commence to cure the identified default(s) at the earliest reasonable time

after receipt of the notice of default and shall complete the cure of such default(s) not later than sixty (60) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that Developer shall continuously and diligently pursue such remedy at all times until such default(s) is cured.

**5.1.3. Failure To Cure Default Procedure.** If after the cure period has elapsed, the Planning Director finds and determines that Developer , or its successors, transferees and/or assignees, as the case may be, remains in default and that the City intends to terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, the Director shall make a report to the Planning Commission and then set a public hearing before the Commission in accordance with the notice and hearing requirements of Government Code Sections 65867 and 65868. If after public hearing, the Planning Commission finds and determines, on the basis of substantial evidence, that Developer or its successors, transferees and/or assignees, as the case may be, has not cured default pursuant to this Section, and that the City shall terminate or modify this Agreement, or those transferred or assigned rights and obligations, as the case may be, Developer and its successors, transferees and/or assigns, shall be entitled to appeal that finding and determination to the City Council in accordance with Section 7.3. In the event of a finding and determination that all defaults are cured, there shall be no appeal by any person or entity. Nothing in this Section or this Agreement shall be construed as modifying or abrogating Los Angeles City Charter Section 245 (City Council review of Commission and Board actions).

**5.2. Default By The City.**

**5.2.1. Default**. In the event the City does not accept, process, or render a decision on necessary development permits, entitlements, or other land use or building approvals for use the implementation of the Project as provided in this Agreement upon compliance with the requirements therefor, or as otherwise agreed to by the Parties, or the City otherwise defaults under the provisions of this Agreement, Developer shall have those rights and remedies provided herein or by applicable law, which shall include Section 7.5, compelling the specific performance of the City's obligations under this Agreement provided that the Developer has first complied with the procedures in Section 5.2.2. No part of this Agreement shall be deemed to abrogate or limit any immunities or defenses the City may otherwise have with respect to claims for monetary damages or specific performance and all rights and remedies set forth in the DDA or available at law or in equity.

**5.2.2 Notice of Default.** Developer shall first submit to the City a written notice of default in the manner prescribed in Section 7.15 stating with specificity those obligations of the City which have not been performed. Upon receipt of the notice of default, the City shall promptly commence to cure the identified default(s) at the earliest reasonable time after receipt of the notice of default and shall complete the cure of such default(s) not later than one hundred and twenty (120) days after receipt of the notice of default, or such longer period as is reasonably necessary to remedy such default(s), provided that the City shall continuously and diligently pursue such remedy at all times until such default(s) is cured. In the case of a dispute as to whether the City has cured the default, the Parties shall submit the matter to arbitration pursuant to Section 7.12.2 of this Agreement.

**5.3. No Monetary Damages**. It is acknowledged by the parties that the City would not have entered into this Agreement if it were liable in monetary damages under or with respect to this Agreement or the application thereof. Both parties agree and recognize that, as a practical matter, it may 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 require to enter into this Agreement to justify such exposure. Therefore, the parties agree 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 this Agreement.

## 6. MORTGAGEE PROTECTIONS.

### 6.1. No Encumbrances Except Mortgage, Deeds of Trust. Sales and Lease-Backs or Other Financing for Development.

Developer shall have the same right to encumber Developer's right, title and interest in, to and under this Agreement and the Development Site that Developer would have absent this Agreement, pursuant to one or more Mortgages, provided that each such Mortgage is given for the purpose of securing funds to be used for financing the acquisition of the Development Site or any portion thereof, the construction of improvements thereon, and any other expenditures reasonably necessary and appropriate to develop the Project.

**6.2 Title by Foreclosure**. Except as otherwise set forth herein, all of the provisions contained in this Agreement shall be binding on and for the benefit of any person who acquires title to the Development Site or any portion thereof by foreclosure, trustee's sale, deed in lieu of foreclosure, lease termination or expiration or other involuntary transfer under a Mortgage.

**6.3 Modification of Article; Conflicts.** The City hereby agrees to cooperate in including in this Agreement by suitable amendment from time to time any provision which may reasonably be requested by any proposed Mortgagee for the purpose of allowing such Mortgagee reasonable means to protect or preserve the lien and security interest of the Mortgage hereunder as well as such other documents containing terms and provisions customarily required by Mortgagees (taking into account the customary requirements of their participants, syndication partners or ratings agencies) in connection with any such financing. The City agrees to execute and deliver (and to acknowledge, if necessary, for recording purposes) any agreement necessary to effectuate any such amendment; provided, however, that any such amendment shall not in any way materially adversely affect any rights of either Party under this Agreement. If there is any conflict between this Article 6 and any other provision contained in this Agreement, this Article 6 shall control.

**6.4. Entitlement to Written Notice of Default.** The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Property, or any part thereof, and their successors and assigns shall, upon written request to the City, be entitled to receive from the City written notification of any default by Developer of the performance of Developer's

obligations under this Agreement which has not been cured within sixty (60) days following the date of default. Notwithstanding the foregoing, the City's failure to comply with this section shall not constitute a default, or grounds for termination. Developer shall reimburse the City for its actual costs, reasonably and necessarily incurred, to prepare this notice of default.

## 7. GENERAL PROVISIONS

**7.1. Effective Date**. This Agreement shall be effective upon such date as it is attested by the City Clerk of the City of Los Angeles after approval by the City Council and execution by Developer and the Mayor of the City of Los Angeles.

**7.2. Basic Term**. The term of this Agreement ("Term") shall commence on the Effective Date and shall extend until twenty (20) years after the Effective Date, unless said Term is otherwise terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the Parties hereto. The Term shall be subject to extension pursuant to Section 7.4.

**7.2.1 Termination of Agreement**. Following the expiration of the Term, this Agreement shall terminate and be of no further force and effect.

**7.2.2. Early Full Termination of Agreement.** The Agreement is terminable: (I) by mutual written consent of the Parties; or (ii) by either Party following an uncured default by the other Party under this Agreement, subject to the procedures and limitations set forth in this Agreement.

**7.3. Appeals To City Council**. Where an appeal by Developer to the City Council from a finding and/or determination of the Planning Director or Planning Commission is created by this Agreement, such appeal shall be taken, if at all, within twenty (20) days after the delivery of notice in accordance with Section 7.15 of such finding and/or determination to Developer, or its successors, transferees, and/or assignees, as the case may be. The City Council shall act upon the finding and/or determination of the Planning Director or Planning Commission within eighty (80) days after such delivery of notice in accordance with Section 7.15, or within such additional period as may be agreed upon by the Developer and the City Council. The failure of the City Council to act shall not be deemed to be a denial or an approval of the appeal, which shall remain pending until final City Council action.

**7.4. Enforced Delay; Extension Of Time Of Performance**. In addition to specific provisions of this Agreement, whenever a period of time, including a reasonable period of time, is designated within which either Party hereto is required to do or complete any act, matter or thing, the time for the doing or completion thereof shall be extended by a period of time equal to the number of days during which such Party is actually prevented from, or is unreasonably interfered with, the doing or completion of such act, matter or thing because of causes beyond the reasonable control of the Party to be excused, including: war; insurrection; riots; floods; earthquakes; fires; casualties; acts of God; litigation and administrative proceedings against the Project (not including any administrative proceedings contemplated by this Agreement in the normal course of affairs

such as the Annual Review); any approval required by the City (not including any period of time normally expected for the processing of such approvals in the ordinary course of affairs); restrictions imposed or mandated by other governmental entities; enactment of conflicting state or federal laws or regulations; judicial decisions; the exercise of the City's Reserved Powers; or similar bases for excused performance which is not within the reasonable control of the Party to be excused (financial inability excepted). This Section shall not be applicable to any proceedings with respect to bankruptcy or receivership initiated by or on behalf of Developer or, if not dismissed within ninety (90) days, by any third parties against Developer. If written notice of such delay is given to either Party within thirty (30) days of the commencement of such delay, an extension of time for such cause will be granted in writing for the period of the enforced delay, or longer as may be mutually agreed upon; in the event no such notice is given, such claim of delay from that cause shall be deemed waived and no extension shall be granted on that basis.

**7.5. Legal Action**. Subject to the limitation on remedies imposed by this Agreement, either Party may, in addition to any other rights or remedies, institute legal action to cure, correct, or remedy any default, enforce any covenant or agreement herein, enjoin any threatened or attempted violation, or enforce by specific performance the obligations and rights of the Parties hereto or seek declaratory relief with respect to its rights, obligations and interpretations of this Agreement or pursue other remedies under applicable law.

**7.6. Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of California, and the venue for any legal actions brought by any Party with respect to this Agreement shall be the County of Los Angeles, State of California for state actions and the Central District of California for any federal actions.

**7.7. Amendments.** This Agreement may be amended from time to time by mutual consent in writing of the Parties to this Agreement in accordance with Government Code Section 65868. Any amendment to this Agreement which relates to the Term, permitted uses, density or intensity of use, height, or size of buildings, provisions for reservation and dedication of land, conditions, restrictions, and requirements relating to subsequent Discretionary Action, monetary contributions by Developer, if any, or any conditions or covenants relating to the use of the Development Site shall require notice and public hearing before the Parties may execute an amendment thereto. Developer shall reimburse the City for its actual costs, reasonably and necessarily incurred, to review any amendments requested by Developer including the cost of any public hearings.

**7.8 Assignment**

**7.8.1. Right to Assign Development Site**. Developer shall have the right to sell, transfer, or assign the Development Site or any portion thereof (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq.) to any person, partnership, joint venture, firm, or corporation at any time during the Term of this Agreement, together with the rights granted to and obligations imposed upon the Development Site pursuant to this Agreement, including the right to transfer and allocate density and other development rights, without consent of the City,

subject to the following:

7.8.1.1 Notwithstanding Section 7.8.1 of this Agreement, because this Agreement is intended to represent an integrated plan, the failure of any successor-in-interest to perform the obligations assigned to it may result, at the City's option, in a declaration that this Agreement has been breached and an election to terminate this Agreement in its entirety as provided for in Section 5.1.

7.8.1.2 Developer, or any successor transferor, shall give prior written notice to the City of its intention to assign or transfer any of its interests, rights or obligations under this Agreement and a complete disclosure of the identity of the assignee or transferee, including copies of the Articles of Incorporation in the case of corporations and the names of individual partners in the case of partnerships. Any failure by Developer to provide said notice shall be curable in accordance with the provisions of Section 5.1.

**7.8.2 Allocation of Development Rights.** Notwithstanding the foregoing, Developer shall have the right to contractually allocate with any proposed purchaser, transferee, or assignee of any portion of the Development Site, the rights and obligations of Developer hereunder with respect to such portion of the Development Site, including, without limitation, permitted density and/or other development rights, and the right and obligation to construct improvements, all of which shall be set forth in a written assignment and assumption agreement between Developer and the proposed purchaser, transferee, or assignee. The assignment of Developer's rights and obligations under this Agreement shall not be effective unless the City consents in writing thereto. The City may withhold its consent to such assignment if the City reasonably believes that the assignment of the rights and obligations under this Agreement will interfere with or will diminish the Developer's and/or assignee's ability to perform the obligations under this Agreement.

**7.9. Covenants.** The provisions of this Agreement shall constitute covenants which shall run with the land comprising the Development Site for the benefit thereof and as a burden thereon, and the burdens and benefits hereof shall bind and inure to the benefit of all assignees, transferees, and successors to the Parties hereto. To the extent that the Development Site consists of property leased to Developer, this Agreement shall encumber only the leasehold interest and shall not constitute an encumbrance upon the estate in fee.

**7.10. Implementation.**

**7.10.1. Processing**. Upon satisfactory completion by Developer of all required preliminary actions, applications and payment of appropriate Processing Fees and Charges, including the fee for processing this Agreement, the City and Developer shall commence and diligently process all required steps necessary for the implementation of this Agreement and the implementation of the Project in accordance with the terms of this Agreement. Developer shall, in a timely manner, provide the City with all documents, plans, fees and other information necessary for the City to carry out its processing obligations.

**7.10.1.1. Processing Fees and Charges**. Processing Fees and Charges for the implementation of the Project shall be limited to Processing Fees and

Charges in effect on the Effective Date.

**7.10.1.2. Time frames and Staffing for Processing and Review.** The City agrees that expeditious processing of Ministerial Permits and Approvals, Inspections, and any other approvals or actions required for the implementation of the Project are critical. The City and Developer agree that all requests for Ministerial Permits and Approvals shall be reviewed and/or completed by the City as expeditiously as possible following the submittal of full and complete applications for such Ministerial Permits and Approvals. The City further agrees to expeditiously respond to requests for Inspections by Developer.

**7.10.2. Other Governmental Permits**. Developer shall apply in a timely manner for such other permits and approvals as may be required from other governmental or quasi-governmental agencies having jurisdiction over the Project as may be required for the development of, or provision of services to, the Project. The City shall cooperate with Developer in its endeavors to obtain such permits and approvals and shall, from time to time at the request of Developer, attempt with due diligence and in good faith to enter into binding agreements with any such entity to ensure the availability of such permits and approvals, or services, provided such agreements are reasonable and not detrimental to the City. These agreements may include, but are not limited to, joint powers agreements under the provisions of the Joint Exercise of Powers Act (Government Code Section 6500, et seq.) or the provisions of other laws to create legally binding, enforceable agreements between such parties. To the extent allowed by law, Developer shall be a party to any such agreement, or a third party beneficiary thereof, entitled to enforce for its benefit on behalf of the City, or in its own name, the rights of the City or Developer thereunder or the duties and obligations of the parties thereto. Developer shall reimburse the City for all costs and expenses incurred in connection with seeking and entering into any such agreement provided that Developer has requested it. Developer shall defend the City in any challenge by any person or entity to any such agreement, and shall reimburse the City for any costs and expenses incurred by the City in enforcing any such agreement. Any fees, assessments, or other amounts payable by the City thereunder shall be borne by Developer, except where Developer has notified the City in writing, prior to the City entering into such agreement, that it does not desire for the City to execute such agreement.

**7.10.3. Impact Fees**. This Agreement shall not limit any impact fees, linkage fees, exaction, assessments or fair share charges or other similar fees or charges imposed by other governmental entities and which the City is required to collect or assess pursuant to applicable law (e.g., school district impact fees pursuant to Government Code Section 65995).

**7.11. Relationship Of The Parties.** It is understood and agreed by the Parties hereto that the contractual relationship created between the Parties hereunder is that Developer is an independent party and not an agent of the City. Further, the City and Developer hereby renounce the existence of any form of joint venture or partnership between them and agree that nothing herein or in any document executed in connection herewith shall be construed as making the City and Developer joint venturers or partners.

**7.12. Dispute Resolution**.

**7.12.1. Dispute Resolution Proceedings**. The Parties may agree to dispute resolution proceedings to fairly and expeditiously resolve disputes or questions of interpretation under this Agreement. These dispute resolution proceedings may include: (a) procedures developed by the City for expeditious interpretation of questions arising under development agreements; (b) non-binding arbitration as provided below; or (c) any other manner of dispute resolution which is agreed upon by the Parties.

**7.12.2. Arbitration.** Any dispute between the Parties that is to be resolved by arbitration shall be settled and decided by arbitration conducted by an arbitrator who must be a former judge of the Los Angeles County Superior Court or Appellate Justice of the Second District Court of Appeals or the California Supreme Court. This arbitrator shall be selected by mutual agreement of the Parties.

**7.12.3. Arbitration Procedures.** Upon appointment of the arbitrator, the matter shall be set for arbitration at a time not less than thirty (30) nor more than ninety (90) days from the effective date of the appointment of the arbitrator. The arbitration shall be conducted under the procedures set forth in the Code of Civil Procedure Section 638, et seq., or under such other procedures as are agreeable to both Parties, except that provisions of the California Code of Civil Procedure pertaining to discovery and the provisions of the California Evidence Code shall be applicable to such proceeding.

**7.12.4. Extension Of Agreement Term**. The Term of this Agreement as set forth in Section 7.2 shall automatically be extended for the period of time in which the Parties are engaged in dispute resolution to the degree that such extension of the Term is reasonably required because activities which would have been completed prior to the expiration of the Term are delayed beyond the scheduled expiration of the Term as the result of such dispute resolution.

**7.13. Cooperation In The Event Of Litigation**. In the event of any Litigation instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the Signage Ordinance, or the Existing Development Approvals, the Parties hereby agree to affirmatively cooperate in defending said action.

**7.13.1. Coordination and Notice**. In the event any Litigation should arise, the City shall notify Developer in writing of such Litigation not later than five (5) business days after service upon City and shall transmit to Developer any and all documents (including, without limitation, correspondence and pleadings) received by, or served upon, City in connection with such Litigation. Upon receipt of such notice from the City, Developer shall retain and appoint legal counsel ("Counsel" for purposes of this Section) with respect to the Litigation. The Parties acknowledge that Counsel will appear and represent Developer in connection with such Litigation and such Counsel shall, at the request of the City Attorney, cooperate with the City Attorney and shall coordinate legal strategy and otherwise cooperate with City in connection with the Litigation. The City Attorney or his designee shall appear on behalf of the City in any such Litigation and shall at all times retain final authority and control over all documents to be filed on the City's behalf and all actions to be taken by the City with respect to Litigation. The City and

Developer shall cooperate in the defense of the Litigation, and each shall make its records (other than documents privileged from disclosure) and personnel available to the other as may be reasonably requested in connection with the Litigation.

**7.13.2. Joint Defense**. It is understood and agreed that Counsel shall represent Developer and that the City shall not be considered the client of Counsel, nor Developer the client of the City Attorney. Both Developer and the City understand that the requirements of cooperation contained in this Agreement apply only as to matters reasonably necessary for the accomplishment of the defense of the Litigation and shared information is intended to be, and must be, kept confidential.

