

## ORDINANCE NO. 23-29

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD APPROVING A DEVELOPMENT AGREEMENT IN CONJUNCTION WITH THE NEW OFF-SITE ADVERTISING BILLBOARD AT 9015 SUNSET BOULEVARD, WEST HOLLYWOOD, CALIFORNIA.

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. An application for Master Project (MP20-0030), Sign Permit (BB20-0020), Zoning Map Amendment (ZMA20-0012), Administrative Permit (AP21-0016), Certificate of Appropriateness (COA20-0022) and Development Agreement (DA20-0012) was filed on November 3, 2020, by Aaron Green, Afriat Consulting Group, on behalf of Andrew Bilanzich, ACE Outdoor Group for the construction and installation of billboards located 9009 and 9015 Sunset Boulevard. Subsequent to that, the City separated the applications for these two properties for the purpose of permitting, requiring separate and distinct permit numbers for 9015 Sunset, and creating a new Certificate of Appropriateness permit number, COA23-0008 which was assigned to include both properties. Additionally, the media company was changed to Orange Barrel Media (OBM). The new permit numbers for 9015 Sunset are Sign Permit (BB23-0008) and Development Agreement (DA23-0008). The billboard project at 9015 Sunset consists of a two-sided vertical billboard with the east face being digital and the west being static (internally illuminated) at the Rainbow Bar & Grill. As described in Chapter 3: Administrative Procedures, of the Sunset Boulevard Off-Site Signage Policy, this project requires approval of a development agreement, zoning map amendment, sign permit, and certificate of appropriateness.

SECTION 2. The Sunset Arts & Advertising Subcommittee reviewed this current proposal at its March 9, 2023 meeting and provided specific input on the design of the billboard. The feedback received was incorporated into the revised plans which were then viewed at the Historic Preservation Commission meeting of June 27, 2023.

SECTION 3. The Historic Preservation Commission reviewed this proposal at its June 27, 2023 and unanimously recommended approval of Certificate of Appropriateness (COA23-0008). The current design incorporated revisions suggested by the Historic Preservation Commission when it first reviewed the project proposals on May 24, 2021. The Historic Preservation Commission unanimously recommended approval of this proposal.

SECTION 4 Pursuant to WHMC Section 19.78.040 regarding amendments to the Zoning Map, the Planning Commission shall make a written recommendation to the Council regarding Development Agreement 23-0008. This proposal was previously reviewed at an August 5, 2021 Planning Commission hearing.

Subsequent to that hearing and recommendation to approve, the media company (billboard operator) was changed to Orange Barrel Media (OBM) and the project was redesigned to provide a better fit for OBM and to respond to some of the issues raised in the previous reviews by both the Planning and Historic Preservation Commissions. On October 5, 2023, the Planning Commission properly reviewed and considered the revised project at a noticed public hearing held in person at the Council Chambers, West Hollywood Public Library. Notice of the public hearing was posted on the site for a period of at least 28 days, beginning on September 7, 2023. Notices for the public hearing were mailed to surrounding property owners and occupants within a 500-foot radius of the site as well as to Neighborhood Watch groups on September 21, 2023. Additionally, a notice was advertised on the City's website and City's Channel 6. The staff report was made available on the City's website on September 28, 2023. The Planning Commission received a staff report both oral and written, received a presentation by the applicant and received public testimony, and carefully considered the proposal. Thereafter, the Planning Commission unanimously voted to recommend approval of the permits, with one recusal.

SECTION 5. On December 18, 2023, the City Council properly reviewed and considered this matter at a noticed public hearing held in person at the Council Chambers, West Hollywood Public Library. Notice of the public hearing was posted on the site for a period of at least 28 days, beginning on November 22, 2023. Notices for the public hearing were mailed to surrounding property owners and occupants within a 500-foot radius of the site as well as to Neighborhood Watch groups on November 3, 2022. Additionally, a notice was advertised on the City's website and City's Channel 6. The staff report was made available on the City's website on December 13, 2023.

SECTION 6. In accordance with the Sunset Boulevard Off-Site Signage Policy (the Policy), adopted on March 18, 2019, which modified the Sunset Specific Plan in regard to off-site signage on Sunset Boulevard, the proposed billboard on a cultural resource was permitted as a billboard application only after the proposal was screened for and demonstrated design excellence as determined by a screening and award process that began in November 2019 and concluded in June 2020. The proposal demonstrated a high level of creativity and met specific design excellence principles and it was determined that it met the following principles: design excellence (including innovation, cohesiveness, timelessness), innovation, compatibility with the context of the Sunset Strip, sustainability, economic development, and community benefit.