**7.14. Hold Harmless and Insurance.**

**7.14.1. Developer Hold Harmless.** Developer hereby agrees to and shall indemnify, save, hold harmless and defend the City, and its elected and appointed representatives, boards, commissions, officers, agents, and employees (collectively, "the City" in for purposes of this Section), from any and all claims, costs, and liability for any damages, personal injury or death which may arise, directly or indirectly, from Developer or Developer's contractors, subcontractors, agents, or employees' operations, acts or omissions in connection with the construction of the Project or implementation of the Signage Ordinance, whether such operations, acts or omissions be by Developer or any of Developer's contractors, subcontractors, by any one or more persons directly or indirectly employed by, or acting as agent for Developer or any of Developer's contractors or subcontractors. Developer further agrees to and shall indemnify, save, hold the City harmless in any action brought by a third Party (1) challenging the validity of this Agreement or (2) seeking damages which may arise directly or indirectly from the negotiation, formation, execution, enforcement or termination of this Agreement. Developer specifically agrees that it will indemnify City for its costs of defense of such litigation, including the costs of attorneys fees which may be incurred by or payable by the City. Nothing in this Section shall be construed to mean that Developer shall hold the City harmless and/or defend it from any claims that arise from, or are alleged to have arisen from, the negligent acts, or negligent failure to act, on the part of the City. City agrees that it shall fully cooperate with Developer in the defense of any matter in which Developer is defending and/or holding the City harmless.

**7.14.2. Insurance.** Without limiting its obligation to hold the City harmless, Developer shall provide and maintain at its own expense, at all times during the Term of this Agreement, the following program of insurance concerning its operations hereunder. The insurance shall be provided by insurer(s) satisfactory to the City on or before the Effective Date of this Agreement. The program of insurance provided shall specifically identify this Agreement and shall contain express conditions that the City is to be given written notice at least thirty (30) days prior to any modification or termination of coverage. Such insurance shall be primary to and not contributing with any other insurance maintained by the Developer, shall name the City as an additional insured, and shall include, but not be limited to, either comprehensive general liability insurance endorsed for Premises/Project Site Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury or Builder's All-Risk Insurance, with a combined single limit of not less than [ ----------per occurrence.

From time to time, but not more often than once every two (2) years, Developer shall increase the coverage limits of the insurance required under this Section if so directed by the City after a determination by the City that such an increase is justified using customary and reasonable risk management methods and principles.

**7.15. Notices.** Any notice or communication required hereunder between the City or Developer must be in writing, and may be given either personally or by registered or certified mail, return receipt requested or by overnight courier. If given by registered or certified mail, the same shall be deemed to have been delivered and received on the first to occur of (I) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or delivered by courier, a notice shall be deemed to have been given when delivered to the Party to whom it is addressed. Any Party hereto may at any time, by giving ten (10) days' written notice to the other Party hereto, designate any other address in substitution of the address, or any additional address, to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the City:

Director of Planning
City of Los Angeles
City Hall Room 561-C
200 North Spring Street
Los Angeles, California 90012

with copies to:

General Manager
Department of Transportation
City of Los Angeles
Room 1200, City Hall
200 North Spring Street
Los Angeles, California 90012

City Administrative Officer
1500 floor, City Hall East
200 No. Main Street
Los Angeles, California 90012

City Attorney, City of Los Angeles
Real Property/Environment Division
Managing Assistant
1800 City Hall East,
200 N. Main Street
Los Angeles, California 90012

If to Developer:

TrizecHahn Hollywood LLC
4350 La Jolla Village Drive, Suite 400

San Diego, CA 92122-1233
Attn.. General Counsel

with copies to:

Allen, Matkins, Leck, Gamble & Mallory, LLP
515 South Figueroa Street
Los Angeles, California 90071
Attn.: Jerold B. Neuman, Esq.
Michael J. Kiely, Esq.

**7.16. Estoppel Certificates.** Any Party may, at any time, deliver written notice to any other Party requesting such Party to certify in writing that, to the best knowledge of the certifying Party, (I) this Agreement is in full force and effect and a binding obligation of the Parties, (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended, identifying the amendments, and (iii) the requesting Party is not in default in the performance of its obligation set forth in this Agreement or, if in default, to describe therein the nature and amount of any such defaults. A Party receiving a request hereunder shall execute and return such certificate within thirty (30) days following the receipt thereof. Any third Party including a Mortgagee shall be entitled to rely on the Certificate.

**7.17. Recordation**. As provided in Government Code Section 65868.5, the City Clerk of Los Angeles shall record a copy of this Agreement with the Registrar-Recorder of the County of Los Angeles within ten (10) days following its execution by both Parties. Developer shall provide the City Clerk with the fees for such recording prior to or at the time of such recording.

**7.18. Constructive Notice And Acceptance.** Every person who now or hereafter owns or acquires any right, title, interest in or to any portion of the Development Site is and shall be conclusively deemed to have consented and agreed to every provision contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in the Development Site.

**7.19. Severability.** If any provisions, conditions, or covenants of this Agreement, or the application thereof to any circumstances of either Party, shall be held invalid or unenforceable, the remainder of this Agreement or the application of such provision, condition, or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

**7.20. Time Of The Essence.** Time is of the essence for each provision of this Agreement of which time is an element.

**7.21. Waiver**. No waiver of any provision of this Agreement shall be effective unless in writing and signed by a duly authorized representative of the Party against whom enforcement of a waiver is sought and refers expressly to this Section. No waiver of any right or remedy with respect to any occurrence or event shall be deemed a waiver of any right or remedy with respect to any other occurrence or event.

**7.22. No Third Party Beneficiaries.** The only Parties to this Agreement are the City and Developer and their successors-in-interest. There are no third Party beneficiaries and this Agreement is not intended, and shall not be construed to benefit or be enforceable by any other person whatsoever.

**7.23 Expedited Processing.** Developer and the City agree to cooperate in the expedited processing of any legal action seeking specific performance, declaratory relief or injunctive relief, to set court dates at the earliest practicable date(s) and not cause delay in the prosecution/defense of the action, provided such cooperation shall not require any Party to waive any rights.

**7.24 Entire Agreement**. This Agreement and the documents, agreements and exhibits referenced herein or attached hereto set forth and contain the entire understanding and agreement of the Parties with respect to the rights and obligations contained herein, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements except as expressly referred to herein, and no testimony or evidence of any such representations, understandings, or covenants shall be admissible in any proceedings of any kind or nature to interpret or determine the provisions or conditions of this Agreement

**7.25 .Legal Advice; Neutral Interpretation; Headings, and Table Of Contents**

Each Party has received independent legal advice from its attorneys with respect to the advisability of executing this Agreement and the meaning of the provisions hereof. The provisions of this Agreement shall be construed as to their fair meaning, and not for or against any Party based upon any attribution to such Party as the source of the language in question. The headings and table of contents, used in this Agreement are for the convenience of reference only and shall not be used in construing this Agreement.

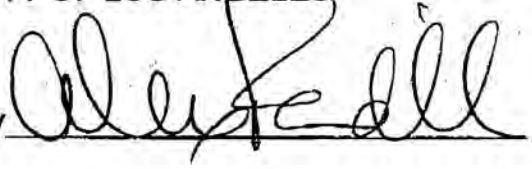
**7.26 Counterparts.** This Agreement is executed in duplicate originals, each of which is deemed to be an original. This Agreement, not counting the Cover Page, and Table of Contents, consists of X pages and X Exhibits which constitute the entire understanding and agreement of the Parties. The Exhibits are identified in the List of Exhibits, which is contained in the Table of Contents of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

TRIZECHAHN HOLLYWOOD LLC

By_____ Date_____

CITY OF LOS ANGELES

By  Date NOV 5 2002

APPROVED AS TO FORM AND LEGALITY

ALLEN MATKINS LECK GAMBLE & MALLORY LLP

By_____ Date_____
(For TrizecHahn Hollywood LLC)

ROCKARD J. DELGADILLO, CITY ATTORNEY

By Susan D. Pfann Date Nov 4, 2002
Susan D. Pfann
Assistant City Attorney

81050-3
November 3, 2002

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

TRIZECHAHN HOLLYWOOD LLC

By _____ Date 11-5-02

CITY OF LOS ANGELES

By _____ Date _____

APPROVED AS TO FORM AND LEGALITY

ALLEN MATKINS LECK GAMBLE & MALLORY LLP

By _____ Date 11-5-02
(For TrizecHahn Hollywood LLC)

ROCKARD J. DELGADILLO, CITY ATTORNEY

By _____ Date _____
Susan D. Pfann
Assistant City Attorney

EXHIBIT A

H&H
HOLLYWOOD & HIGHLAND
LEVEL-3
SITE PLAN
EL 430'-0"
A-12
© 1999 ALTOON + PORTER ARCHITECTS

# ENTITLEMENTS RE: 6801 HOLLYWOOD BOULEVARD

| Item | Date | Description |
|---|---|---|
| 1. | 9/15/98 | **City Plan Case No. 98-0203 (ZC)**, Zone Change to C4 2-D<br>City Planning Commission; |
| 2. | 10/7/98 | **Vesting Tract Map No. 52496 (VTM No. 52496)**<br>City Council; |
| 3. | 12/16/98 | **CF 98-1766-S2, CD 13,** Conditions of Approval and Variance Appeal (BZA 5614, 5615, 5616, 5617)(ZA 98-0449 CUB, CUX, CUZ, ZV)<br>City Council; |
| 4. | 6/9/99 | **VTM No. 52496, Letter of Modification/Revised Map** re condition F-1.<br>Darryl Fisher, Deputy Advisory Agency; |
| 5. | 6/15/99 | **VTM No. 52496, Letter of Clarification** re Orchid Street Vacation<br>Daryl Fisher, Deputy Advisory Agency |
| 6. | 9/16/99 | **VTM No. 52496, Letter of Correction** re conditions B.2, E.16, F.16, A.7, A.8, and M.3<br>Darryl Fisher, Deputy Advisory Agency; |
| 7. | 11/17/99 | **CPC 99-2674, VTM 52496, CPC 98-0203,** Amendment of Council's Instructions Re Removal of [T] Tentative Conditions<br>Con Howe, Planning Director; |
| 8. | 12/20/99 | **Case No. ZA 98-0449(CUB)(CUX)(CUZ)(ZV), Letter of Clarification**<br>Emily Gabel-Luddy, Associate Zoning Administrator; |
| 9. | 2/22/00 | **VTM 52496 Letter of Clarification** re conditions C.6 and C.15<br>Emily Gabel-Luddy, Deputy Advisory Agency |
| 10. | 3/6/00 | **Case No. ZA 98-0449(CUB)(CUX)(CUZ)(ZV), Letter of Clarification**<br>Emily Gabel-Luddy, Associate Zoning Administrator |
| 11. | 6/23/00 | **CF 00-1231, City Council Action approving Final Map No. 52496-01** |
| 12. | 10/12/00 | **Case No. ZA 2000-3409(CUB)** Conditional Use Permit for sale of alcoholic beverages in a duty free shop,<br>John Perica, Associate Zoning Administrator; |
| 13. | 11/21/00 | **VTM No. 52496, Letter of Clarification** re Condition F-1<br>Emily Gabel-Luddy, Deputy Advisory Agency; |
| 14. | 12/21/00 | **VTM No. 52496, Letter of Clarification** re Condition F-1<br>Emily Gabel-Luddy, Deputy Advisory Agency; |
| 15. | 1/16/01 | **Case No. ZA 2000-4320(CUB)(CUX)** Conditional Use Permit to allow the sale and dispensing of alcoholic beverages in three restaurants and two stand alone bars; live entertainment and dancing in one restaurant; and extend hours for one stand alone bar,<br>Jon Perica, Associate Zoning Administrator; |
| 16. | 2/22/01 | **Case No. ZA 98-0449(CUB)(CUX)(CUZ)(ZV), Reissued Letter of Clarification** re Condition No. 14, Governors' Ballroom to include terrace and pre-function areas and that the hotel has maintained exiting deemed to be approved and CUP locations for sales of alcoholic beverages, Jon Perica, Associate Zoning Administrator; |
| 17. | 3/28/01 | **VTM No. 52496** Recorded as Instrument No. 01-0513983, in Book 1258, at Page 1 of Maps in the County of Los Angeles; |
| 18. | 6/28/01 | **Ordinance No. 174063**<br>City Council |
| 19. | 2/13/02 | **CF 98-1766-S2** Zone Variance Appeal for Off-Site Parking and Transit Programs for Employees (CPC 2001-1940-DA-ZV),<br>City Council; |

587833.01/LA
H3507-012/6-28-02/gaw/pap

EXHIBIT C

**COMPOSITE***

# LICENSE AGREEMENT

TRIZECHAHN HOLLYWOOD LLC,
a Delaware limited liability company

as Licensor,

TRIZECHAHN HOLLYWOOD HOTEL LLC,

a Delaware limited liability company

as Hotel Owner,

and

THE ACADEMY OF MOTION PICTURE ARTS AND SCIENCES,
a California non-profit corporation

as Academy.

*** (An assembledge of the original License Agreement dated as of April 20, 1999 and the First Amendment to License Agreement dated October 15, 2001; additions/replacements attributable to the First Amendment are set forth in bold)**

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# COMPOSITE
# LICENSE AGREEMENT

This License Agreement (this "License" or "License Agreement") and the First Amendment to License Agreement were each entered into by and between TRIZECHAHN HOLLYWOOD LLC, a Delaware limited liability company ("Licensor"), ACADEMY OF MOTION PICTURE ARTS AND SCIENCES, a California nonprofit corporation ("Academy"), and, for certain limited purposes as further set forth in this License, TRIZECHAHN HOLLYWOOD HOTEL LLC, a Delaware limited liability company, in its capacity as owner of the "Hotel," as that term is defined below (in such capacity, "Hotel Owner").

## RECITALS

A. Licensor is the developer of that certain mixed use retail/entertainment complex, to be located at the northwest corner of Hollywood Boulevard and Highland Avenue in the Hollywood area of the City of Los Angeles, California (the "Project"). The Project shall be deemed to include the parking facility servicing the same, the land upon which the Project and the parking facility are located, and all other improvements located on such land. That certain hotel and related facilities located adjacent to the Project and currently owned by Hotel Owner is herein referred to as the "Hotel." Hotel Owner is renovating the Hotel concurrently with the construction of the Project (the "Hotel Renovations").

B. Licensor, Hotel Owner and Academy each desire to enter into an agreement for the operations specified in this License. As part of such agreement, Academy desires to use and Licensor and Hotel Owner each desire to grant to Academy a license for the use of those portions of the Project and Hotel specified in this License.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants to be performed hereunder, Licensor, Hotel Owner and Academy agree as follows.

## SECTION 1.

## THE LICENSE AREA

1.1 Construction of License Area. Licensor shall construct the Project and the "License Area," as that term is defined in Section 1.2, below, in accordance with the terms of the Work Letter attached hereto as Exhibit B. Hotel Owner shall complete the Hotel Renovations in accordance with the "Design Development Drawings," as defined in Section 1.3 of the Work Letter, and the applicable terms of the Work Letter. In order to effect such construction, Licensor acknowledges that it is necessary to, and Licensor therefor shall, acquire, or cause the City of Los Angeles or the Los Angeles Community Redevelopment Agency to acquire, the property generally known as the Madison surface parking lot.

1.2 Use and Definition of License Area; Delivery Condition.

1.2.1 **Use and Definition of License Area. In consideration of the payment by Academy to Licensor of the "License Fees," as that term is defined in Section 3.1 of this License, Licensor and Hotel Owner shall allow Academy the right to use, and access to, pursuant to the terms of this License, those areas of the Project and the Hotel set forth below, as more particularly set forth on Exhibit A, attached to this Amendment (collectively, the "License Area"), and such other areas of the Project as Licensor, Hotel Owner and Academy may mutually designate from time to time. The License Area shall consist of the following areas, provided that to the extent of any discrepancy between the descriptions set forth below and Exhibit A, Exhibit A shall control:**

(i) **the "Theatre," consisting of the Theatre structure, stage, staging and audience areas, lobbies, backstage areas which serve the Theatre, offices which serve the Theatre, loading dock areas which serve the Theatre, and other areas as shown on Exhibit A;**

(ii) **the "Governors Ballroom Area," consisting of the ballroom, storage rooms, and other areas as shown on Exhibit A, and including the designated bay(s) of the "East Retail Loading Dock" defined below, the "Kitchen Area," consisting of the kitchen and food services areas of the Governors Ballroom, and the service elevator which travels between the Kitchen Area and the Theatre Loading Dock, as designated on Exhibit A;**

(iii) **the "Pool Deck Area," consisting of the pool deck of the Hotel which is adjacent to the Governors Ballroom Area, as shown on Exhibit A;**

(iv) **the "Arrivals Area," consisting of the Hollywood Boulevard Frontage and those certain portions of the Orchid Walk Area as are included in the Arrivals Area for a particular Presentation, as more particularly set forth in Section 4 of the Operational Addendum attached hereto as Exhibit C;**

(v) **the "Hollywood Boulevard Frontage," consisting of that certain portion of the sidewalk owned by Licensor on Hollywood Boulevard between Highland Avenue and Orange Drive as is included in the Arrivals Area for a particular Presentation, as more particularly set forth in Section 4 of the Operational Addendum;**

(vi) **the "Pathway," consisting of the path to be used by guests for ingress and egress between the Arrivals Area, the Theatre and the Governors Ballroom for the applicable Presentation, as shown on Exhibit A;**

(vii) **the "Orchid Walk Area," consisting of the forecourt, lower and upper arcade walkway, and rotunda, as shown on Exhibit A;**

(viii) **the "Production Access Area," consisting of the circular bus drive and areas providing ingress and egress to the Theatre and the cable tunnel, as shown on Exhibit A;**

(ix) **the "Parking Area," consisting of all of the Project parking areas, as shown on Exhibit A, but not including the "Valet Parking Area" defined below;**

(x) **the "Valet Parking Area," consisting of those certain areas of Level P1 of the Project parking facility designated for the construction of temporary facilities, security offices, and other ancillary uses as shown on Exhibit A;**

(xi) **the "Press Area," consisting of those certain areas of the Project and Hotel shown on Exhibit A, including the Hotel's "Junior Ballroom" and adjacent meeting rooms, designated for the construction of temporary press facilities and interview rooms;**

(xii) **the "Hotel Meeting Rooms," consisting of the rooms on Level 435 of the Hotel located directly over the "Junior Ballroom," and the "Business Center" of the Hotel, as designated on Exhibit A;**

(xiii) **the "Security Offices Area," consisting of the area within the Valet Parking Area designated for Security Offices on Exhibit A; and**

(xiv) **the "East Retail Loading Dock," consisting of the southernmost loading dock in the east retail loading dock area on Level 400 of the Project.**

1.2.2 Delivery Condition; Covenants Regarding Use.

(i) **Theatre. On the commencement of Academy's period of exclusive use of the Theatre, as such period is set forth in Section 9.2 of this License, Licensor shall deliver the Theatre to Academy "broom clean," with the Theatre manager office, storage, dressing and other areas empty and ready for use by Academy. Notwithstanding the foregoing, certain areas, which shall be mutually agreed upon by Academy and Licensor, such as the janitorial closets, may remain stocked with supplies and related equipment.**

(ii) Elevator. During Academy's period of exclusive use of the Theatre, the elevator located approximately at the intersection of grid lines H and 10 on the page of Exhibit A showing Theatre Level 390, shall be "locked out" so that it will not stop at Level 390.

(iii) Governors Ballroom. On the commencement of Academy's period of exclusive use of the Governors Ballroom Licensor shall deliver the Governors Ballroom, other than the Kitchen Area, to Academy, empty and "broom clean," with storage areas empty and ready for use by Academy. Notwithstanding the foregoing, certain areas, which shall be mutually agreed upon by Academy and Licensor, such as the janitorial closets, may remain stocked with supplies and related equipment. Additionally, Academy shall have the right, on reasonable prior request to Licensor, subject to the terms of this License, to use the furniture or equipment of Licensor which is generally used by Licensor in the Governors Ballroom (not including the Kitchen Area). Such use of furniture or equipment shall be at no cost or expense to Academy. Academy shall be responsible for any damage to such furniture or equipment resulting from such use.

(iv) Kitchen Area. On the commencement of Academy's period of exclusive use of the Kitchen Area, Licensor shall deliver the Kitchen Area to Academy, empty and "broom clean," with storage areas empty and ready for use by Academy. Licensor shall make available to Academy, or cause any food service tenant or operator then occupying the Kitchen Area (the "Food Service Operator") to make available to Academy, the kitchen fixtures and major items of kitchen equipment located in the Kitchen Area. Academy shall be responsible for any damage caused by its use of any such fixtures or equipment. Academy will provide its own cookware, servingware, dishes, utensils and other minor items of equipment necessary for the Presentation (or make arrangements with such Food Service Operator to use its such property) at Academy's sole cost and expense. At least five (5) days prior to the Presentation, the refrigerators, freezers and other food storage areas within the Kitchen Area, shall be emptied and cleaned and Academy shall return the same to Licensor (or such Food Service Operator) in like condition one (1) day following the Presentation. In connection with Licensor's delivery of the Kitchen Area to Academy as set forth above, if Academy has not entered into a separate agreement with the Food Service Operator to provide food services for the Presentation, Academy shall pay to Licensor, as compensation for the use of the fixtures and major items of kitchen equipment, and the costs of emptying and cleaning the food storage areas within the Kitchen Area, an amount equal to Two Thousand Five Hundred Dollars ($2,500.00) for each day during the Annual Use Period which Academy has exclusive use of the Kitchen Area (which daily amount shall be increased annually by an amount equal to the annual increase in the Consumer Price Index for all Urban Consumers for the Los Angeles-Anaheim-Riverside area, published by the US Department of Labor).

(v) Security Offices Area. Licensor shall have the right to relocate the Security Offices Area within the Project after the day following the Presentation, to a location reasonably acceptable to Academy, and reasonably coordinated in advance with the Academy and its security team.

(vi) **Arrivals Area. Licensor shall deliver the Arrivals Area and provide access to the Arrivals Area as set forth in, and subject to the terms of, the Operational Addendum for the applicable Presentation.**

(vii) Crew Feed. In addition to the License Area, Licensor shall provide Academy with a location at the Project, reasonably acceptable to Academy, where Academy can set up its "crew feed" area, sufficient to allow for sit-down meals (lunch and dinner) for approximately 600 persons in one hour in reasonable proximity to the Theatre, during the period commencing three (3) days prior to the Presentation, and continuing through the day of the Presentation.

(viii) Ingress, Egress and Bathrooms. In addition to the License Area, Academy shall have the right to use certain areas of the Project for ingress and egress (including, without limitation, on the day of the Presentation, the service exit corridor on the west side of Orchid Walk at level 380 of the Project). Additionally, (a) all of the Project public restrooms; shall be open and available for use by Academy and its invitees, and (b) Academy shall have the right, on reasonable prior notice to Licensor, and when accompanied by a representative of Licensor, to access the Project mechanical and utility rooms as necessary to prepare for the Presentation.

(ix) Kitchen Service Elevator. On the day after the Presentation Academy shall have the right to use the service elevator connecting to the Kitchen Areas for the purpose of removing trash and other items from the Governors Ballroom.

1.3 **Initial Year of License Term; Failure to Complete Project.**

**1.3.1 Initial Presentation Requirements. With respect to the Presentation scheduled for March, 2002 (the "Initial Presentation"), Licensor and Hotel Owner hereby covenant and agree to cause the Project to be "Presentation Ready," as that term is defined in Section 1.3.3, below, on or before January 1, 2002. In connection therewith, Licensor and Hotel Owner shall (i) demonstrate to the Academy, on or before January 1, 2002, that the Known Conflicts have been resolved, and (ii) demonstrate to the Academy, on or before January 1, 2002, that the Licensor Offsite Conditions have been or will be met in the manner and to the extent required by the terms of Section 9.6 of the License. Provided that the Project is Presentation Ready on or before January 1, 2002, Academy shall stage the Presentation scheduled for March, 2002, at the Project in accordance with the terms of the License Agreement, as amended hereby.**

**1.3.2 Failure to be Presentation Ready. If Licensor has failed to cause the Project to be Presentation Ready on or before January 1, 2002, then either party shall have the right to terminate this License by notice given to the other on or before January 15, 2002. Upon termination of this License by either party pursuant to the terms of this Section 1.3.2, Licensor shall pay to Academy the "Termination Damages," defined in, and subject to the limitation set forth in, Section 12.4. of the License Agreement.**

**1.3.3 Presentation Ready. As used in this License, the term "Presentation Ready" shall mean that all of the following have occurred: (i) "Substantial Completion," as defined in Section 2 of the Work Letter, has occurred, with a demonstration by Licensor that any punch list items will be completed in a timely manner and so as not to cause any interference with the preparations for, and staging of the Presentation, and in any event prior to the commencement of Academy's exclusive use period of any areas to which any particular punch list items relate, (ii) all "Presentation Conflicts," as that term is defined in Section 4.3.2, below, have been resolved in accordance with the requirements of such Section 4.3.2, (iii) the "Licensor Offsite Conditions," as such term is defined in Section 9.6, below, have been satisfied in accordance with the requirements of such Section 9.6, and (iv) in lieu of the requirements of Schedule 1 of the Work Letter, Licensor has delivered to Academy certifications in the form set forth on Exhibit G attached hereto, or in another form reasonably acceptable to Academy, from the parties listed on such Exhibit G, or any substitute for any such party as is mutually reasonably agreed upon by Academy and Licensor.**

**1.3.4 Construction Drawings. Notwithstanding anything to the contrary contained in Sections 1.3 and 1.4 of the Work Letter, the parties hereto acknowledge and agree as follows:**

**1.3.4.1 As used in this Section 1.3.4, the term "Baseline Construction Drawings" shall have the meaning set forth in Exhibit E attached to this Amendment.**

**1.3.4.2 Academy hereby approves the Baseline Construction Drawings and, except as set forth in this Section 1.3, (i) Academy shall have no right to require any changes in the Final Construction Drawings and, (ii) notwithstanding anything to the contrary contained in the License, except with respect to future changes as set forth in Section 13.3 of the License Agreement, as amended hereby, Academy shall have no further rights to approve or disapprove of the design or construction of the Project.**

**1.3.4.3 Licensor and Hotel Owner shall complete the construction of the Project and the Hotel in accordance with the Baseline Construction Drawings; subject however, to such deviations therefrom which would not require Academy's consent as a change, alteration, addition or improvement pursuant to Section 13.3 of the License Agreement, as amended hereby.**

**1.3.5 Resolution of Presentation Conflicts. Licensor shall resolve the Known Conflicts in order to meet the requirements of Section 4.3.2.2 of the License Agreement as soon as practicable and in any event on or before January 1, 2002. Academy agrees that various methods of resolving the Known Conflicts may be acceptable, provided the Known Conflicts are resolved on or before January 1, 2002, and provided that the resolution meets the standard set forth in Section 4.3.2 of the License.**

## SECTION 2.

## LICENSE TERM AND COMMENCEMENT DATE

2.1 License Term. This License shall be for a term of twenty (20) years (the "License Term"), commencing in the year of the Initial Presentation, subject however, to earlier termination as provided elsewhere in this License, including pursuant to Section 12, below. The period each year during which Academy has the right of use of certain portions of the Project and the Hotel pursuant to the terms of this License shall be referred to herein as the "Annual Use Period". In the event that in any year of the License Term after the Initial Presentation, Academy, in accordance with the terms of this License, is excused from the requirements of Section 9.1, below, and does not stage the Presentation at the Project, the License Term shall be extended by one additional year, so that as of the end of the License Term, Academy will have staged the Presentation at the Project on twenty (20) separate occasions, subject however, to earlier termination as provided elsewhere in this License, including pursuant to Section 12, below.

2.2 Commencement of License Term. The License Term shall commence upon the first day of the calendar year of the Initial Presentation (the "Commencement Date"), and the License Term shall end at 11:59 p.m. on the last day of the Annual Use Period in the final year of the License Term, unless terminated earlier in accordance with the provisions of this License.

2.3 Acceptance of the License Area. Licensor and Hotel Owner shall construct the project, Hotel and the License Area, as applicable, as specifically set forth in this License and in the Work Letter attached hereto as Exhibit B (the "Work Letter"). Licensor and Hotel Owner shall not be obligated to provide or pay for any other improvements for the License Area. Academy acknowledges that neither Licensor nor Hotel Owner, nor any of their respective agents, have made any representation or warranty regarding the condition of the License Area or the Project or with respect to the suitability of any of the foregoing for the conduct of Academy's business or the production of the Presentation, except as specifically set forth in this License and the Work Letter. Subject to any "punch list" to be timely provided by Academy to Licensor following the delivery of the License Area in connection with the Initial Presentation, the taking of possession of the License Area by Licensee shall conclusively establish that the License Area was at such time in good and sanitary order, condition, and repair.

## SECTION 3.

## LICENSE FEES

3.1 License Fees. During the License Term, Academy shall pay to Licensor the following amounts for the rights granted under the provisions of this License (collectively, the "License Fees"): (i) a basic annual license fee (the "Basic License Fee") equal to (a) for the first year of the License Term, Four Hundred Thousand Dollars ($400,000.00), and (b) for each year thereafter, an amount equal to one hundred five percent (105%) of the Basic License Fee applicable to the immediately preceding year, and (ii) additional charges consisting of all other sums payable by Academy under the provisions of this License ("Additional Charges"). The Basic License Fee for each year during the License Term shall be payable on or before February 1 of each year of the License Term.

3.2 Payment of License Fees. Academy shall pay the Basic License Fee when due, without notice or demand, and without any abatement, deduction or setoff. Academy shall pay the License Fees in lawful money of the United States, to Licensor at its office at the address set forth in Section 13.4, below, or to such other person or place as Licensor may designate in writing from time to time. Academy hereby acknowledges that the late payment of Basic License Fees will cause Licensor to incur damages, including administrative costs, loss of use of the overdue funds and other costs, the exact amount of which would be impractical and extremely difficult to ascertain. Licensor and Academy therefore agree that if Licensor does not receive a payment of License Fees within ten (10) days after notice from Licensor that the same are due, Academy shall pay to Licensor, as Additional Charges, a late charge of Two Thousand Dollars ($2,000.00). All Additional Charges shall be payable within thirty (30) days after invoice, unless otherwise provided herein. Notwithstanding anything to the contrary contained in this License, all payments received by Licensor, may in Licensor's sole and absolute discretion, be applied to any arrearages owed by Academy, irrespective of any designation of payment by Academy.

3.3 Interest on Past Due Amounts. In addition to the late charge described above, any amounts owing hereunder which are not paid by Academy within ten (10) days after the date they are due shall bear interest from the date when due until paid at a rate per annum equal to the lesser of (i) the floating commercial loan rate announced from time to time by Bank of America,

a national banking association, or its successor, as its prime rate, plus 2% per annum, or (ii) the highest rate permitted by applicable law.

## SECTION 4.

## USE AND COMPLIANCE WITH LAW

4.1 Use. Academy shall only use the License Area for the purpose of preparing for, producing and presenting the annual Academy Awards presentation and Governors Ball, as more particularly set forth in Section 9, below, and as otherwise mutually agreed by the parties, and for no other purpose whatsoever.

4.2 Prohibited Uses. Academy shall not at any time conduct its business or use or occupy or permit any person to use or occupy the License Area during the Annual Use Period, or do or permit anything to be done or kept in the License Area, in a manner which: (i) causes or is liable to cause damage to the Project, the License Area or any equipment, facilities or other systems therein; or (ii) constitutes a violation of law. Notwithstanding the foregoing, Licensor agrees that damage or alterations to the License Area which occur during the normal course of preparing for and staging the Presentation shall not be a breach of this Section 4.2, provided that Academy timely complies with the repair and maintenance obligations set forth in Section 6.1, below.

4.3 Compliance and Cooperation.

4.3.1 Compliance by Academy. Academy shall promptly forward to Licensor any notice it receives of the violation of any law involving the use and occupancy of the License Area by Academy. Academy shall, at Academy's sole cost and expense, comply with all laws and, to the extent applicable to Academy's use of the Project, if at all, the recorded covenants, conditions, and restrictions identified on Exhibit C attached hereto (the "Project Documents"), that impose any obligation, order or duty on Academy, arising from or related to: (a) Academy's use of the License Area; or (b) the manner or conduct of Academy's operation of its installations, equipment or other property therein. Licensor hereby represents and warrants to Academy that the Project Documents delivered to Academy or its attorneys, pursuant to cover letters dated March 25, 1999, April 8, 1999, and April 16, 1999 are true, correct and complete, provided that Academy acknowledges that the Hollywood And Highland Reciprocal Easement And Operating Agreement (the "REA") so delivered is not in final form. Licensor shall not permit the modification of the REA in any way that could prevent Licensor from providing to Academy the rights contemplated under this License. Licensor hereby further represents and warranty to Academy that, to its best knowledge, other than the Known Conflicts, no provisions of the project Documents will prevent Licensor from providing to Academy the rights contemplated under this License. For purposes of the foregoing representation and warranty, best knowledge of Licensor shall mean the due inquiry of Douglas Curtis, Douglas Hageman, Jerold Neuman, and Michael Kiely. Academy shall pay all of the costs, expenses, fines, penalties, and damages which may be imposed upon Licensor by reason of or arising out of Academy's failure to fully and promptly comply with and observe the provisions of this Section 4.3. Licensor and Hotel owner each hereby represent and warrant to Academy that, other than the Project Documents, no documents or agreements to which Licensor or Hotel Owner is a party, or which otherwise affect

the Project, will have a material adverse effect on Academy's rights under this License. Where Academy's compliance as required by this Section 4.3 necessitates actions by Academy for which this License requires Licensor's consent, Academy shall obtain Licensor's consent before taking such actions, which consent shall not be unreasonably withheld.

4.3.2 Known Conflicts with Project Documents; New Conflicts. Academy and Licensor have determined that certain provisions of the Project Documents may prevent Licensor from providing to Academy the rights contemplated under this License (the "Known Conflicts"). Such Known Conflicts are set forth in Section 4.3.2.1, below. Any conflicts with the Project Documents other than the Known Conflicts, including any such conflicts that would not result in a breach of Licensor's representation and warranty regarding the Project Documents set forth in Section 4.3.1, above, shall be referred to herein as the "Future Conflicts". Conflicts with the Project Documents which would result in a breach of Licensor's representation and warranty regarding the Project Documents set forth in Section 4.3.1, above, as well as any similar conflicts with documents or agreements other than the Project Documents, or with changes to the Project Documents made after the date hereof, which changes are not approved by Academy, shall be referred to herein as the "New Conflicts". Academy shall not withhold its consent to such changes unless, in the good faith opinion of Academy, the result of such change is such that the Academy cannot prepare for and present the Presentation within the Annual Use Period with (i) no material interference other than as contemplated pursuant to the License during any period of partial access to a License Area or that is inherent in the design of the Project as a mixed-use project and (ii) no material decrease in efficiencies from that currently contemplated. The Known Conflicts, Future Conflicts and the New Conflicts are referred to collectively herein as the "Presentation Conflicts". Notwithstanding anything to the contrary contained herein, no conflict created by Academy's use of the Project or Hotel, and in particular, the License Area, in a manner that is not permitted under the terms of this License, will be deemed to be a Presentation Conflict, and Licensor shall have no obligation to resolve any such conflict.

4.3.2.1 Known Conflicts. The "Known Conflicts" are as follows:

(a) Public Access Rights. Certain of the conditions of approval for the Project require that (i) Licensor provide public access across portions of the Project, and (ii) that Orchid Alley, located adjacent to the Project on the Project's northeast side, remain open for vehicular traffic at all times. Neither of such conditions provide for the suspension of such access rights at anytime.