SECTION 7 The approval or conditional approval of a development agreement, zoning map amendment, sign permit, and certificate of appropriateness is a discretionary act for purposes of the California Environmental Quality Act (CEQA). Pursuant to noticing requirements set forth in the California Environmental Quality Act (CEQA) (Public Resources Code Section 21082.1), the City prepared a Negative Declaration (ND), certified by the City Council on March 18, 2019, as adopted in City Council Resolution No. 19-5155. The ND analyzed the environmental

impacts of the Sunset Boulevard Off-Site Signage Policy, which anticipated the replacement of existing billboards and construction of new billboards on specific designated cultural resource site along Sunset Boulevard. The ND found no significant environmental impacts. The original IS/ND for the proposed Policy was based on a speculative development scenario of the original top-scoring billboard proposals selections. Subsequently, and to ensure that that the original analysis was sufficient to cover this application and that no environmental impacts would occur as a result of the new billboards, the City prepared a conformance review for 9015 Sunset proposal. A viewshed analysis was also completed and reviewed to verify that no view impacts will occur with the proposed billboard. The conformance review concluded that no environmental impacts will occur, nor that mitigation measures are required with the proposed billboard project. There have been no substantial changes proposed which would require major revisions, no changes have occurred with respect to the circumstances under which the project is undertaken, there is no new information of substantial importance, and no previously reviewed impact areas have substantially changed. The project is compliant (or will be required to demonstrate compliance) with the environmentally protective provisions of the Policy. Therefore, no further environmental review is required for the project pursuant to Public Resources Code section 21166 and State CEQA Guidelines section 15162.

SECTION 8. In accordance with Chapter 19.66 Development Agreements, Section 19.66.030.E of the West Hollywood Municipal Code, the City Council of the City of West Hollywood hereby makes the following findings of fact regarding the subject Development Agreement (DA23-0008):

1. The development agreement is in the best interests of the city, promoting the public interest and welfare in that the replacement of an existing static, two-sided billboard with a new and innovative digital and internally lit billboard will provide greater visual interest and excitement to Sunset Boulevard, will provide for significant public benefit in terms of providing an annual public benefit payment due to the City, will provide 17.5% of the time available on the digital face, per year, for arts and city content programming and 1% of annual revenue for arts and city content programming for the static face, and will provide several other public benefits such as site improvements, occupancy requirements, and maintenance of cultural resources.
2. The development agreement is consistent with all applicable provisions of the General Plan, any applicable specific plan, and this Zoning Ordinance. The Sunset Boulevard Off-Site Signage Policy, adopted on March 18, 2019, calls for and encourages the new high-quality, innovative billboards, tall walls, and creative signage on Sunset Boulevard. This Policy replaces Part Two: Section 1, Subsection 8 of the 1996 Strike-Through Draft Sunset Boulevard Specific Plan, Billboards and Art Advertising. It outlines an approval process and standards for all new billboards along Sunset Boulevard and this application meets all standards and requirements of this Policy, including a design excellence review. According to WHMC Section 19.14.040, the Development Agreement Overlay Zoning District can be combined with any

zoning district established by WHMC Section 19.04.020 (Zoning Districts Established). The underlying zoning of Sunset Specific Plan (SSP) will remain, and all development standards will remain as described in the Specific Plan or under the provisions of the Development Agreement, as applicable. As described in this Resolution No. PC 23-1528, the subject Development Agreement, which allows the replacement of a two-sided static billboard with a new two-sided digital and internally lit billboard, on a designated cultural resource, is consistent with the General Plan in that Land Use Goal LU-16 calls for the City to maximize the iconic urban design value and visual creativity of signage in West Hollywood. The proposed billboards, authorized by the Sunset Boulevard Off-Site Signage Policy (the "Policy"), were required to demonstrate a high level of creativity and to achieve specific design excellence principles. This design excellence was determined by a screening and award process that spanned from November 2019 to June 2020. The Policy and the design excellence process was a groundbreaking effort to reimagine the world's premier locations for outdoor advertising. The design principles of the Policy build on the existing creative energy of the Sunset Strip to provide for new and modified off-site signage that synthesizes advertising, urban design, architecture, public art, entertainment, and the latest in billboard technology. All proposals were reviewed to ensure they met the following principles: design excellence (including innovation, cohesiveness, timelessness), innovation, compatibility with the context of the Strip, sustainability, economic development, and community benefit. Only once this design excellence award was granted were applicants eligible to apply for a billboard application and to negotiate a development agreement to allow a new billboard. The proposed billboard project was granted this design excellence award because it met both the stated design principles and the vision and intent of the Policy. The adoption of this Development Agreement supports the implementation of the Goals or Policies of the West Hollywood General Plan. The amendment to the Zoning Map and approval of the Development Agreement will help to implement the goals of the Sunset Boulevard Off-Site Signage Policy, which is focused on reinforcing the Sunset Strip as a world-renowned location for dynamic, large-scale, outdoor advertising.