(b) Ullman Property Rights. The owner of the property located at the southeast comer of Hollywood Boulevard and Orange Drive known as the "Hollywood Spectacular" has (i) a right to use up to 136 parking spaces in the Parking Area, and a corresponding right of access over the Project for pedestrian access to the Parking Area, and (ii) rights to use portions of the Orange Court for vehicular access to the Hollywood Spectacular property.

4.3.2.2 Resolution of Presentation Conflicts. Licensor shall use good faith, commercially reasonable efforts to resolve all Presentation Conflicts in a manner that will provide to Academy the rights contemplated under this License. In connection therewith, Licensor shall seek to effect long term solutions to the Presentation Conflicts, and at any time

that Licensor determines that it will be unable to resolve a particular Presentation Conflict, Licensor shall so notify Academy. Academy will cooperate with Licensor in good faith and with due diligence, but at no third party, out-of-pocket cost or expense to Academy, in order to enable Licensor to modify or amend the Project Documents, obtain variances from applicable governmental agencies, or otherwise resolve any Presentation Conflicts. In particular, Licensor shall use good faith, commercially reasonable efforts to resolve the Known Conflicts prior to the Initial Presentation as follows.

(i) The Project and Orchid Alley shall be closed to all traffic, pedestrian and vehicular, on the day of the Presentation, and all vehicles, other than as expressly allowed pursuant to Section 9.3.4 of this License, shall be removed from the Parking Areas.

(ii) The applicable portions of the License Area shall be closed to pedestrian access during the period of Academy's exclusive use thereof.

(iii) During the period of Academy's exclusive use of the Theatre, public access to Orchid Alley shall be limited so as not to materially interfere with Academy's use of the Theatre for loading and unloading of trucks or the staging of trucks for purposes of expanding the backstage area of the Theatre, and to enable Academy to provide security to the Theatre comparable to that which it would be able to provide if it were not using such area for such purpose. Without limiting the generality of the foregoing, during the fourteen (14) day period prior to the Presentation, Orchid Alley will be closed to all public access, except, to the extent necessary, emergency vehicles other than fire trucks; provided, however, that if the Licensor cannot cause Orchid Alley to be closed to fire trucks, Licensor shall redesign the Theatre and/or adjacent areas of the Project or otherwise provide a solution that will permit Academy to use Orchid Alley for such loading/unloading, staging and security purposes.

(iv) The loading areas for the Hollywood Spectacular shall be constructed so as not to interfere with Academy's use of the License Area as provided in this License.

4.3.2.3 **Failure to Resolve Presentation Conflicts**. **With respect to any Presentation which occurs after the year 2002, if the Known Conflicts are not resolved as set forth above, or if any New Conflict or Future Conflict is not resolved, in each instance at least nine (9) months prior to the date of the applicable Presentation, and in the good faith opinion of Academy, such Presentation Conflict is such that the Academy cannot prepare for and present the Presentation within the Annual Use Period with (i) no material interference other than as contemplated pursuant to the License during any period of partial access to a License Area or that is inherent in the design of the Project as a mixed-use project and (ii) no material decrease in efficiencies from that currently contemplated, then Academy shall have the right to (A) notify Licensor of such Presentation Conflict, which notice shall include a reasonably detailed explanation of the nature of the Presentation Conflict, and, to the extent known by Academy, a description of specific actions that could be taken to cure such Presentation Conflict, and (B) secure the rights to use an alternative venue (the "Back-Up Venue") in which to stage the applicable Presentation. If all such Presentation Conflicts are not resolved to the satisfaction of the Academy on or before the date which is six (6) months prior to the applicable Presentation**

**(the "Outside Compliance Date"), Academy shall have the right, within five (5) business days after the Outside Compliance Date, to notify Licensor of such failure to cure the Presentation Conflicts, and to stage such Presentation at such Back-Up Venue. Such notification by Academy shall release Licensor from any obligation to make the Project available to Academy to stage the applicable Presentation. In the event Academy fails to deliver such notice within five (5) business days after the Outside Compliance Date, such Presentation Conflicts shall be deemed to have been resolved. In the event all such Presentation Conflicts are resolved (or are deemed to have been resolved) by the Outside Compliance Date, then, notwithstanding the terms of any agreement entered into by Academy with respect to the Back-Up Venue, Academy shall stage such Presentation at the Project and Licensor shall reimburse Academy for its actual, out-of-pocket costs incurred in connection with (i) securing the rights to the Back-Up Venue; (ii) terminating any agreement regarding the Back-Up Venue; and (iii) its preparation for the production of the Presentation at the Back-Up Venue to the extent such costs are unique to the Back-Up Venue (collectively, the "Back-Up Venue Termination Costs"). Academy will use its best efforts to negotiate a fee structure for the Back-Up Venue that will enable Licensor to minimize the Back-Up Venue Termination Costs.**

**In the event that a Presentation Conflict prevents the staging of the Presentation at the Project for more than two (2) consecutive years, either party shall have the right to terminate this License by giving written notice of such termination to the other within thirty (30) days after the determination has been made, with respect to a particular Presentation, that a Presentation Conflict prevents the staging of such Presentation at the Project. Upon termination of this License by either party pursuant to the terms of this Section 4.3.2.3, other than as a result of a Future Conflict, Licensor shall pay to Academy the Termination Damages in accordance with the terms of Section 12.4 of the License. If either party terminates this License pursuant to the terms of this Section 4.3.2.3 as a result of either a Future Conflict or a Presentation Conflict under the second sentence of Section 4.3.2.2(iii) of the License relating to Licensor's inability to cause closure of Orchid Alley to fire trucks or otherwise provide an alternate solution as provided therein, Licensor shall not be required to pay the Termination Damages.**

4.3.2.4 Pyrotechnics. Licensor and Academy acknowledge that Paragraph B.4 of the Mitigation Plan attached to and incorporated into the decision dated September 16, 1998 of the Los Angeles City Planning Commission regarding Vesting Tract Map No. 52496 Appeal provides that Licensor "shall not permit any pyrotechnics, explosives or fireworks to be utilized within the Project at any time" (such condition, together with all recorded covenants and agreements implementing same being referred to collectively as, the "Pyrotechnics Condition"). It is Licensor's understanding that the Pyrotechnics Condition does not apply to the interior of any building within the Project and, accordingly, the Pyrotechnics Condition shall not constitute a Project Document with which Academy is obligated to comply pursuant to Section 4.3.1 above in its use of the interior of the Theatre. Notwithstanding the foregoing, in connection with Academy's use of pyrotechnics, explosives or fireworks (collectively, "Pyrotechnics") within the Theatre, Academy shall (a) comply with all laws and Project Documents other than the Pyrotechnics Condition, and (b) obtain all necessary permits and licenses from applicable governmental authorities. Academy acknowledges and agrees that the Pyrotechnics Condition does apply to Academy's use of Pyrotechnics at the Project outside the Theatre. If Academy

desires to use Pyrotechnics at the Project outside the Theatre, it may do so provided that (i) it obtains a variance from or waiver of the Pyrotechnics Condition from the City, and (ii) complies with the conditions set forth in clauses (a) and (b) above. Licensor shall reasonably cooperate with Academy's efforts to obtain any such variances, waivers, permits and/or licenses (collectively, "Pyrotechnics Permits") ; provided, however, Licensor makes no representation or warranty that any such Pyrotechnics Permits will be available. Academy's inability to obtain any Pyrotechnics Permits for its use of Pyrotechnics at the Project shall not constitute a basis for termination of this License.

4.4 Service Contracts. Academy shall, to the extent required by any of the Project Documents, or by applicable law, comply with the terms of the City of Los Angeles "Living Wage Ordinance". Any work and/or other services to be performed by, or at the direction of, the Academy or by Licensor, shall be performed by or at the direction of such party, as applicable, so as to avoid any labor dispute that causes or is likely to cause stoppage or impairment of work, deliveries, or any other services in the Project. If there shall be any such stoppage or impairment as the result of any such labor dispute or potential labor dispute, Academy or Licensor, as applicable, shall immediately undertake such action as may be necessary to eliminate such dispute or potential dispute, including, without limitation, (a) removing all disputants from the Project until such time as the labor dispute no longer exists, (b) seeking a temporary restraining order and other injunctive relief with regard to illegal union activities or a breach of contract between Academy or Licensor, as applicable, and any individuals or entities working for, or on behalf of, Academy or Licensor, as applicable, and (c) filing appropriate unfair labor practice charges. The foregoing shall apply to each party only with respect to its particular actions and inactions regarding its own labor force, and shall not apply to any conflict between the respective labor forces.

4.5 Cooperation in Project Operations. Throughout the License Term, and in particular during each Annual Use Period, Academy shall use reasonable, good faith efforts to cooperate with Licensor and Hotel Owner in connection with Licensor's and Hotel Owner's legitimate use of the Project and Hotel, including complying with Licensor's and Hotel Owner's reasonable requests relating to Licensees and Hotel Owner's use of portions of the License Area and the Project that are not then subject to Academy's exclusive use. Likewise, during each Annual Use Period, Licensor and Hotel Owner shall use reasonable, good faith efforts to cooperate with Academy in connection with Academy's legitimate use of the Project and the Hotel, including complying with Academy's reasonable requests relating to Academy's use of portions of the License Area not then subject to Academy's exclusive use.

4.6 Cooperation with Press. During the License Term, and in particular during each Annual Use Period, Licensor shall use commercially reasonable efforts to comply with reasonable requests from media outlets concerning advance publicity and news reports relating to the Presentation. Such efforts shall include reasonable accommodation of such media outlets for the purpose of televising or filming at the Project in the weeks prior to the Presentation.

4.7 Licensor's Development, Maintenance, and Operation of the Project.

4.7.1 General Provisions. Licensor and Hotel Owner shall develop, construct, maintain and manage the Project and Hotel, as applicable, as appropriate for a first-class, "world

landmark" mixed-use project. Licensor and Hotel Owner shall repair and maintain the Project and Hotel, as applicable, including the License Area, in good condition and repair, reasonable wear and tear excepted, and shall provide security, janitorial, and other services as necessary to maintain the first-class appearance and nature of the Project and Hotel.

4.7.2 Use Restrictions. No part of the Project or Hotel shall be used in a manner which would be incompatible with the standards set forth in Section 4.7.1, above. In particular, Licensor agrees that, during the, License Term, no part of the Project or Hotel shall be used for the following:

(i) An "adult" or pornographic bookstore, video store or rental establishment, nor as a "head shop" or retail sales establishment which sells or leases "adult" paraphernalia;

(ii) An "adult" bar or club permitting nude, semi-nude or sexually explicit performances;

(iii) a purveyor of alcoholic beverages for off-site consumption, except for specialty retail boutiques which cater to "high-end" sales of such products;

(iv) A massage parlor or tattoo parlor;

(v) A retail or service establishment whose primary business is the sale of tee-shirts;

(vi) A thrift store or flea market;

(vii) A discount electronics/retail furniture or similar discount establishment;

(viii) A "food-court"; provided that the Project may contain a mix of food service establishments ranging from those serving fully prepared "fast" foods to "high-end" restaurants; and

(ix) An electronic games arcade or attraction, whether or not an entrance fee is charged, except as an incidental use in a retail establishment which is compatible with the first-class, "world-landmark" nature of the Project.

4.8 Licensor's Use of Theatre.

4.8.1 Prior to Initial Presentation. The Theatre will not be used for any commercial purpose prior to the Initial Presentation. Notwithstanding the foregoing, if the Initial Presentation does not occur prior to the end of April, 2001, Licensor shall have the right to use the Theatre for commercial purposes after April, 2001, or, if it is earlier determined that the Initial Presentation will not occur prior to the end of April, 2001, after the date of such determination (but not after the date which is the earlier to occur of (i) February 1 in the year of the Initial Presentation, and (ii) the commencement of the Annual Use Period in the year of the Initial Presentation), provided that Academy shall have the right to use the Theatre for up to five

(5) consecutive days to host an event at the Theatre (with set up and clean up included) to "debut" the Theatre following its completion and prior to the Initial Presentation. Any such use of the Theatre for such "debut" shall be subject to all of the terms of this License regarding Academy's use and maintenance of the License Area.

4.8.2 During the License Term. In any calendar year during the License Term, and provided that the Presentation occurs prior to the end of the month of April in such calendar year, Licensor shall not allow the Theatre or Governors Ballroom to be used for the presentation of any other award shows prior to the date of the Presentation. In no event shall the Theatre or Governors Ballroom be used for any award show in which any award relating to movies made for theatrical release is presented. Notwithstanding the foregoing, Licensor may use the Governors Ballroom for (i) presentation of the AFI Life Achievement Award which may be televised, (ii) any untelevised award shows, and/or (iii) any untelevised dinners, parties or other events held in connection with movie award presentations or shows other than the Presentation (whether such other presentations or shows are televised or untelevised).

## SECTION 5.

## UTILITIES AND SERVICES AND EXCULPATION OF LICENSOR

5.1 Basic Utilities and Services. Licensor and Hotel Owner, as applicable, will furnish to Academy heating, air conditioning, and electrical energy used for lighting and power to the License Area, all in such amounts as are reasonably necessary for the operation of the License Area (but not for supplying electrical or other utilities to, e.g., equipment trucks). Such utilities, and any other utilities used by Academy in the License Area during the Annual Use Period shall be at Academy's own cost and expense. If such utilities are not separately metered to the License Area, Licensor and Hotel Owner shall have the right to reasonably estimate the amounts and costs of the utilities used by Academy. In any event, Academy shall pay the costs of such utilities to Licensor or Hotel Owner, as applicable, within thirty (30) days after Licensor's delivery of an invoice therefor to Academy. If Academy performs work outside of the Annual Use Period that involves the use of Project utilities in excess of such utilities as would ordinarily be provided to the portion of the License Area so used by Academy for more than one (1) day, Academy shall pay to Licensor a utility use fee equal to $500.00 per day. In no event shall Licensor or Hotel Owner be liable in damages or otherwise for any failure or interruption of any utility or service and no failure or interruption of any utility or service shall entitle Academy to terminate this License or to stop making any payments due under this License.

5.2 Exculpation of Licensor and Hotel Owner. Academy hereby agrees that neither Licensor nor Hotel Owner shall be liable for, and Academy hereby waives all claims against Licensor and Hotel Owner for, injury to Academy's business or any loss of income therefrom, or for any damage to the goods, wares, merchandise or other property of Academy, Academy's employees, invitees, customers, or any other person in or about the License Area, nor shall Licensor or Hotel Owner be liable for injury to the person of Academy, Academy's employees, agents or contractors, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, or from the breakage, leakage, obstruction or other defects of pipes, sprinklers, wires, appliances, plumbing, air-conditioning or lighting fixtures, or from any

other cause, whether such damage or injury results from conditions arising upon the License Area, the Hotel or the Project, or from other sources or places, and regardless of whether the cause of such damage or injury, or the means of repairing same is inaccessible to Academy, except to the extent resulting from the gross negligence or willful misconduct of Licensor or Hotel Owner. Neither Licensor nor Hotel Owner shall be liable for any damages arising from any act or neglect of any other licensee, tenant, guest or occupant of Licensor or Hotel Owner.

## SECTION 6.

## REPAIRS, MAINTENANCE AND IMPROVEMENTS TO THE LICENSE AREA; SIGNAGE

6.1 Repairs and Maintenance. Academy shall maintain the License Area in good condition and repair during the portions of the Annual Use Period during which Academy has exclusive use of the corresponding portion of the License Area. On or before the end of each Annual Use Period during the term hereof, Academy shall (i) return the License Area, and other areas of the Project and Hotel used by Academy, to Licensor and Hotel Owner in "broom clean" condition, (ii) make any repairs or replacements necessary to return the License Area, and other areas of the Project and Hotel used by Academy, to the condition it was in as of the commencement of such Annual Use Period, and (iii) **repair any damage to the Project or Hotel caused by Academy or Academy's use of the Project or Hotel, in each instance at Academy's sole cost and expense, reasonable wear and tear excepted. Reasonable wear and tear as stated above shall include normal wear and tear (*i.e.*, wear and tear that would have resulted from the general day-to-day use of the Project and Hotel) as well as normal wear and tear resulting from the staging of the Presentation as currently contemplated by the parties hereto, including through the proper and appropriate use of the equipment in the manner and in the portions of the License Area described in Exhibit B to this Amendment.** Unless otherwise agreed by Licensor in advance, any replacements shall be of the same size, type and quality as the item being replaced. Academy shall be responsible for the obtaining, and expense of, any telephone service and equipment required by Academy, including payments of any deposits therefor, and Academy shall reimburse Licensor for the cost of any janitorial services required by Academy and provided by Licensor during the portion of the Annual Use Period in which Academy has (i) exclusive occupancy of the corresponding portion of the License Area, and (ii) partial access of the License Area, in each instance to the extent such services are attributable to Academy's particular use of the License Area and the cost of providing the same is greater than the cost of providing such services that Licensor would otherwise incur with respect to the License Area.

6.2 Alterations, Additions, and Improvements. Licensor shall, at its sole cost and expense, install the fixtures, equipment, and furnishings to be described in the "Construction Drawings," as that term is defined in the Work Letter. Academy shall at its sole cost and expense, supply and furnish any trade fixtures, equipment and furnishings which are not installed by Licensor pursuant to the Work Letter and are needed for Academy's use of the License Area. All fixtures shall become and remain a part of the License Area and the property of Licensor, regardless of whether the fixtures were installed by Academy or at Academy's expense and shall not be removed by Academy, except that Academy may remove trade fixtures, and, with Licensor's prior approval, which shall not be unreasonably withheld, remove and/or replace

other fixtures on account of obsolescence or technological advance, and, upon Licensor's request, Academy shall remove any other fixtures, equipment or furnishings installed by or on behalf of Academy as designated by Licensor on or before the end of the License Term and repair any damage caused to the License Area or Project by such removal. The timing and manner of completion of any such work, if not performed during the Annual Use Period, shall be approved in advance by Licensor, which approval shall not be unreasonably withheld.

6.3 Academy's Property. All furnishings and other articles of movable personal property installed by or on behalf of Academy and located in the License Area shall remain the property of Academy and may be removed by or on behalf of Academy at any time during the annual Use Period, and, in any event, shall be removed by Academy prior to the end of each Annual Use Period. Academy shall repair, at its sole cost and expense, any damage to the License Area or to the Project resulting from the installation or removal of such property.

6.4 Signage; Identity.

6.4.1 Project and Theatre Identity. Licensor shall have the right to name the project, and the "Theatre Complex," which shall include the physical structure containing the Theatre, but shall not include the interior of the Theatre itself. Academy shall have the right to approve the names given to the Project and the Theatre Complex. Notwithstanding the foregoing, Academy shall not disapprove (i) any name for the Project which is either generic or geographic in nature (e.g., the Hollywood/Highland Project), or which is a derivative of Licensor's name (e.g., the TrizecHahn Project), provided that in no event shall the Project be identified, through signage or other form of identification, by any name related to the industry, or any corporate name or identity which is not then a nationally recognized real estate or real estate management company, or (ii) the names "Ford Center for the Performing Arts" or "AT&T Center for the Performing Arts" or "George Eastman Center for the Performing Arts" or "Thomas A. Edison Center for the Performing Arts" for the Theatre Complex. Except as set forth in Section 9.4.1, below, Academy shall not be required to utilize the name of the Project or the Theatre Complex in connection with the Presentation, the telecast of the Presentation or Academy's use of the Theatre. Furthermore, except as set forth in item (ii), above, Academy may withhold its consent to any name related to the industry (e.g., the Douglas Fairbanks Center), or which is commercial in nature (e.g., the General Motors Center), in its sole discretion. Academy shall have the right to designate a name for the Theatre. Licensor shall not disapprove any name given to the Theatre by Academy that is the name or common name or a former, current or fixture member of the Academy (e.g. the Douglas Fairbanks Theatre), but shall otherwise have the right to disapprove any such name in Licensor's sole discretion. In no event shall Academy extract, as a quid pro quo, any compensation in exchange for designating the name or identity of the Theatre or independently promote the name of the Theatre.

6.4.2 Theatre Identity Signage. In reviewing and approving the Design Development Drawings as provided in the Work Letter, Academy acknowledges that Licensor shall have the right to identify the Theatre Complex by (i) placing a sign bearing the name of the Theatre Complex, no more than three (3) feet wide or high, on the west side of the Orchid Walk entrance portal, positioned in the approximate location as set forth in Exhibit A-1 attached hereto, (ii) placing a sign bearing the name of the Theatre Complex on the top crosspiece of such entrance portal, (iii) placing a sign or identifying marker in the Rotunda Area of the Project, in

the approximate location, and of the approximate size, as set forth on Exhibit A-2, attached hereto, and (iv) subject to the prior approval of Academy with respect to size and positioning, placing a poster display on the south facade of the Project. Commencing two (2) days prior to the Presentation, and continuing through the day of the Presentation, Academy will have the right to drape or otherwise cover the sign referenced in item (ii) above and to use such area for its own signage announcing the Presentation.

6.4.3 Use of Academy Trademarks. Licensor and Hotel Owner agree that, except in connection with a "Best Picture" Award presentation to be located in the Orchid Walk Area, and which shall be subject to Academy's prior approval, not to be unreasonably withheld, delayed or conditioned, neither Licensor nor Hotel Owner shall use, or permit any tenant of the Project, pursuant to its lease, to use, the Oscar statuette or any look-alike statuette; the name or phrases "Oscar(s)," "Oscar Night," "Academy Award(s)," "Academy of Motion Picture Arts and Sciences," "Academy," "A.M.P.A.S.," "Academy Foundation" or "Center for Motion Picture Study"; or any derivative of any such name or phrase (collectively, "Trademarks"). Notwithstanding the foregoing, the terms of this Section 6.4.3 shall not require Licensor to prohibit any of its tenants, pursuant to its lease or otherwise, from using any of such tenant's respective tradenames or trademarks which is a nationally recognized chain or trademark, or a regionally recognized chain or trademark of a company or chain based in the Los Angeles area. Nothing contained herein shall imply any right on the part of Licensor or any of its tenants or invitees to make any use of a Trademark or prohibit Academy from seeking to enforce its rights with respect to the same.

6.4.4 Other Uses of Trademarks. Academy shall entertain discussions with Licensor to allow Licensor to use certain of the Trademarks in connection with a film to be produced by Licensor for presentation in the Theatre to customers and invitees of the Project. The manner of Licensor's use of any Trademarks in such regard shall be subject to the prior approval of Academy, which approval may be granted or withheld in Academy's sole discretion.

6.4.5 Hotel Identity. Licensor shall not allow the Hotel to carry any name related to the industry, or to carry any corporate name or identity which is not then a nationally recognized hotel enterprise.

## SECTION 7.

## INDEMNITY AND INSURANCE

7.1 Indemnification and Waiver. Academy shall indemnify, defend, and protect Licensor and Hotel Owner, and their respective partners, lenders, parent and subsidiary corporations, and their respective officers, directors, shareholders, beneficiaries, agents, servants, employees, and independent contractors (collectively, the "Licensor Parties"), and hold Licensor Parties harmless from any and all loss, cost, damage, expense, and liability (including, without limitation, court costs and attorneys' fees) incurred in connection with or arising from Academy's use of the Project or Hotel, except to the extent any such loss, etc., is attributable to Licensor's or Hotel Owner's gross negligence or willful misconduct. Licensor and Hotel Owner shall indemnify, defend, and protect Academy, its partners, subsidiary corporations, and their respective officers, directors, members, governors, beneficiaries, agents, servants, employees,

and independent contractors (collectively, the "Academy Parties"), and hold Academy Parties harmless from any and all loss, cost, damage, expense, and liability (including, without limitation, court costs and attorneys' fees) incurred in connection with or arising from Licensor's or Hotel Owner's gross negligence or willful misconduct. Licensor Parties shall not be responsible for any breaking and entering into the License Area, or for the theft of any property owned, rented, used or in any way connected with Academy or anyone associated with Academy while located on or adjacent to the License Area. The provisions of this Section 7.1 shall survive the expiration or sooner termination of this License with respect to any claims or liability occurring prior to such expiration or termination.

7.2 Insurance. Academy shall maintain, during each Annual Use Period throughout the License Term, and at its own cost and expense, commercial general liability insurance, including public liability and property damage insurance in the amount of Ten Million Dollars ($10,000,000) per occurrence for personal injuries or deaths of persons occurring in or about the License Area, Hotel or Project including a Broad Form Commercial General Liability endorsement covering Academy's contractual liability, including the insuring provisions of this Agreement and the performance by Academy of the indemnity agreements set forth in Section 7.1 hereof. Additionally, if Academy performs work at the Project or Hotel outside of any Annual Use Period, Academy shall maintain, or require its contractors to maintain, commercial general liability insurance in connection with such work in amounts, and to the extent, that such insurance is customarily carried by contractors performing similar work in projects similar to the Project. Licensor and Hotel Owner shall maintain during each Annual Use Period throughout the License Term, and at its own cost and expense, commercial general liability insurance, including public liability and property damage insurance, of the types and in the amounts required pursuant to the Reciprocal Easement Agreement identified on Exhibit C hereto, including a Broad Form Commercial General Liability endorsement covering Licensor's and Hotel Owner's contractual liability, including the insuring provisions of this License and the performance by Licensor and Hotel Owner of the indemnity agreements set forth in Section 7.1 hereof.

7.3 Form of Policies. The minimum limits of policies of insurance required under this License shall in no event limit the liability of any party under this License. All policies required hereunder shall (i) name the other parties hereto and, with respect to the insurance obtained by Academy, any first mortgage lender to the Project or Hotel and any third-party manager of the Project or Hotel, which it so specifies, as well as, if requested by Licensor, the City of Los Angeles (or such City agency or subdivision as may have an ownership interest in any portion of the Project), the Community Redevelopment Agency of the City of Los Angeles, and the Municipal Improvement Corporation of the City of Los Angeles, as an additional named insured; (ii) be issued by an insurance company with a Best's rating of A-/IV or better; (iii) be primary insurance as to all claims thereunder and provide that any insurance carried by the additional insured is excess and noncontributing with any insurance requirement of the insured; (iv) provide that such insurance shall not be canceled or coverage changed unless thirty (30) days prior written notice shall have been given to the additional insured and, with respect to the insurance obtained by Academy, the first mortgage lender to the Project or Hotel specified by Licensor or Hotel Owner; and (v) contain a cross liability endorsement or severability of interest clause acceptable to the additional insured. Each party hereto shall deliver a copy of its policy or

policies or a certificate or certificates thereof to the additional insured on or before the commencement of each Annual Use Period.

7.4 Subrogation. The parties intend that their respective property loss risks shall be borne by insurance carriers to the extent above provided, and each party hereby agrees to look solely to, and seek recovery only from, their respective insurance carriers in the event of a property loss to the extent that such coverage is agreed to be provided hereunder or if higher, to the extent such insurance has been obtained. The parties each hereby waive all rights and claims against each other for such losses, and waive all rights of subrogation of their respective insurers, provided such waiver of subrogation shall not affect the right to the insured to recover thereunder from the insurer. The parties agree that their respective insurance policies are now, or shall be, endorsed such that the waiver of subrogation shall not affect the right of the insured to recover thereunder.

## SECTION 8.

## PERSONAL LICENSE

It is agreed between Licensor and Academy that this License is personal to Academy and shall not inure to the successors or assigns of Academy, other than an entity succeeding to substantially all of the assets of Academy (including the Trademarks) which succeeds to the mission of the Academy and, in particular, the Presentation. No other person or entity may use any portion of the License Area or conduct Academy's business and any "Transfer," as defined below, shall be null and void and of no further force and effect. As used herein, "Transfer" shall include any attempts to mortgage, pledge or otherwise encumber this License or the License Area or any part thereof in any manner whatsoever or the assignment or other transfer of this License or offer to advertise to do so, whether voluntarily, involuntarily, by operation of law or otherwise. Any dissolution of Academy's existence, other than in connection with the succession to substantially all of the assets of Academy (including the Trademarks) by an entity which succeeds to the mission of the Academy and, in particular, the Presentation, shall be deemed a Transfer of this License subject to the above prohibition.

## SECTION 9.

## PRODUCTION AND PRESENTATION OF ACADEMY AWARDS SHOW

9.1 The Presentation. During the License Term, except as otherwise expressly set forth in this License, Academy agrees that it shall use the License Area only for the purposes of preparing for and presenting its annual awards show, commonly known as "The Academy Awards Show," and the traditional honoree's banquet following such show, commonly known as the "Governors Ball," and thereafter dismantling and removing the trade fixtures, equipment and other items of personal property used in connection therewith. The Academy Awards Show and Governors Ball are referred to herein collectively as the "Presentation". The Presentation shall be held annually during the month of March or April. Academy shall determine the precise date on which the Presentation will be held (the "Presentation Date") on or before July 1 of the calendar year preceding the date of the Presentation, and shall notify Licensor of such

Presentation Date immediately following such determination. During the License Term, except as provided in Sections 1.3, 10.5, or 11.4, Academy shall not use any other venue other than the License Area for the Presentation.

9.2 Access to and Use of License Area. During each Annual Use Period, Academy shall have the right to partial access to, and/or exclusive use of, the various portions of the License Area for the periods set forth herein.

| License Area Sub Area | Partial Access | Exclusive Access |
|---|---|---|
| **Theatre Area** | **28 days prior, 8 days after** | **21 days prior, 4 days after** |
| **Governors Ballroom Area** | | |
| • **Ballroom(s), including prefunction area, storage rooms, elevator and access** | **14 days prior, 4 days after** | **12 days prior, 2 days after** |
| • **Kitchen Area** | **None.** | **5 days prior, 2 days after** |
| • **Access and Loading areas (as designated on Exhibit A)** | **14 days prior (1 bay, 6-7 hrs/day), 6 days prior (2 bays, 4-5 hrs/day), 2 days after (2 bays, 4-5 hrs/day)** | **Close of Business* the day prior, 6 a.m. the day after** |
| **Pool Deck** | **None.** | **Close of Business the day prior, 6 a.m. the day after** |
| **Arrivals Area** | **As provided in the Operational Addendum.** | **As provided in the Operational Addendum.** |
| **East Retail Loading Dock (Can be used after hours)** | **14 days prior (1 bay, 6-7 hrs/day), 6 days prior (2 bays, 4-5 hrs/day), 2 days after (2 bays, 4-5 hrs/day)** | **Close of Business the day prior, 6 a.m. the day after** |
| **Orchid Walk Area** | | |
| • **Forecourt** | **21 days prior, 5 days after** | **4 days prior** |
| • **Lower Walkway** | **21 days prior, 5 days after** | **4 days prior** |
| • **Upper Walkway** | **As necessary to install cable and lighting, to access cable ways, and to otherwise prepare for the Presentation** | **9 p.m. the day prior, 6 a.m. the day after** |
| • **Lower Rotunda** | **14 days prior, 1 day after** | **9 p.m. the day prior, 6 a.m. the day after** |
| • **Upper Rotunda** | **7 days prior, 1 day after** | **9 p.m. the day prior, 6 a.m. the day after** |
| **Hollywood Boulevard Frontage** | **14 days prior, 1 day after** | **Close of Business the day prior, 6 a.m. the day after** |
| **Production Access Area** | **28 days prior, 8 days after** | **21 days prior, 2 days after** |
| **Press Area** | **None.** | **12 days prior, 5 days after** |
| **Valet Parking Area** | **None.** | **10 days prior, 2 days after** |
| **Security Offices Area** | **None.** | **28 days prior, 8 days after** |

| License Area Sub Area | Partial Access | Exclusive Access |
|---|---|---|
| **Hotel Meeting Rooms** | **None.** | **9 days prior, 2 days after** |
| • **Business Center** | **None.** | **Close of Business the day prior, 6 a.m. the day after** |

In addition to such use during each Annual Use Period, Academy shall be permitted reasonable access to the Project for the purpose of laying power and communication cables, and making related connections to such cables, provided that (i) for such purposes, to the extent practicable, Academy shall use the dedicated cable ways installed in the Project for such purposes, (ii) except at the times and in the portions of the License Area that Academy has exclusive use, Academy shall not leave cable exposed and unattended without Licensor's prior approval, and (iii) such access shall not unreasonably interfere with the use of or access from or to other occupants or invitees of the Project.

9.2.1 Partial Access. **For the purposes of this License, "partial access" shall mean such access as is necessary to enable Academy to perform its preparatory work for the Presentation without unreasonably interfering with the use of or access of the Project or the License Area by other occupants or invitees of the Project. Notwithstanding the foregoing, with respect to (i) the portions of the Hollywood Boulevard Frontage and the Orchid Walk Area included in the Arrivals Area during the period commencing fourteen (14) days prior to the Presentation, and continuing through the date which is five (5) days after the Presentation, and (ii) the ballroom areas of the Governors Ballroom Area during the entire period of partial access to such areas prior to and after the Presentation, "partial access" shall mean such access as is necessary to enable Academy to prepare for the Presentation, including, if necessary, temporary prohibitions on other uses, or temporary closures, of all or portions of such Arrivals Area and Governors Ballroom Area; provided that in performing such work, Academy shall interfere with the use of or access to the Project or the License Area by other occupants or invitees of the Project as little as is practicable. Additionally, during the period of Academy's exclusive access to the Orchid Walk Area (as determined in accordance with the terms of Section 4.1.3 of the Operational Addendum), Academy shall allow the retail tenants whose stores line the Orchid Walk to use the Orchid Walk as an emergency exit from those stores, and shall not take any actions that would prevent such use (*i.e.*, by blocking such exitways), as necessary to allow such stores to remain open during such exclusive use period (not including the day of the Presentation).**

9.2.2 Initial Presentation Phase-In Period. Notwithstanding the time periods set forth above in this Section 9.2, and in Section 9.3, below, Licensor and Hotel Owner agree that, in connection with the Initial Presentation only, each such time period shall be increased by twenty-five percent (25%) (e.g., a twelve day period shall be extended to be a fifteen day period). Any partial days resulting from such 25% increase shall be "rounded up" to a full day. Notwithstanding the foregoing, in no event shall the time periods relating to (i) the closure of the project on the Presentation Date, as set forth in Section 9.5, below, be extended pursuant to this Section **[clause (ii) deleted]** or (iii) the period of Academy's use of the Press Area be extended to commence prior to the date which is fourteen (14) days prior to the date of the Presentation.

Additionally, with respect to the time periods for Academy's use of the Parking Areas, as set forth in Section 9.3.1, below, the twenty-five percent (25%) increase shall apply only to the time periods during which Academy is provided 720 or 1100 spaces (which time periods shall be increased to 10 days prior to the Presentation, and 3 days prior to the Presentation, respectively).

9.2.3 **Review of Required Annual Use Period. From time to time during the License Term, Academy will review the actual amount of time required for partial access and/or exclusive use of the various portions of the License Area and the Hawthorn Lot. If Academy reasonably determines that it requires less (or with respect to the partial access period of the Hollywood Boulevard Frontage only, more) time than the time periods granted by this License in order to adequately prepare for the Presentation without any material increase in costs or decrease in efficiency, Academy shall notify Licensor of such fact, and Academy and Licensor will mutually agree on a modified access schedule. With respect to the Hollywood Boulevard Frontage, the partial access period shall not be increased by more than five (5) days in the aggregate.**

9.3 Parking.

9.3.1 Parking Spaces Provided. During the Annual Use Period, Licensor shall provide Academy with parking spaces in the Parking Areas, in the amounts set forth below, at the lowest parking rate (which may include applicable taxes) then generally charged to any user of similar areas of the Project parking facilities. Notwithstanding the foregoing, Academy shall not be required to pay any amounts for any non-parking uses of the Parking Area as contemplated by the terms of this License (i.e., for the Security Offices Area).

| Period of Annual Use Period | Number of Parking Spaces Provided |
|---|---|
| Commencing 21 days prior to the Presentation Date | 50 |
| Commencing 14, days prior to the Presentation Date | 80 |
| Commencing 10 days prior to the Presentation Date | 130 |
| Commencing 7 days prior to the Presentation Date | 720 |
| Commencing 2 days prior to the Presentation Date | 1100 |
| During the 2 days after the Presentation Date | 175 |

Academy and Licensor shall cooperate reasonably and in good faith in order to minimize the aggregate number of parking spaces required in the Project by, for example, using valet parking and/or offsite parking arranged by Licensor and approved by Academy, which such approval shall not be unreasonably withheld or delayed. The costs of offsite parking areas used by Academy shall be paid by Academy or the persons utilizing such areas. Such costs shall be based on the prevailing parking rates charged in such areas.