3. The development agreement does not adversely affect the comfort, health, peace, or welfare, or valuation of property, of persons residing or working in the vicinity of the proposed development. The proposed billboard project at 9015 Sunset, at the Rainbow Bar & Grill, will be replacing an existing two-sided billboard with a new two-sided billboard, will improve the courtyard area between the 9009 and 9015 buildings with seating, landscaping and lighting and will add a poster wall celebrating the rock and roll history of the strip with memorabilia provided by the owners of both 9009 and 9015 Sunset. In order to ensure the comfort and peace of those residing near the billboard, the Sign Permit will require that the proposed billboard meets all of the lighting and operational standards in Chapter 5, Sections A-G of the Policy, including: 1) hours of operation for day and ambient lighting conditions for daytime,

evening and after hours; 2) illuminance limited to 1.4 foot candles at any adjacent residentially zoned property line; 3) smooth transitions in sign luminance; 4) visual comfort and contrast control for motorists and other viewers; 5) renewable energy use; 6) on site sound permitted only during special events; and 7) light monitoring report at the commencement of operations of the sign and at three-year intervals.

4. The development agreement does not endanger, jeopardize, or otherwise constitute a menace to the public convenience, health, interest, safety, or general welfare. All health and safety aspects of having a billboard at this location were analyzed in the negative declaration (ND) for the Policy, prior to its adoption. In addition to this ND, for this application, the city prepared an addendum to the ND, which confirmed that no additional environmental impacts would occur with the proposed billboard. A viewshed analysis was also completed and reviewed to verify that no view impacts will occur due to the billboard conversion. The addendum concludes that no environmental impacts will occur, and no mitigation measures are required with this billboard conversion. The conformance memo conducted for the project reconfirmed this conclusion.
5. The development agreement is in compliance with the conditions, requirements, restrictions, and terms of Sections 19.66.040(A) (Mandatory contents) and 19.66.040(B) (Permissive contents), in that it meets the requirements of Government Code Section 65865.2 (Agreement Contents) which require the development agreement to specify the duration of the agreement, the permitted uses of the property, the density or intensity of use [where modified], the maximum height and size of proposed buildings [or structures]. In addition, the application does not involve the reservation or dedication of land for public purposes.

SECTION 9. In accordance with Section 3.A.1.a and b, of the Sunset Boulevard Off-Site Signage Policy the City Council of the City of West Hollywood hereby makes the following findings of fact regarding the subject Development Agreement Overlay (DA23-0008):

1. The proposed billboard is required to and will display arts programming and city content as outlined in Section 3.E (Public and Arts Programming) of the Policy and the details of how this requirement is met are outlined in the language of Development Agreement (DA23-0008).
2. In addition to meeting the required findings of Zoning Code Section 19.66.030 as described in Section 6 above, the proposed billboard project shall provide public benefits, which include physical site improvements, and financial contribution intended for new streetscape project celebrating the rock and roll history and this enhances the quality and comfort of the pedestrian experience. The details of how the proposed billboard project meets this

public benefit requirement are contained in the language of Development Agreement (DA23-0008).

SECTION 10. In accordance with Section 3.B (Alternative Projects) of the Sunset Boulevard Off-Site Signage Policy (the Policy), the City Council hereby makes the following findings of fact for an alternative project allowing the additional height of approximately two feet over the height limit of the existing billboard and the allowing 2,000 square feet of sign area, exceeding the standard of 1,500 square feet, for Sign Permit (BB23-0008) as follows:

1. *Meets the development agreement findings required in Section 19.66.030 of the Zoning Code.* These findings are met and outlined in Section 7 of the draft ordinance for the development agreement associated with this project.
2. *Meets the overall intent of the Design Principles of the Policy, representing an exceptional design that furthers the vision of both the Specific Plan and Sunset Boulevard Off-Site Advertising Policy.* The proposal was granted a design excellence award and subsequently an application for a new billboard was submitted. This billboard converts the existing two-sided static billboard to a two-sided billboard, with the west face being static (internally illuminated) and the east face being digital. This proposed billboard upgrades the existing billboard and the Policy envisioned just this type of replacement of existing signage with new, thoughtfully designed, and creative billboards that contribute to the Strip's unique character and vibrancy.

The Rainbow billboard is a simplified, vertical billboard with two faces: the west facing sign being static (internally illuminated) and the east facing sign being digital. The new configuration and height of the Rainbow billboard creates a larger gap between the bottom of the billboard and the existing historic vertical Rainbow sign below allowing greater visual space for can sign so that it is legible and retains its significance. In addition, the "Rocking R" sign is proposed eight feet lower to allow it to be read more clearly.