9.3.2 Exclusive Use of Parking Areas. During the period commencing upon the close of business of all of the tenants of the Project on the day prior to the Presentation Date, and continuing until 2:00 a.m. on the day after the Presentation Date, Academy shall have the exclusive use and control of the Parking Areas, subject to the terms of Section 9.3.4, below, regarding the use of portions of the Parking Area by the owners of the Hotel, at no charge to Academy.

9.3.3 General Conditions. In connection with Academy's use of the Parking Area as set forth above, (but not in connection with Academy's use under Sections 9.2 or 9.3.2, above), Academy shall abide by all reasonable rules and regulations which are prescribed from time to time for the orderly operation and use of the Parking Area and shall cooperate in ensuring that Academy's employees and visitors also comply with such rules and regulations. Licensor specifically reserves the right to change the size, configuration, design, layout and all other aspects of the Parking Area at any time (provided that such changes do not materially interfere with the preparation and staging of the Presentation, and provided that no such work shall occur during the Annual Use Period) and Academy acknowledges and agrees that Licensor may, without incurring any liability to Academy, from time to time (but not during the Annual Use Period), close-off or restrict access to the Parking Area, for purposes of permitting or facilitating any such construction, alteration or improvements. Licensor may delegate its responsibilities hereunder to a parking operator in which case such parking operator shall have all the rights of control attributed hereby to the Licensor (provided that such operator shall be bound by all of the obligations of Licensor hereunder).

9.3.4 Hotel Parking Uses. Academy acknowledges that the Hotel Owner may not be able to reasonably procure parking areas outside of the Project, and may, therefore, be required to continue to use up to three hundred (300) spaces in the Parking Area on the day of the Presentation. Any such use shall be valet only, and members of the public shall not be allowed access to the Parking Areas in connection with such use. As a condition of such use of the Parking Area by the Hotel, Licensor and/or the Hotel Owner shall comply with and use the valet parking security plan implemented by Academy in Academy's sole, good faith discretion, which shall provide that any cars parked in the Parking Areas during the Presentation will be subject to inspection by Academy, including inspection of the trunk of such cars. Any incremental costs resulting from allowing such use of the Parking Area by the Hotel, including costs of additional valet or security personnel, shall be borne by Licensor.

9.3.5 Valet/VIP Parking. The first 130 parking spaces provided to Academy shall be provided on Level P2, in contiguous blocks of spaces. Academy shall have the right, at Academy's sole cost and expense, to temporarily mark such spaces as reserved spaces for the use of Academy, and to individually identify reserved "VIP" spaces within such areas.

9.4 Marketing Agreements.

9.4.1 Broadcast Agreements. In each of the broadcast agreements entered into by Academy with respect to the Presentation, Academy shall include a provision requiring broadcasters to describe the Presentation as the "Academy Awards from the [approved name of the Theater, e.g. Bob Hope Theatre] in the [approved name of the Theater Complex, e.g. Ford Center for the Performing Arts] from Hollywood and Highland, California," or such other description approved in writing by Licensor. Notwithstanding the foregoing, Academy may, at its option, omit the name of the Theatre, but not the name of the Theatre Complex or the Project, from the foregoing description.

9.4.2 Presentation Tickets. Academy shall allow Licensor to purchase, at face value and subject to the same restrictions imposed on other holders of tickets, (i) twenty (20) tickets to each Presentation held at the Project during the License Tenn, and, (ii) if the Theatre as finally constructed contains more than 3335 seats, ten (10) additional tickets to the Academy Awards Show, but not the Governors Ball, on the same terms. Academy shall provide such tickets to the Academy Awards Show in blocks of not less than two (2) contiguous seats (and shall endeavor to provide blocks of not less than four (4) contiguous seats), and shall provide such tickets to the Governors Ball in not more than three (3) tables. In no event shall Licensor sell such tickets, or give away such tickets in connection with any promotions or charitable event. Licensor may, however, invite sponsors, major tenants or advertisers at the Project to attend the Presentation using Licensor's tickets, provided that such individuals agree not to sell or otherwise give away the tickets, and further provided that all invitees shall remain subject to the same restrictions imposed on other holders of tickets. Additionally, Licensor may make certain of its tickets available to any permitted recipient of the naming rights of the Theatre Complex, subject to all of the limitations set forth herein.

9.4.3 Additional Events. Academy will entertain discussions regarding holding other ceremonies leading up to the Presentation, such as the nominee announcements, fashion shows and the Scientific and Technical Awards Dinner, at the Project, and in such context, Licensor shall be given the opportunity to purchase a reasonable allocation of additional tickets to such ceremonies.

9.5 Project Closure. Licensor shall maintain operational control of the Project throughout the Annual Use Period and Presentation Date, and shall cause other tenants and occupants of the Project, as well as the adjacent "Chinese Theatre," to close for business to the public from the normal closing business hours of the day preceding the Presentation, and to remain closed until such businesses' normal opening hours on the day after the Presentation Date. Other than in connection with (i) its general maintenance and security operations at the Project, and (ii) the operation of certain of the Project restaurants on the evening of the Presentation to serve Academy's invitees only, Licensor shall not use the Project for any purpose on the day of the Presentation without the prior approval of Academy, which approval may be withheld in Academy's sole discretion.

9.6 **Offsites. Licensor shall obtain, prior to the Initial Presentation as set forth in Section 1.3 of this License, the consents, permits and agreements from third parties identified on Exhibit D attached to this Amendment as Licensor's primary responsibility**

(the "Licensor Off-Site Conditions"). Academy shall use its best efforts to obtain the consents, permits and agreements from third parties identified on Exhibit D as Academy's primary responsibility (the "Academy Off-Site Conditions") for the Initial Presentation prior to January 1, 2002. If Academy is unable to satisfy the Academy Off-Site Conditions by such date, Academy shall have the right, within five (5) business days thereafter to notify Licensor of such failure and to stage the Initial Presentation at a Back-Up Venue. Such notification by Academy shall release Licensor from any obligation to make the Project available to Academy to stage the Initial Presentation at the Project. In the event Academy fails to deliver such notice by such date, the Academy Off-Site Conditions shall be deemed to have been satisfied. In no event shall Academy be entitled to recover Back-Up Venue Termination Costs or Termination Damages on account of a failure of an Academy Off-Site Condition within respect to the Initial Presentation.

With respect to any Presentation after March, 2002, each of the Licensor Offsite Conditions must be satisfied on or before the date which is nine (9) months prior to the date of the applicable Presentation, or Licensor must demonstrate to Academy on or before such date that such Conditions will be satisfied in a timely manner and so as not to cause any interference with the preparations for, and staging of the Presentation, and in any event prior to the commencement of the applicable Annual Use Period. All of the consents, permits and agreements required to satisfy the Licensor Offsite Conditions are subject to the prior approval of Academy, which approval shall not be withheld if, in the good faith opinion of Academy, they enable Academy to prepare for and present the Presentation within the Annual Use Period with (i) no material interference, other than as contemplated pursuant to the License during any period of partial access to a License Area, or that is inherent in the design of the Project as a mixed-use project and (ii) no material decrease in efficiencies from that currently contemplated. If Licensor is unable to satisfy the Licensor Offsite Conditions, as set forth herein, or Academy is unable to satisfy the Academy Offsite Conditions, in either instance as necessary to meet the requirements set forth above at least nine (9) months prior to the date of the applicable Presentation, Academy shall have the right to secure a Back-Up Venue in which to stage the applicable Presentation. If all such Offsite Conditions are not satisfied, as set forth herein, on or before the Outside Compliance Date, Academy shall have the right, within five (5) business days after the Outside Compliance Date, to notify Licensor of such failure to meet the Offsite Conditions, and to stage such Presentation at the Back-Up Venue. Such notification by Academy shall release Licensor from any obligation to make the Project available to Academy to stage the applicable Presentation. In the event Academy fails to deliver such notice within five (5) business days after the Outside Compliance Date, such Offsite Conditions shall be deemed to have been satisfied. In the event all such Conditions are satisfied, or deemed satisfied as set forth above, then, notwithstanding the terms of any agreement entered into by Academy with respect to the Back-Up Venue, Academy shall stage such Presentation at the Project and, if the condition leading to the securing of the Back-Up Venue was a Licensor Offsite Condition, Licensor shall reimburse Academy for its Back-Up Venue Termination Costs. Academy will use its best efforts to negotiate a fee structure for the Back-Up Venue that will enable Licensor to minimize the Back-Up Venue Termination Costs.

**Each party hereto shall reasonably cooperate with the party primarily responsible for obtaining a consent, permit or agreement hereunder, including under this Section 9.6, but at no third-party out-of-pocket cost to such cooperating party, in each instance to facilitate the Presentation.**

**In the event that an Offsite Condition prevents the staging of the Presentation at the Project for more than two (2) consecutive years, either party shall have the right to terminate this License by giving written notice of such termination to the other within thirty (30) days after the determination has been made, with respect to a particular Presentation, that an Offsite Condition prevents the staging of such Presentation at the Project. Upon termination of this License by either party pursuant to the terms of this Section 9.6 as a result of a failure of a Licensor Offsite Condition, Licensor shall pay to Academy the Termination Damages in accordance with the terms of Section 12.4 of the License. If either party terminates this License pursuant to the terms of this Section 9.6 as a result of a failure of an Academy Offsite Condition, Licensor shall not be required to pay the Termination Damages.**

9.6.1 **Hawthorn Lot. Academy agrees that the Licensor Offsite Condition originally identified as the "Hawthorn Lot" on Exhibit D to the License (the "Hawthorn Lot Condition") may be satisfied by Licensor arranging for the use of properties of suitable size and location to meet the Academy's needs for staging and operation of press and international broadcaster facilities, including satellite and microwave vehicles placed in an area suitable for satellite and microwave transmission, production trucks, trailers, support vehicles and tents, all as determined in Academy's reasonable discretion, and that the precise method of satisfying such Condition may differ from year to year. Notwithstanding the foregoing, Academy hereby agrees that the Hawthorn Lot Condition may be satisfied by Licensor with respect to any Presentation by Licensor arranging for Academy to have the exclusive use of any of the following groupings of properties for the exclusive access period of the applicable Annual Use Period; provided, however, that no such property, and no property adjacent thereto, has been altered or improved from its present condition, other than as contemplated in Section 9.6.1(D), below, in a manner that would prevent such property from being certified by National TeleConsultants, or other such consultant mutually agreed to by Licensor and Academy, as being suitable for microwave and satellite reception and broadcasting. For each Annual Use Period, Academy shall be entitled to use such property or properties for (i) nine (9) days prior, and two (2) days after, the Presentation with respect to the property to be used for the international broadcasters, and (ii) three (3) days prior, and one (1) day after, the Presentation with respect to the property to be used for satellite parking for press vehicles; increased, however, for the Initial Presentation as contemplated in Section 9.2.2 of the License; and subject to the provisions of Section 9.2.3 of the License Agreement, as amended hereby, with respect to subsequent Presentations.**

A. **Quality/CUNA/Hawthorn. The surface parking lot currently leased and operated by Quality Parking Service, Inc., as shown on Exhibit F (the "Quality Lot"), and the surface parking lot owned by CUNA Mutual Life Insurance Company, as shown on Exhibit F attached (the "CUNA Lot"), together with a closure by the City of Hawthorn Avenue between Highland Avenue and Orange Avenue, subject to a fire lane**

**remaining open, together with the granting of the right to park press vehicles on the closed portions of Hawthorn Avenue (the "Hawthorn Closure").**

**B. Grant/CUNA/Hawthorn. The use of the surface parking lot owned by Yorkburry Investments, Inc., operated by Grant Parking, as shown on Exhibit F (the "Grant Lot"), together with the use of the CUNA Lot and the Hawthorn Closure.**

**C. Hollywood ITC/Hawthorn. The use of a new parking structure constructed on the Quality Lot, CUNA Lot, and Grant Lot, suitable for use by Academy in accordance with the criteria set forth above (the "ITC Structure"), together with the Hawthorn Closure. For the one Annual Use Period during which the ITC Structure may be under construction, the Academy shall accept the use of the Hollywood High School athletic field as contemplated in the original Exhibit D to the License Agreement.**

**D. Highland Properties/CUNA/Hawthorn. The use of the Highland Properties (as defined below) together with the CUNA Lot and the Hawthorn Closure. "Highland Properties" shall mean the properties known as 1639 and 1651 Highland Avenue, provided that all structures located thereon, other that the existing billboard structure, shall have been demolished, and the properties shall have been properly paved for use as a parking lot.**

**E. Grant/Highland/Hawthorn. The use of the Grant Lot, the Highland Properties, and the Hawthorn Closure.**

**F. Quality/Highland/Hawthorn. The use of the Quality Lot, the Highland Properties, and the Hawthorn Closure.**

**G. Quality/Grant. The use of the Quality Lot and the Grant Lot.**

**Notwithstanding the foregoing, prior to satisfying the Hawthorn Lot Condition by the use of any option which includes the use of the Highland Properties, National TeleConsultants, or other such consultant mutually agreed to by Licensor and Academy, shall have certified that the properties used to make up such option, taken as a whole, shall have sufficient areas suitable for satellite and microwave transmission to enable Academy to use such properties for staging and operation of press and international broadcast facilities in a manner consistent with its historical configuration.**

9.6.2 **Cost. The out-of-pocket costs incurred by Licensor, exclusive of any amounts paid to any of its affiliates, in providing for the use of the properties in satisfaction of the Hawthorn Lot Condition (the "Parking Costs") shall be split equally between Academy and Licensor; provided, however, that Academy's share of the Parking Costs shall not exceed (i) $2,000 per day for the use of the CUNA Lot, (ii) $2,000 per day for the use of the Quality Lot, or (iii) $3,000 per day for the use of the Grant Lot; provided further, however, that each of such amounts may be increased by 5% per year following the March, 2002, Presentation. If at any time during the License Term, the Highland Properties are no longer owned or controlled by Licensor or any of its affiliates, or the ITC Structure is developed on one or more of the properties, the out-of-pocket costs incurred by**

**Licensor in making either of such properties available to Academy shall likewise be split equally between Academy and Licensor. Notwithstanding the foregoing, if Licensor has previously secured a long term right to use certain parking lots or other areas in satisfaction of the Hawthorn Lot Condition, for the time periods set forth in Section 9.6.1, above (the "Original Time-Periods"), then, notwithstanding any reduction of such time periods as set forth in Section 9.2.3, Academy shall continue to have the obligation to bear the portion of the costs of obtaining the rights to use such areas during the Original Time Periods.**

9.6.3 **Street Closures. As set forth in Exhibit D attached hereto, the Offsite Condition known as the "Street Closure Condition" is an Academy Offsite Condition, and, in accordance with the terms of Section 9.6, above, the failure of Academy to satisfy such condition may allow Academy to secure a Back-Up Venue, and, if applicable, stage a particular Presentation at a Back-Up Venue. Notwithstanding the foregoing, in the event that, at any time during the License Term, Licensor obtains an appropriate and binding Development Agreement from the City of Los Angeles to the effect that the City will provide either (i) a street closure plan which will allow the Academy to stage the Presentation at the Project within the Annual Use Period with (A) no material interference, other than as contemplated pursuant to the License during any period of partial access to the License Area, and (B) no material decrease in efficiencies from that currently contemplated, or (ii) a specific street closure plan for future Presentations which has been approved in advance by Academy, then, during any year of the License Term in which such agreement remains in effect, the Street Closure Condition will be deemed satisfied, and Academy shall have no right to secure a Back-Up Venue or stage the Presentation at a Back-Up Venue, in each case because of a failure of the Street Closure Condition.**

9.6.4 **Satisfied Conditions. The Offsite Conditions known as (i) "Madison Lot" and (ii) "Street Furniture," as listed in the original Exhibit D to the License Agreement, have been satisfied, and are no longer Offsite Conditions; and the Offsite Condition known as "Cable Pathways" has been satisfied except for the completion of a "signal interference" test to the satisfaction of Academy, and once such test has been so completed, the "Cable Pathways" Condition shall no longer be an Offsite Condition.**

9.7 Security Concerns. Licensor and Academy shall cooperate reasonably and in good faith to coordinate the provision of security and access control services during each Annual Use Period and in connection with each Presentation. Provided that Licensor is not denied access to the Project management and security offices, and except in the event of an emergency, Licensor shall require its security personnel to defer to those of Academy during the period the project is otherwise closed pursuant to Section 9.5.

9.8 Hotel Uses. If Hotel Owner provides to Academy an arrangement regarding the use of hotel rooms as favorable to Academy as its current arrangement with Hilton, then, provided that (i) Academy uses commercially reasonable efforts to promote the Hotel for use by the media attendees and other personnel or entities which participate in the Presentation, and (ii) Academy gives the Hotel a promotional mention at the end of the broadcast of the Presentation, Hotel Owner will provide Academy fifty (50) room nights at the Hotel free of charge, and one hundred fifty (150) room nights at the Hotel at half rates during the Presentation. If the

conditions in items (i) and (ii) above are not met by Academy, and irrespective of whether Hotel Owner provides Academy an arrangement regarding the use of hotel rooms as favorable to Academy as its current arrangement with Hilton, Hotel Owner will provide Academy with two hundred (200) room nights at the Hotel at rates no greater than the Hotel's standard prevailing rates. Additionally, if the Hotel Renovations have not been sufficiently completed to allow Hotel owner to provide the rooms required pursuant to this Section 9.8, Licensor and Hotel Owner shall use commercially reasonable efforts to obtain rooms at other hotels in the reasonable vicinity of the Project for the use of Academy and its invitees, at the prevailing rates generally charged by such other hotels.

9.9 **Billboards and Electronic Message Boards. During the seven (7) day period prior to the Presentation, neither (i) the vertical advertising billboard located on the corner of Hollywood Boulevard and Highland Avenue, (ii) the scrolling electronic message board to be located on the exterior of the Project, nor (iii) any billboard, electronic or other signs which are (a) located on or visible from the Hollywood Boulevard exterior of the Project or (b) on or visible from the Pathway, including elevator signs, shall be used to (x) advertise any movie, (y) advertise any motion picture company, or (z) advertise any theme park or similar attraction carrying the name of any motion picture company.**

## SECTION 10.

## RECONSTRUCTION

10.1 Destruction Due to Risks Covered by Insurance. In the event of damage to the License Area and/or the Project by peril fully covered by Licensor's or Hotel Owners insurance on the Project, exclusive of Licensor's self-insured retention, Licensor shall notify Academy, as soon as reasonably practicable, of the estimated period required to repair such damage, and shall, within a period of one hundred twenty (120) days after the date of such damage, commence repair, reconstruction and restoration of the License Area and prosecute the same diligently to completion, in which event this License shall continue in full force and effect. Notwithstanding the foregoing, in the event of any destruction to the Project to an extent of at least twenty percent (20%) of the then full replacement cost of the Project as of the date of destruction, Licensor shall have the option to terminate this License upon giving written notice to Academy of exercise thereof as soon as practicable and in any event within one hundred twenty (120) days after such destruction.

10.2 Destruction Due to Risks Not Covered by Insurance. In the event the License Area shall be damaged to any material extent as a result of any casualty not fully covered by Licensor's insurance, exclusive of Licensees self-insured retention, Licensor may, within one hundred twenty (120) days following the date of such damage, commence repair, reconstruction or restoration of the License Area and/or the Project and prosecute the same diligently to completion, in which event this License shall continue in full force and effect, or, within such one hundred twenty (120) day period, elect not to so repair, reconstruct or restore the License Area and/or the Project, in which event this License shall terminate. In either such event Licensor shall give Academy written notice of its intention as soon as practicable and in any event within such one hundred twenty (120) day period.

10.3 Improvements and Waiver of Termination. Notwithstanding anything to the contrary contained herein, in no event shall Licensor be required to restore, repair or reconstruct any alterations, additions or improvements made by Academy to the License Area. Academy waives any right to terminate this License under Sections 1932 and/or 1933(4) of the Civil Code of California or any similar or superseding law.

10.4 Mutual Release. Upon any termination of this License under this Section 10, the parties shall be released thereby without further obligations to the other party coincident with the surrender of possession of the License Area to Licensor, except for items which have accrued and are unpaid prior thereto.

10.5 Basic License Fee Abatement During Reconstruction. In the event that, in Academy's good faith determination, repair, reconstruction and restoration of the License Area or Project as herein provided will prevent Academy from using the License Area for the purposes set forth herein during the Annual Use Period, the Basic License Fee to be paid under this License shall be abated for the entire year of the License Term in which such Annual Use Period occurs (and, if previously paid, refunded to Academy), and Academy will be free to seek an alternative venue at which to stage the Presentation during such year. In the event that the repair, reconstruction and restoration of the License Area is reasonably likely to prevent Academy from staging the Presentation at the Project for more than two (2) consecutive years, Academy shall have the right to terminate this License. Academy shall not be entitled to any compensation or damages from Licensor for interference with Academy's ability to conduct its business or for loss in the use of the whole or any part of the License Area during the Annual Use Period, Academy's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

10.6 Disputes Over Amount of Damage. In the event of damage or destruction as identified in Section 10.1 and/or Section 10.2, Licensor shall estimate the extent of damage and notify Academy within thirty (30) days after the occurrence thereof. Should Academy dispute the accuracy of such estimate, and so notify Licensor within fifteen (15) days after receipt of Licensor's notice, Licensor shall retain, at Academy's cost and expense, a disinterested M.A.I. appraiser who shall evaluate the aforementioned damage. The determination of such appraiser shall be binding upon the parties.

## SECTION 11.

## EMINENT DOMAIN

11.1 Complete Taking. If the whole of the Project or the License Area is taken by condemnation, sale in lieu of condemnation, or in any other manner for any public or quasi-public use or purpose (collectively, "Eminent Domain"), this License shall terminate as of the earlier of the date of vesting of title on such taking or the date that the condemning purchasing authority takes possession (the "Date of the Taking").

11.2 Partial Taking. If only a portion of the Project or the License Area is taken by Eminent Domain, this License shall be unaffected by such taking, except that if (i) twenty percent (20%) or more of the Project or any material portion of the License Area shall be so

taken, Licensor may terminate this License by giving Academy notice to that effect as soon as practicable and in any event within one hundred twenty (120) days after the Date of the Taking and this License shall terminate as of the date that such termination notice is delivered. If a portion of the Project or the License Area is taken which will have a material negative impact on the image of the Academy or the Presentation or, in the good faith opinion of Academy, prevent Academy from preparing for and presenting the Presentation within the Annual Use Period with (i) no material interference, other than as contemplated pursuant to the License during any period of partial access to a License Area, or that is inherent in the design of the Project as a mixed-use project and (ii) no material decrease in efficiencies from that currently contemplated, then, in any such event, Academy may terminate this License by giving Licensor notice to that effect as soon as practicable and in any event within one hundred twenty (120) days after the Date of the Taking and this License shall terminate as of the date that such termination notice is delivered.

11.3 Award. Licensor and Hotel Owner, as applicable, shall be entitled to receive the entire award or payment in connection with any taking of the License Area, without deduction for any interest vested in Academy by this License. Academy hereby expressly assigns to Licensor all of its right, title and interest in and to every such award or payment, except that Academy shall be entitled to any award expressly granted for the taking of Academy's Personal Property.

11.4 Basic License Fee Abatement During Reconstruction. In the event that, in Academy's good faith determination, repair, reconstruction and restoration of the License Area or Project relating to a taking by Eminent Domain will prevent Academy from using the License Area for the purposes set forth herein during the Annual Use Period, the Basic License Fee to be paid under this License shall be abated for the entire year of the License Term in which such Annual Use Period occurs (and, if previously paid, refunded to Academy), and Academy will be free to seek an alternative venue at which to stage the Presentation during such year. In the event that such repair, reconstruction and restoration of the License Area is reasonably likely to prevent Academy from staging the Presentation at the Project for more than two (2) consecutive years, Academy shall have the right to terminate this License. Except as expressly set forth in Section 11.3, above, Academy shall not be entitled to any compensation or damages from Licensor for interference with Academy's ability to conduct its business or for loss in the use of the whole or any part of the License Area during the Annual Use Period, Academy's personal property or any inconvenience or annoyance occasioned by such damage, repair, reconstruction or restoration.

## SECTION 12.

## TERMINATION OF LICENSE

12.1 Definition of Default. The occurrence of any one or more of the following events shall constitute a material default and breach of this License by Academy:

(i) The failure by Academy to make, any payment of License Fees hereunder, within ten (10) days after notice that the same is overdue;

(ii) The failure by Academy to observe or perform any of the express or implied covenants, promises, agreements or provisions of this License, where such failure continues for thirty (30) days after notice thereof; provided however, if the nature of the default is such that more than thirty (30) days are required for its cure, then Academy shall not be in default under this License if Academy commences such cure within such thirty (30) day period and thereafter diligently pursues the same to completion; or

(iii) Should Academy institute any proceedings under the Bankruptcy Act, or any similar or superseding statute, whether in such proceeding Academy seeks to be adjudicated a bankrupt or be discharged of its debts or to effect a plan of liquidation, composition or reorganization; or should any involuntary proceeding be filed against Academy under any such bankruptcy laws; or should Academy become insolvent or be adjudicated a bankrupt in any court of competent jurisdiction, or should a receiver or trustee be appointed of Academy's property, or should Academy make an assignment for the benefit of creditors.

12.2 Revocation of License. In the event of any default by Academy, as set forth in Section 12.1, above, Licensor may, in addition to any and all other rights or remedies available to Licensor hereunder, at law or in equity, immediately revoke this License upon written notification to Academy. No delay or omission of Licensor to exercise any right or remedy shall be construed as a waiver of any such right or remedy or of any default.

12.3 Termination of License by Academy. Notwithstanding the terms of Section 2.1, above, and in addition to any other termination rights of Academy hereunder, Academy shall have the right to terminate this License as set forth in this Section 12.3.

12.3.1 Project Condition or Utility. In the event (i) the Project is not maintained in a first-class condition or otherwise in the manner set forth in Section 4.7, above, or (ii) the Theatre has become technically obsolete based on commercially reasonably standards (item (i) or (ii), the "Maintenance Failure"), Academy shall have the right to deliver written notice (the "Maintenance Failure Notice") to Licensor of such condition, which notice shall state with reasonable specificity the particular conditions causing such Maintenance Failure, and, if Licensor fails to cure such particular conditions within the twelve (12) month period following Licensor's receipt of the Maintenance Failure Notice, Academy shall have the right to terminate this License by written notice to Licensor.

12.3.2 Neighborhood Deterioration. In the event the immediate area surrounding the project, and bounded by La Brea Boulevard, Sunset Boulevard, Franklin Street, and Vine Street, shall deteriorate from its condition existing as of the date of completion of the Project, as demonstrated by a material decline in property values or business revenues, or a material increase in vacancy or crime rates in such area, Academy shall have the right to terminate this License by delivering twelve (12) months prior written notice to Licensor.

12.3.3 Image of the Academy. In the event that Academy, or a significant constituency of its board of governors, makes a good faith determination that its association with the Project has (i) had a negative impact on the Presentation, including the pre-production, production or telecast aspects thereof, or the experience of the Presentation by its participants or audience, or (ii) demeaned the image of Academy or the Presentation (item (i) or (ii), the "Image

problem"), Academy shall have the right to deliver twelve (12) months prior written notice (the "Image Problem Notice") to Licensor of such condition, which notice shall, in any event, not be effective prior to the expiration of the fifth (5th) year of the License Term. In the case of an Image Problem set forth in item (ii), above, this License shall terminate as of the effective date of such notice. With respect to an Image Problem set forth in item (i), above, Academy's notice shall state with reasonable specificity the particular condition or conditions causing such Image Problem and if Licensor fails to cure such condition or conditions within the twelve (12) month period following the effective date of such notice, Academy shall have the right to terminate this License by an additional written notice to Licensor. Academy's determination of an image Problem shall in no event be based on an opportunity to host the Presentation at a competing mixed-use venue or a new theater. The factors used by Academy in making its good faith determination of an Image Problem set forth in item (ii), above, may include, but shall not be limited to (a) a substantial increase in the incidence of non-sanctioned uses of the Trademarks for commercial purposes resulting from Academy's connection to the Project, or (b) significant incidence of publication, marketing or distribution of the Trademarks in connection with a negative connotation of the Project or the Hollywood area of Los Angeles.

12.3.4 Cessation of Presentation. If, at any time during the License Term, Academy no longer holds the Presentation, or the Presentation is no longer telecast by a national television network for any reason other than a voluntary decision by Academy not to continue to televise the Presentation, or to terminate any existing contract for such telecast, Academy shall have the right to terminate this License by delivering Licensor not less than twelve (12) months prior written notice of such termination.

12.3.5 General Termination Right. Academy shall have the further right to terminate this License on not less than two (2) years prior written notice effective any time after the tenth (10th) year of the License Term.

12.3.6 Licensor Default. Notwithstanding anything to the contrary set forth in this License, Licensor shall be in default in the performance of any obligation required to be performed by Licensor pursuant to this License if Licensor fails to perform such obligation, within a reasonable time period with the expenditure of diligent efforts, but in no event more than thirty (30) days after the receipt of written notice from Academy specifying in detail Licensor's failure to perform; provided, however, if the nature of Licensees obligation is such that more than thirty (30) days are required for its performance, then Licensor shall not be in default under this License if Licensor commences such performance within such thirty (30) day period and thereafter diligently pursues the same to completion.

12.4 Limitation On Academy Remedies. In the event that this License is terminated based on (i) a failure by Licensor to cause the Substantial Completion of the Project and Hotel as required pursuant to the terms of Section 1.3, above, (ii) the failure to resolve any Known Conflict or New Conflict as set forth in Section 4.3, above, (iii) the failure to satisfy any Licensor offsite Condition as set forth in Section 9.6, above, or (iv) any default by Licensor under this License, Licensor shall pay to Academy, in addition to the Back-Up Venue Costs payable pursuant to the terms of Section 1.3.3, above, "Termination Damages" in an amount equal to the total, actual third party out-of-pocket costs incurred by Academy in connection with the negotiation of this License, including the letter of intent setting forth the general terms and

conditions hereof, and its approval of the Design Development Drawings, including preliminary drawings used to create the Design Development Drawings, and Final Construction Drawings. Notwithstanding the foregoing, in no event shall the sum of (i) the total amount of all Back-Up Venue Costs paid by Licensor under this License, and (ii) the Termination Damages, exceed One Million Dollars ($1,000,000). The payment of the Termination Damages and the Back-Up Venue Costs shall be Academy's sole remedy for the termination of this License, and neither Licensor nor Hotel Owner shall have any further liability whatsoever to Academy.

## SECTION 13.

## MISCELLANEOUS

13.1 Entry by Licensor. Provided that Licensor uses commercially reasonable efforts to minimize interference with Academy's use of the License Area, Licensor and its agents shall have the right to enter or pass through the License Area at reasonable times (i) to examine the License Area and (ii) to make repairs, alterations, additions and improvements in the License Area, or the Project and equipment. Provided that Licensor uses commercially reasonable efforts to minimize interference with Academy's use of the License Area, Licensor shall be allowed to bring materials and equipment into the License Area as required in connection with repairs, alterations, additions and improvements, without any liability to Academy and without any reduction of Academy's covenants and obligations. Any such entry which occurs during any period of exclusive use of a particular portion of the License Area shall be subject to reasonable prior notice to Academy, and Licensor's compliance with Academy's reasonable security requirements. Notwithstanding the foregoing, Licensor agrees that, except in the case of emergency, it shall not enter those portions of the License Area as to which Academy has exclusive use for the above purposes within the seven (7) day period prior to, and including the date of, the Presentation (provided that such seven (7) day period shall not work to extend any shorter period of exclusive use set forth in Section 9.2, above).

13.2 Project Name and Address. Subject to Academy's rights set forth in Section 6.4.1, above, Licensor reserves the right at any reasonable time, on reasonable prior notice to Academy, to change the Project's or Theatre Complex's name or address, and Licensor shall have no liability to Academy for any cost or inconvenience occasioned thereby.

13.3 **Alterations of Project. Provided that Licensor uses commercially reasonable efforts to minimize interference with Academy's use of the License Area, Licensor reserves the right, at any reasonable time, without incurring any liability to Academy therefor and without affecting or reducing any of Academy's covenants and obligations hereunder, to make such changes, alterations, additions and improvements (for purposes of this Section 13.3, collectively a "Change") in or to the Project and its systems and equipment, as well as in or to street entrances, doors, halls, passages, elevators, stairways, and other public parts of the Project, as Licensor shall deem necessary or desirable. Notwithstanding the foregoing, Academy shall have the right to approve, in a manner consistent with the notice and approval procedures set forth in the Work Letter, any material Change which (i) affects the License Area, (ii) has a material adverse impact on the quality or overall aesthetics of the Project or the exterior of the Hotel, or (iii) would have an impact on the manner in which Academy is able to prepare for and stage the Presentation, in any**

**instance without the prior consent of Academy, which consent shall not be unreasonably withheld or delayed. It shall not be unreasonable for Academy to withhold its consent to any Change, if, in the good faith opinion of Academy, the result of such Change is such that the Academy cannot prepare for and present the Presentation within the Annual Use Period with (A) no material interference other than as contemplated pursuant to the License during any period of partial access to a License Area or that is inherent in the design of the Project as a mixed-use project, and (B) no material decrease in efficiencies from that currently contemplated. Licensor shall not, except in the case of emergency, effect any Change in the License Area during the Annual Use Period. Licensor shall give Academy not less than eighteen (18) months prior notice of any Change that might affect Academy's preparation, for, and staging of, the Presentation. Without limiting the generality of the foregoing, Licensor will not make a Change which impacts the cable trays or pathways (or the areas of the Project which affect the use of such trays and pathways or the Presentation) or the Production Access Area (collectively, the "Critical Areas") in a manner which could adversely affect Academy's ability to prepare for and present the Presentation, without the prior approval of Academy, which approval shall not be unreasonably withheld or delayed. If Licensor and Academy cannot agree if a Change to a Critical Area is permitted hereunder, either party shall be entitled to have National TeleConsultants (or other such consultant mutually agreed to by Academy and Licensor) determine if such Change is consistent with the standards set forth in clauses (A) and (B) above.**

13.4 Notices. Whenever it shall be required or permitted that notice or demand be given or served by either party to this License to or on the other, such notice or demand must be in writing and must be given either by personal delivery or by mail, and if given by mail shall be deemed sufficiently given if sent by Registered or Certified Mail, postage prepaid, addressed to the addresses of the parties specified below. Notwithstanding anything to the contrary in this Section 13.4, either party may, by written notice to the other, specify a different address for notice purposes. Service of notice shall be deemed complete at the time of delivering the notice if delivered personally or by express or overnight mail or, if sent by registered or certified mail, two (2) days after mailing the same.

Licensor: TrizecHahn Hollywood LLC
4350 La Jolla Village Drive
Suite 700
San Diego, California 92212-1233
Attention: Legal Department

Academy: Academy of Motion Picture Arts and Sciences
Academy Foundation
8949 Wilshire Boulevard
Beverly Hills, CA 90211-1972
Attention: Executive Director

13.5 Estoppel Certificates. Academy agrees from time to time, within ten (10) days after a request by Licensor, to execute and deliver to Licensor an estoppel certificate, in a form reasonably satisfactory to Licensor.