The project also includes site improvements that will create a more inviting pedestrian connection to the cultural resource. The improvements extend and include the Roxy Theatre as well, thereby creating a visual connection between these two important and well-known venues. The drive area between the Rainbow and the Roxy will be improved for outdoor seating use, creating permanent space for outdoor dining with new permeable pavers, with planters throughout the outdoor space, and three new large trees near Sunset Blvd. New string lighting will be installed in the space as well as the aforementioned three new trees that will be up-lit. The permeable paving that will be extended along the front of the Roxy on-site to tie the two buildings together along the public way. The most significant

piece in this area is a new poster wall with archival photos of rock and roll history. This archival material will be provided by the owners of the venues and programmed by the "Legends of Sunset". The project will also be removing the existing curb cut between the Rainbow and the Roxy. Taken all together, the improvements create an inviting outdoor area that can be enjoyed by both the general public and patrons of the Rainbow Bar & Grill. Streetscape improvements were part of the vision of the Policy and will improve the viability of the businesses on-site and therefore the cultural resources themselves.

- 3. *Provides an extraordinary benefit to the City.* The operator will provide benefits to the community with an annual revenue payment, by providing 17.5% of digital screen time and 96 hours for the static board for arts and City programming, and by providing a rehabilitation and maintenance plan for the designated cultural resource. As an extraordinary benefit, the project will contribute to the funding necessary to help implement the "Legends of Sunset" program. These benefits are detailed in the proposed development agreement for the project.

SECTION 11. Based on the foregoing, the City Council of the City of West Hollywood hereby approves the request for Development Agreement (DA23-0008) in substantially the form as provided in the Draft Development Agreement document shown as an Exhibit to this ordinance.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 22<sup>nd</sup> day of January, 2024 by the following vote:

AYES: Councilmember: Heilman, Meister, Shyne, Vice Mayor Byers, and Mayor Erickson.  
NOES: Councilmember: None.  
ABSENT: Councilmember: None.  
ABSTAIN: Councilmember: None.

DocuSigned by:  
*JOHN ERICKSON*  
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\_\_\_\_\_  
JOHN M. ERICKSON, MAYOR

ATTEST:

DocuSigned by:  
*Melissa Crowder*  
20728CE25250489  
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MELISSA CROWDER, CITY CLERK

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STATE OF CALIFORNIA        )  
COUNTY OF LOS ANGELES    )  
CITY OF WEST HOLLYWOOD    )

I, Melissa Crowder, City Clerk of the City of West Hollywood, do hereby certify that the foregoing Ordinance No. 23-29 was duly passed, approved, and adopted by the City Council of the City of West Hollywood at a regular meeting held on the 22<sup>nd</sup> day of January 2024, after having its first reading at a regular meeting of said City Council on the 18<sup>th</sup> day of December, 2023.

I further certify that this ordinance was posted in three public places as provided for in Resolution No. 5, adopted the 29th day of November 1984.

WITNESS MY HAND AND OFFICIAL SEAL THIS <sup>30</sup> \_\_\_\_\_ DAY OF JANUARY, 2024.

DocuSigned by:  
  
\_\_\_\_\_  
2072ACE2325D4E9  
MELISSA CROWDER, CITY CLERK



**EXHIBIT A**

DEVELOPMENT AGREEMENT  
BY AND BETWEEN  
CITY OF WEST HOLLYWOOD  
AND  
BAM SUNSET, LLC  
DATED \_\_\_\_\_, 2024

THIS AGREEMENT is entered into as of the \_\_ day of \_\_\_\_, 2024 by and between the CITY OF WEST HOLLYWOOD, a municipal corporation (the “City”), and BAM SUNSET, LLC (“Owner”).

**RECITALS**

- A. Owner is the owner of certain real property in the City of West Hollywood, County of Los Angeles, State of California more fully described in EXHIBIT A hereto (the “Property”) improved with a building commonly known as 9015 Sunset Boulevard, West Hollywood, California (the “Building”).
- B. The Property is located within the boundaries of the Sunset Specific Plan (the “Specific Plan”).
- C. The Property is located within the boundaries of a Development Agreement Overlay District governed by Section 19.14.040 of the West Hollywood Municipal Code (the “DA Overlay District Regulations”).
- D. The City is authorized to enter into development agreements with any person having legal or equitable development interests in real property located within the City pursuant to California Government Code Section 65864 *et seq.*
- E. The City has adopted rules and regulations for consideration of development agreements, pursuant to Government Code Section 65865, in Chapter 19.66 of the West Hollywood Municipal Code (the “Code”).
- F. Through the Specific Plan, as amended in April 2019, the City has adopted rules and regulations for consideration of off-site advertising in the Specific Plan area, which require a development agreement.
- G. Owner has requested the City to enter into a development agreement, and proceedings have been undertaken in accordance with the Sunset Specific Plan and Chapter 19.66 of the Code in connection with an application under the DA Overlay District Regulations to permit the construction and installation of one, two-sided digital and internally lit

billboard at 9015 Sunset Boulevard (Rainbow Bar and Grill) (the “Permitted Sign”). The Permitted Sign is further described in Exhibit B to this Agreement.

- H. The terms and conditions of this Agreement have been found by the City to be fair, just, and reasonable.
- I. The public health, safety, and welfare of the residents of the City will be served by entering into this Agreement due to the fact that the Permitted Sign will further the goals of the Specific Plan to encourage the construction and operation of unique off-site advertising signs as a signature feature of the Sunset Strip, will contribute to the unique character and vibrancy of the Sunset Strip consistent with the purposes and intent of the Specific Plan, will generate revenue for the City, and will contribute other Extraordinary Public Benefits to the City.
- J. By approval of this Agreement and the Permitted Sign Approval, the City is approving that the Permitted Sign that is generally consistent with the design guidelines and standards set forth in the Specific Plan. By approval of this Agreement and the Permitted Sign Approval, the City is approving the construction and operation of the Permitted Sign, subject to the terms and conditions of approval as set forth in the Permitted Sign Approval.
- K. This Agreement will bind future City Councils to the terms and obligations specified in this Agreement and limit, to the degree specified in this Agreement, the future exercise of the City’s ability to regulate off-site advertising signage on the Property.
- L. This Agreement will serve to implement policies and objectives set forth in elements of the City of West Hollywood General Plan, the Specific Plan, the DA Overlay District Regulations, and the Permitted Sign Approval and, with the approval of this Agreement and the Permitted Sign Approval, the City confirms that the Permitted Sign is consistent with the General Plan, the Specific Plan, and the DA Overlay District Regulations.
- M. This Agreement will provide assurance to the Owner that it can erect the Permitted Sign and continue its operation and that the conditions imposed by the City with respect to the construction and operation of the Permitted Sign will not change after the approval of the Permitted Sign.
- N. The project was submitted under the Sunset Arts & Advertising Program and screened for and demonstrated design excellence as determined by a screening and award process pursuant to the terms of the Off-Site Advertising Signage Chapter of the Sunset Specific Plan. The proposal demonstrated a high level of creativity and met the

following principles: design excellence (including innovation, cohesiveness, timelessness), innovation, compatibility with the context of the Sunset Strip, sustainability, economic development and community benefit.

- O. The project concept qualified to proceed through the entitlement process under the category of Cultural Resource project because the Building is a designated cultural resource. The Project conforms with Secretary of the Interior's Standards for Rehabilitation. The project was found to not adversely impact the integrity of the resource or its setting, obscure character defining features of any adjacent historical resources, and is compatible with the scale, size, and proportion of the historic resource.
- P. This agreement shall replace and supersede the existing development agreement on the site (dated March 6, 2017), approved through Ordinance No. 17-998.

## AGREEMENT

NOW THEREFORE, in consideration of the above recitals, the mutual covenants and conditions herein contained, and other good and valuable considerations, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

### 1. DEFINITIONS

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

- 1.1. "**Agreement**" means this Development Agreement by and between the City and Owner.
- 1.2. "**Annual Adjustment**" shall have the meaning set forth in Section 4.1.1.2.
- 1.3. "**Applicable Rules**" means the ordinances, resolutions, rules, regulations, requirements, and official policies of the City, including without limitation the DA Overlay District Regulations, the General Plan, the Specific Plan, and the Zoning Ordinance, all as in force as of the Approval Date, governing, *inter alia*, development agreements, signage, and other land use issues (but not including building codes as provided in West Hollywood Municipal Code Title 13) and shall also include the terms and conditions set forth in the Permitted Sign Approval.