13.6 Broker. Academy and Licensor each covenants, warrants, and represents that no broker was instrumental in bringing about or consummating this License and that it has had no conversations or negotiations with any broker concerning this License. Academy and Licensor each agrees to indemnify, defend and hold the other harmless against and from any claims for any brokerage commissions or finder's fees and all costs, expenses and liabilities, including attorneys' fees, incurred in connection with such claims, which arise by reason of the acts or alleged acts of the other.

13.7 Entire Agreement. This License contains all of the agreements and understandings of the parties and the respective obligations of Licensor, Hotel Owner and Academy in connection therewith. Neither Licensor nor Hotel Owner has made, nor are either of them making, and Academy, in executing and delivering this License, is not relying upon, any warranties, representations, promises or statements, except those that are expressly set forth in this License, including any exhibits hereto. All prior agreements and understandings between the parties have merged into this License, which alone fully and completely expresses the understanding of the parties.

13.8 Amendments. No agreement shall be effective to amend, change, modify or waive any of the provisions of this License, in whole or in part, unless such agreement is in writing, refers expressly to this License and is signed by Licensor and Academy.

13.9 Successors. Except as otherwise expressly provided herein, the obligations of this License shall bind and benefit the successors and assigns of the parties hereto; provided, however, that no assignment, sublease or other transfer in violation of the provisions of Section 8 shall operate to vest any rights in any putative assignee, sublessee or transferee of Academy.

13.10 Force Majeure. Licensor shall have no liability whatsoever to Academy on account of (i) the inability of Licensor to fulfill, or delay in fulfilling, any of Licensor's obligations under this License by reason of strike, other labor trouble, governmental preemption or priorities or other controls in connection with a national or other public emergency, or shortages of fuel, supplies or labor resulting therefrom, or any other cause, whether similar or dissimilar to the above, beyond Licensor's reasonable control; or (ii) any failure or defect in the supply, quantity or character of electricity or water furnished to the License Area, by reason of any requirement, act or omission of the public utility or others furnishing the Project with electricity or water, or for any other reason, whether similar or dissimilar to the above, beyond Licensor's reasonable control. If this License specifies a time period for performance of an obligation of Licensor (other than with respect to the periods set forth in Sections 1.3.2 and 1.3.3 hereof), that time period shall be extended by the period of any delay in Licensor's performance caused by any of the events of force majeure described above.

13.11 Governing Law. Irrespective of the place of execution or performance, this license shall be governed by and construed in accordance with the laws of the State of California.

13.12 Invalidity. If any provision of this License or the application thereof to any person or circumstances shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this License and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced to the extent permitted by law.

13.13 Captions. The table of contents, captions, headings and titles of this License are solely for convenience of reference and shall not affect its interpretation.

13.14 Presumptions. This License shall be construed without regard to any presumption or other rule requiring construction against the party drafting a document. It shall be construed neither for nor against Licensor or Academy, but shall be given a reasonable interpretation in accordance with the plain meaning of its terms and the intent of the parties.

13.15 Independent Covenants. Each covenant, agreement, obligation or other provision of this License on Academy's part to be performed shall be deemed and construed as a separate and independent covenant of Academy, not dependent on any other provision of this License.

13.16 Time is of the Essence. Time is of the essence of this License and of each provision hereof in which a time of performance is established.

13.17 Submission of License. The submission of this License to Academy or its agent or attorney for review or signature does not constitute an offer to Academy to enter into this License or an option to do so. This instrument shall have no binding force or effect until its execution and delivery by both Licensor and Academy.

13.18 Licensing of the City of Los Angeles. The obligations of Academy under this License shall not be conditioned upon the receipt by Academy of any necessary licenses and approvals from the City of Los Angeles (other than as any such licenses or permits are required to be obtained by Licensor pursuant to the terms of Section 9.3, 9.5, or Exhibit D hereto).

13.19 Parties Relationship. Nothing contained in this License shall be deemed or construed by the parties hereto or by any third party to create the relationship of lessor and lessee, principal and agent or of partnership or of joint venture or of any association whatsoever between Licensor and Academy, it being expressly understood and agreed that none of the provisions contained in this License nor any act or acts of the parties hereto shall be deemed to create any relationship between Licensor and Academy other than the relationship of licensor and licensee.

13.20 Holding Over. In the event Academy remains in possession of the License Area after the expiration of the License Term, or after the expiration of any particular Annual Use Period, and without the execution of a new license, or other written agreement extending such particular Annual Use Period, Academy, at the option of Licensor, shall be deemed to be occupying the License Area as a tenant from month-to-month, subject to all of the terms and conditions, provisions, and obligations of this License insofar as the same are applicable to a month-to-month license, and, in such event Academy shall pay a monthly Basic License Fee equal to two twelfths (2/12ths) the annual Basic License Fee in effect at the time of such holdover. Licensor reserves the right to cancel such month-to-month license upon ten (10) days' notice in writing.

13.21 Exculpation. The obligations of Licensor and Hotel Owner under this License do not constitute personal obligations of the corporate or individual partners which constitute Licensor or Hotel Owner, and Academy shall look solely to the Project and Hotel and to no other assets of Licensor or Hotel Owner for satisfaction of any liability with respect to this License and

will not seek recourse against the corporate or individual partners which are Licensor or Hotel owner herein, nor against any of their personal or corporate assets for such satisfaction. Notwithstanding any contrary provision herein, neither Licensor nor Hotel Owner shall be liable under any circumstances for injury or damage to, or interference with, Academy's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

13.22 Attorneys' Fees. Should any litigation be commenced between the parties to this License concerning the License Area, this License, or the rights and duties of either in relation thereto, the prevailing party in such litigation shall be entitled, in addition to such other relief as may be granted in the litigation, to a reasonable sum as and for its attorneys' fees in the litigation which fees shall be determined by the court in such litigation or in a separate action brought for that purpose, and such amounts shall not be subject to the terms of Section 12.4, above.

13.23 Disputes. IF ANY PARTY COMMENCES LITIGATION AGAINST ANOTHER FOR THE SPECIFIC PERFORMANCE OF THIS LICENSE, FOR DAMAGES FOR THE BREACH HEREOF OR OTHERWISE FOR ENFORCEMENT OF ANY REMEDY HEREUNDER, THE PARTIES HERETO AGREE TO AND HEREBY DO WAIVE ANY RIGHT TO A TRIAL BY JURY.

13.24 Nondiscrimination. There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, creed, national origin, ancestry, sex, sexual preference/orientation, age, disability, medical condition, Acquired Immune Deficiency Syndrome (AIDS) - acquired or perceived, retaliation for having filed a discrimination complaint, or marital status in the sale, lease, sublease, transfer, use occupancy, tenure or enjoyment of the License Area, nor shall Academy itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the License Area.

13.25 Living Wage. Academy acknowledges that Licensor has informed Academy of the City of Los Angeles' "Living Wage Ordinance" and Licensor's support thereof, and that Licensor encourages Academy to pay its employees the "Living Wage" in accordance with such ordinance.

**14. Development Agreement. Certain of the Presentation Conflicts, including the Known Conflicts, and certain of the Offsite Conditions, and in particular the Licensor Offsite Condition known as the Street Closure Condition, are subject to annual agreements with the City of Los Angeles and other governmental agencies and the failure to resolve the same could, in any one year, prevent the staging of the Presentation at the Project. Accordingly, and while Licensor and Academy have agreed to use their best efforts to resolve such Conflicts and satisfy such Conditions, the parties will seek a longer-term solution to the resolution of such Conflicts and the satisfaction of such Conditions. Towards that end, Academy shall cooperate with Licensor in order to reach agreements with such City and other agencies which would enable such Conflicts and Conditions to either be satisfied on a longer term basis, in which event the License, as amended hereby, shall be further amended to reflect such solution(s) in satisfaction or partial satisfaction of**

**the applicable Conflict and/or Condition. In addition, and since Licensor has not yet resolved the Known Conflicts, Academy shall cooperate with Licensor in order to enable Licensor to include the resolution of such Conflicts in connection with obtaining the consents, permits and agreements from the City of Los Angeles and other governmental agencies necessary to satisfy the Licensor Offsite Condition known as the Street Closure Condition.**

**15. Operational Addendum. Each of the parties hereto recognize that the staging of the Presentation at the Project, and the preparation therefor, will evolve from time to time as Academy, Licensor and Hotel Owner, as well as the City of Los Angeles and other governmental agencies gain experience with the previous staging of Presentations at the Project. Further, Academy recognizes that Licensor and Hotel Owner want the Presentation, and the preparation therefor, to interfere with their and their respective tenants, invitees and guests' use of the Project as little as is practicable, and Licensor and Hotel Owner recognize that Academy desires to stage the Presentation, and prepare therefor, in as efficient and economical manner as is practicable. In order to capitalize on the experience to be gained in future Presentations and reconcile the competing objectives of the parties, the parties hereto have established the Operational Addendum attached hereto as Exhibit C which clarifies and expands upon certain of the obligations and rights contemplated under the License, as amended hereby, and directs the manner in which the parties will work together in order to reconcile their competing objectives, in particular in light of the need to create an "Arrivals Sequence" each year in cooperation with such City and other agencies. It is intended that the Operational Addendum will be revised from time to time to reflect the experience of the parties and further delineate methods whereby the competing objectives with respect to the Project may be reconciled.**

**16. Exhibits.**

**(i) Exhibit A to the License shall be replaced in its entirety and all references to Exhibit A in the License shall refer to Exhibit A as attached to this Amendment.**

**(ii) Exhibit D to the License shall be replaced in its entirety with Exhibit D attached to this Amendment.**

**17. Conflicts. Except as specifically amended hereby, the License shall continue to be in full force and effect and is hereby ratified and confirmed. Nothing contained in this Amendment shall in any manner limit or be deemed to limit any of the rights and remedies of the parties pursuant to the License, all of which rights and remedies are expressly reserved by the parties.**

**18. Execution in Counterparts. This Amendment may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile shall be effective as delivery of a manually executed counterpart of this Agreement.**

# EXHIBIT B

ORDINANCE NO. 174063

A draft ordinance establishing signage provisions for the TrizecHahn mixed-use project located at Hollywood Boulevard and Highland Avenue in the Hollywood Redevelopment Area.

**WHEREAS,** the City of Los Angeles (City), the Community Redevelopment Agency of the City (Agency), and TrizecHahn Hollywood LLC (Developer), have entered into a series of agreements including a Disposition and Development Agreement, dated February 10, 1999 (DDA); and

**WHEREAS,** pursuant to those agreements, Developer is developing a mixed-use entertainment/retail destination project and public space (Project) to be located at the northwest corner of Hollywood Boulevard and Highland Avenue within the Hollywood Redevelopment Project Area; and

**WHEREAS,** the Project is consistent with and contributes to the purposes of the Community Redevelopment Law of California, including the assembly of land into parcels suitable for integrated development, planning, redesigning and developing an underutilized area of the City, and eliminating existing blight and dangerous conditions; and

**WHEREAS,** the Project will accomplish this purpose by creating and promoting commercial, retail, and entertainment land use activity in the Hollywood area; and

**WHEREAS,** the Project will accordingly enhance and upgrade the Hollywood area by attracting businesses, shopping and tourism; and

**WHEREAS,** the Project, because of the nature of its use, and particularly because of its location in the center of a highly urbanized area, will require signage which can effectively communicate event-related information to users of the development and other businesses and facilities located in and around Hollywood; and

**WHEREAS,** Developer may enter into sponsorship agreements with various commercial enterprises, including most prominently entertainment and consumer products producers, in order to finance the construction and ongoing operation of the Project; and

**WHEREAS,** the practice of selling advertising space is a well established practice at large-scale entertainment venues throughout the country, particularly those venues that host televised events, and has become central to the economic growth and success of those facilities; and

**WHEREAS,** the Project is a unique venue and requires a signage program appropriate to the location, size, scale and purpose of the facility; and

**WHEREAS,** pursuant to the DDA, substantial restrictions have been imposed on the ability of Developer to advertise and to display advertising; and

**WHEREAS,** this ordinance will facilitate the Department of Building and Safety in reviewing and granting permits for signage consistent with the restrictions and rights provided for in the DDA; and

**WHEREAS,** this ordinance is consistent with the restrictions and rights provided for in the DDA; and

**WHEREAS,** the City, the Agency and Developer now wish to set forth the signage restrictions and rights applicable to the Project with respect to the LAMC sign regulations;

**NOW THEREFORE,**

**THE PEOPLE OF THE CITY OF LOS ANGELES DO ORDAIN AS FOLLOWS:**

**Section 1. Establishment of Project Signage Provisions.** This ordinance establishes the signage provisions for the Hollywood and Highland properties which are located in that portion of the City as depicted on the map in Exhibit 1, within the heavy black lines. Notwithstanding: (i) Ordinance Nos. 173,562, 173,681, 173,988; (ii) Los Angeles Municipal Code (LAMC) Sections 91.6201 through 91.6204; (iii) LAMC Sections 91.6205.11, except for Subparagraph 3, and Sections 91.6206 through 91.6218, except for Sections 57.12.01, 57.12.04, 91.6207.3, 91.6208.6, 91.6209.6, 91.6210.6, 91.6211.3, 91.6211.4, 91.6211.5, 91.6212.6, 91.6213.5, 91.6215.3, and Paragraph 1 of Section 91.6218.9; (iv) and any other moratoria or interim control ordinances regulating signs in effect as of the effective date of this Ordinance, the Administrator of the Community Redevelopment Agency shall have authority to approve any signs for the Project that are consistent with both the Hollywood Redevelopment Plan and any standards set for signage in any overlay zone adopted by City Council for this area, relative to location, size, area, height, projection over building lines, orientation, spacing, method of placement and height to width ratio of pole signs. Where materials for signs are not specified in the Code, materials shall be jointly approved by the Departments of Building and Safety and Fire.

**Sec. 2. Permits.** A building permit shall be obtained from the Department of Building and Safety in accordance with the provisions of LAMC Section 91.6205 for any signs that are regulated by this Ordinance. Notwithstanding the above, no application for a permit shall be subject to LAMC Sections 91.6205.5 and 91.6205.6.

**Sec. 3. Interpretation.** This Ordinance shall be construed liberally to carry out the purpose of providing signage appropriate to the uses of the Project. Whenever any ambiguity or uncertainty exists related to the signs permitted by this Ordinance or the application of this Ordinance so that it is difficult to determine the precise application of these provisions, the Administrator of the Community Redevelopment Agency shall, upon application by any person, issue written determinations on the requirements of the Ordinance consistent with the purpose and intent of this Ordinance. The applicant, or any other aggrieved person, may appeal the determination of the Administrator to the Board of Commissioners of the Community Redevelopment Agency.

**Sec. 4. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, that invalidity shall not affect other provisions, clauses, or applications of this Ordinance which can be implemented without the invalid provision, clause or application, and to this end the provisions and clauses of this ordinance are declared to be severable.

(66177)

**Sec. 5.** The City Clerk shall certify to the passage of this ordinance and have it published in some daily newspaper printed and published in the City of Los Angeles.

I hereby certify that the foregoing ordinance was introduced at the meeting of the Council of the City of Los Angeles JUN 13 2001 and was passed at its meeting of JUN 22 2001.

J. MICHAEL CAREY, CITY CLERK

BY Howard Cartwright
Deputy

Approved JUN 28 2001

Mayor

Approved as to Form and Legality

6/22/01
James K. Hahn, City Attorney

By claudia culling
CLAUDIA CULLING
Assistant City Attorney

Pursuant to Charter Section 559, I disapprove this ordinance and, on behalf of the City Planning Commission, recommend it not be adopted . . . . . .

June 22, 2001

see attached report.

CON HOWE
Director of Planning

File No. CPC 2001-1940 (DA)(ZV)(CUB)
98-1766-S2

**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles. I am over the age of 18 and not a party to the within action; my business address is: Isaacs | Friedberg LLP, 555 South Flower Street, Suite 4250, Los Angeles, CA 90071.

On **January 30, 2024**, I served a copy of the following document(s) described as:

**FIRST AMENDED COMPLAINT FOR SPECIFIC PERFORMANCE, INJUNCTIVE RELIEF, DAMAGES AND DECLARATORY RELIEF FOR:**

1. **BREACH OF WRITTEN CONTRACT – THE DEVELOPMENT AGREEMENT;**
2. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING – DENIAL OF BENEFITS;**
3. **BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING – BAD FAITH EXERCISE OF DISCRETION;**
4. **VIOLATION OF 42 U.S.C. SECTION 1983 – SUBSTANTIVE DUE PROCESS;**
5. **VIOLATION OF 42 U.S.C. SECTION 1983 – PROCEDURAL DUE PROCESS;**
6. **VIOLATION OF 42 U.S.C. SECTION 1983 – EQUAL PROTECTION; AND**
7. **DECLARATORY RELIEF**

on the interested party(ies) in this action as follows:

**SEE ATTACHED SERVICE LIST**

[ ] **BY MAIL:** By placing a true copy thereof enclosed in a sealed envelope(s) addressed as below and placing each for collection and mailing on that date following ordinary business practices. I am "readily familiar" with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal Service in Los Angeles, California, in a sealed envelope with postage fully prepaid.

[ ] **BY MESSENGER SERVICE:** I served the documents by placing them in an envelope or package addressed to the persons listed below and providing them to a professional messenger service for service.

[X] **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons at the e-mail addresses attached. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

[X] **STATE:** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on **January 30, 2024**, at Los Angeles, California.

Brenda Susan Reimers

**SERVICE LIST**

***H&H Retail Owner, LLC v. City of Los Angeles, et al.***
**Superior Court Case No. 22STCP03975**

Hydee Feldstein Soto, Esq.
John W. Heath, Esq.
Kenneth Fong. Esq.
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