- 1.4. “**Application**” means the application submitted to the City by the Owner and/or its authorized Tenant for the Permitted Sign Approval, a copy of which is available in the City’s Planning and Development Services Department.
- 1.5. “**Approval Date**” means the date on which the Approval Ordinance is adopted by the City Council.
- 1.6. “**Approval Ordinance**” means Ordinance No. \_\_\_\_\_, adopted by the City Council on \_\_\_\_\_, approving this Agreement.
- 1.7. “**City**” means the City of West Hollywood, California.
- 1.8. “**City Content Allocation**” shall have the meaning set forth in Section 4.2
- 1.9. “**City Council**” means the City Council of the City of West Hollywood.
- 1.10. “**Code**” means the Municipal Code of the City of West Hollywood.
- 1.11. “**Commencement Date**” means the date that is 30 days following the Approval Date, provided, however, (i) if the Approval Ordinance is made the subject of a referendum, the Commencement Date shall be the date when the referendum proceedings have been concluded by any process which results in the Approval Ordinance becoming effective, and (ii) if litigation challenging the validity of this Agreement should be brought after the Approval Date, and such litigation impacts the Owner’s rights or its ability to exercise of its rights under this Agreement, the Commencement Date shall be the date such litigation is concluded in a manner that permits Owner to exercise its rights under this Agreement.
- 1.12. “**Commission**” means the Planning Commission of the City of West Hollywood.
- 1.13. “**Cultural Resource Rehabilitation and Maintenance Plan**” shall mean a plan prepared by a certified preservation consultant which proposes how the cultural resource building will be preserved over the life of the development agreement. The Plan shall include, at a minimum, the following: documentation of work completed to date on the building, to the extent possible; existing conditions of all architectural elements, roof, exterior materials, windows, structural, mechanical, electrical, and plumbing; termite inspection; inspections by qualified preservation engineers to determine existing conditions and future required improvements; existing photographic inventory; any required rehabilitation work; specific years for maintenance and rehabilitation items, and any other items deemed necessary by the City.
- 1.14. “**DA Overlay District Regulations**” means the regulations set forth in Section 19.14.40 of the Code.
- 1.15. “**Development Agreement Act**” means Section 65864 et seq. of the California Government Code.

- 1.16. **"General Plan"** means the General Plan of the City.
- 1.17. **"Legends of Sunset"** means the Legends of the Sunset Strip, LLC.
- 1.18. **"Mortgagee"** means any mortgagee of a mortgage and beneficiary under a deed of trust with respect to the Property.
- 1.19. **"Owner"** means BAM SUNSET, LLC and its successors and assigns pursuant to Section 6.1 hereof.
- 1.20. **"Permitted Sign"** means the one, two-sided digital and internally lit billboard at 9015 Sunset Boulevard (Rainbow Bar and Grill) as generally depicted on Exhibit B (as the designs thereof may be modified from time to time, subject to the terms of this Agreement).
- 1.21. **"Permitted Sign Approval"** means the Sign Permit for the Permitted Sign as found in Section 19.34.100 of the West Hollywood Municipal Code and any other discretionary approvals granted by the City with respect to the Application for the Permitted Sign as set forth in Section 2.5.
- 1.22. **"Permitted Sign Payment Commencement Date"** shall mean the first day following the date that a certificate of occupancy has been issued for the Permitted Sign structure by the applicable City building authorities, which shall only be issued once the Permitted Sign is fully operational and capable of hosting advertising.
- 1.23. **"Processing Fees"** means all routine, generally applicable City-wide fees required by the City for processing applications and permits including, but not limited to, fees for land use applications, building applications, building permits, and certificates of occupancy.
- 1.24. **"Public Benefit Payment"** shall have the meaning set forth in Section 4.1.2.
- 1.25. **"Specific Plan"** means the Sunset Specific Plan.
- 1.26. **"Sunset Boulevard Off-Site Signage Policy"** means Part Two: Section 1, Subsection 8 of the Sunset Specific Plan.
- 1.27. **"Tenant"** means a person, corporation, partnership, limited liability company, trust or other entity which leases or licenses the Permitted Sign from time to time from Owner.
- 1.28. **"Term"** means the term of this Agreement, as provided in Section 2.6 of this Agreement.
- 1.29. **"Zoning Ordinance"** means the comprehensive Zoning Ordinance of the City, found in Article 19 of the Code of the City of West Hollywood as it exists on the Approval Date.

## 2. THE DEVELOPMENT AGREEMENT PROCESS

- 2.1. Statement of Benefits and Considerations. The parties hereto have determined that a development agreement to govern and permit the construction and operation of the Permitted Sign is appropriate due to the substantial benefits to be derived by both parties therefrom. As stated in the Specific Plan, off-site advertising signage is one of the significant defining features of the Sunset Strip, and the provisions of the Specific Plan with respect to such signs are designed to allow the signs to reflect the unique nature of the district and encourage possibilities for innovative and creative designs. The construction of the Permitted Sign is consistent with and will further the goals identified in the Specific Plan with respect to advertising signage, including, *inter alia*, to encourage the maintenance and existence of proposed billboards, to allow for creative and innovative signage which will enhance the excitement of the Sunset Strip, and to allow for artwork (as described in this Agreement) and design elements to be incorporated into the signage in order to enhance the visual quality of the street. The Permitted Sign will display artwork, civic announcements, and other content as directed by the City in accordance with the provisions found in Section 3.E of the Sunset Boulevard Off-Site Signage Policy, and subject to the terms of this Agreement. In addition, the operation of the Permitted Sign will generate revenues for the City by the payment of the Public Benefit Payment set forth in this Agreement. The revenue generated by the Permitted Sign will also encourage the preservation of the designated cultural resource. Accordingly, the City has determined that the Permitted Sign will promote the health, safety, and general welfare of the City of West Hollywood and its residents. In exchange for these and other benefits to the City, Owner will receive assurance that Owner may erect and operate the Permitted Sign during the Term of this Agreement, subject to the terms and conditions herein contained. City has undertaken the necessary proceedings, has found and determined that this Agreement is consistent with the General Plan, the Specific Plan, the DA Overlay District Regulations, the Permitted Sign Approval, and the Zoning Ordinance, and has adopted Ordinance No. \_\_\_\_\_ approving this Agreement. This Agreement does not supersede, nullify, or amend any condition imposed in the Permitted Sign Approval. The City has determined that, as a result of the construction and operation of the Permitted Sign in accordance with this Agreement, the City will receive substantial benefits.
- 2.2. In consideration of the substantial benefits, commitments and consideration to be provided by Owner pursuant to this Agreement and in order to strengthen the public planning process and reduce the economic cost of development, the City hereby provides Owner assurance that it can proceed with the construction and operation of the Permitted Sign for the Term of this Agreement pursuant to the Applicable Rules, the Permitted Sign Approval, and this Agreement. Owner would not enter into this Agreement or agree to provide the public benefits, commitments, and considerations, if it were not for the certainty provided by the agreement of the City that the Permitted Sign can be erected and operated during the Term of this Agreement in accordance with the Applicable Rules and

the Permitted Sign Approval and Owner's reliance thereupon.

- 2.3. Public Hearings. On \_\_\_\_\_ the Planning Commission of the City, after giving notice pursuant to Sections 65090 and 65867 of the California Government Code, held a public hearing on the Owner's application for this Agreement. The City Council of the City, after providing public notice as required by law, similarly held a public hearing on \_\_\_\_\_.
- 2.4. City Council Findings.
- 2.4.1. The City Council finds that review of the environmental impacts of the Agreement and the Permitted Sign Approval has been conducted in accordance with the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code §§ 21000 *et seq.*, and the State and local guidelines adopted thereunder, and the City Council has given consideration to such environmental review prior to its approval of this Agreement and the Permitted Sign Approval and has undertaken all actions necessary to comply with CEQA.
- 2.4.2. The City Council finds that this Agreement and the Permitted Sign Approval include public benefits which are intended for streetscape improvements that commemorate the history of the Sunset Strip and enhance the quality and comfort of the pedestrian experience as required by the Specific Plan. Further, the City Council finds that this Agreement will provide further assurance to the City that the Property will be maintained on an ongoing basis to a standard consistent with the maintenance standards applicable to the Property as a Cultural Resource of the City in order to maintain the quality of the Property as a Cultural Resource. The City Council also finds that revenue generated by the Permitted Sign will also encourage the preservation of the designated cultural resource.
- 2.4.3. The City Council further finds that this Agreement is consistent with the General Plan, the Specific Plan, and all other applicable plans, policies, and regulations, of the City of West Hollywood, as set forth in the Permitted Sign Approval.
- 2.4.4. The City Council further finds that the project represents an exceptional design that furthers the vision of both the Specific Plan and of Part 2, Section 1, Subsection 8 of the Specific Plan in that the Specific Plan encourages allowing "creative billboards which will enhance the excitement of Sunset Strip without detracting from the existing visual aesthetics or interfering with views" and this billboard was granted a concept award after demonstrating a creative and innovative approach to the proposed billboard.
- 2.4.5. The City Council further finds that the project creates or includes an extraordinary benefit to the City, and that this Agreement outlines several benefits to the City required of the Owner throughout the life of the project.

- 2.5. Permitted Sign. The Permitted Sign is more particularly described and/or depicted in Exhibit B attached hereto as approved by the Permitted Sign Approval. As of the date of this Agreement, the Permitted Sign consists of a freestanding sign 1,000 square feet of digital signage and 1,000 square feet of static signage. Except as permitted under this Agreement or as may be separately permitted under the Specific Plan and the Code, no other off-site advertising shall be permitted on the Property. The existing static off-site advertising signage existing on the Property as of the date hereof shall be removed prior to or concurrently with the erection of the Permitted Sign.
- 2.6. Current Project Approvals. The project includes, without limitation, all items described in Exhibit B and the following that have been approved by the City as of the Approval Date (the "Project Approvals"):
- 2.6.1. Zone Map Amendment to place the Property within the Development Agreement Overlay Zone;
  - 2.6.2. This Development Agreement; and
  - 2.6.3. Permitted Sign Approval
- 2.7. Term. This Agreement shall commence on the Commencement Date and shall expire thirty (30) years from the Permitted Sign Payment Commencement Date ("Term"), unless this Agreement is terminated, modified, or extended pursuant to the provisions of this Agreement or the mutual consent of the parties hereto. The parties may negotiate to extend the term of this Agreement for additional periods of length to be determined by the parties. This agreement shall replace and supersede the existing Development Agreement on the site, dated March 6, 2017, upon execution of this agreement, the prior agreement shall be of no further force and effect.

### **3. VESTED DEVELOPMENT RIGHTS**

- 3.1. Vested Rights. Subject to the terms, conditions, and covenants of this Agreement, including the Reservation of Power in Section 3.6, the Owner shall have a vested right to erect and operate the Permitted Sign in accordance with, and to the extent of, the Permitted Sign Approval, and subject to the Applicable Rules. Nothing in this Agreement shall be deemed to obligate Owner to initiate or complete the construction of the Permitted Sign within any period of time or at all. In the event that, subject to force majeure, the Owner (or its authorized Tenant) has not submitted a building permit application for the construction of the Permitted Sign within 24 months of the date of the Commencement Date, then the City shall have the right, by written notice to Owner and in accordance with Chapter 19.66 of the Code, to terminate this Agreement at any time prior to submittal of such building permit application; provided, however, that the City shall have no such right to terminate this Agreement in the event that, prior to receipt of any such notice of termination, Owner elects to (and



thereafter continues until such construction commences) make payments to the City equal to fifty percent (50%) of the Public Benefit Payment due to the City under this Agreement for the first year of the Term, with such payment escalating twenty-five percent (25%) for each subsequent year of the Agreement (until such construction commences) the Public Benefit Payment for the first year of the Term. The City's right to terminate this agreement will commence again if the sign is not constructed within five (5) years of the Commencement Date.

- 3.1.1. Certain Changes Prohibited Without Consent of Owner. Except as otherwise expressly provided in this Agreement, during the Term, the City shall not, without the prior written consent of the Owner: (a) change the Applicable Rules or the Permitted Sign Approval as they apply to the Property or Permitted Sign in a manner that would adversely affect Owner's ability to obtain the Permitted Sign Approval or to construct and/or operate the Permitted Sign; (b) apply to the Property or the Permitted Sign any new or amended ordinance, resolution, rule, regulation, requirement, or official policy that is inconsistent with the Applicable Rules or the Permitted Sign Approval, so as to prevent or adversely affect the construction or use of the Permitted Sign in accordance with the Applicable Rules or the Permitted Sign Approval; or (c) apply to the Property or the Permitted Sign any new or amended ordinance, resolution, rule, regulation, requirement, or official policy that requires additional discretionary review or approval not otherwise required for the Permitted Sign by the Applicable Rules or Permitted Sign Approval.
- 3.1.2. Rights Are Vested. Unless amended or terminated in the manner specified in this Agreement (and subject to and in accordance with the provisions of this Agreement), Owner shall, during the entire Term of this Agreement, have the rights and benefits afforded by this Agreement and no new or amended law, requirement or policy adopted by the City shall in any way limit or affect Owner's rights and benefits hereunder or the enforceability of this Agreement by Owner or the City, including, without limitation, (i) any ordinances or regulations adopted after the Approval Date or any change in the applicable general or specific plan, zoning, or subdivision regulations adopted by the City which alter or amend the Applicable Rules or the Permitted Sign Approval, or (ii) the adoption of any new or amended ordinance, resolution, rule, regulation, requirement, or official policy that is inconsistent with the Applicable Rules or the Permitted Sign Approval and would, but for this Agreement, prevent or adversely affect the construction and use of the Permitted Sign in accordance with the Applicable Rules or the Permitted Sign Approval.
- 3.2. Future Ministerial Permits. The Owner (or its authorized Tenant) may seek additional ministerial permits as required by the City, including, without limitation, building permits, as needed to implement the Permitted Sign Approval and to construct and operate the Permitted Sign. Collectively, these ministerial permit applications and ministerial permits are called the

“Ministerial Permits”. The City agrees that it will not unreasonably withhold or unreasonably condition any Ministerial Permits which must be issued by the City in order for the construction and operation of the Permitted Sign to proceed, provided that Owner reasonably and satisfactorily complies with all generally applicable preliminary procedures, actions, payment of Processing Fees, and other criteria generally required for processing such Ministerial Permits, provided further that the application for such Ministerial Permits complies with this Agreement and the Applicable Rules. In the event that Owner (or its authorized Tenant) seeks to use the Permitted Sign as a creative billboard sign or as part of a special event, Owner (or its authorized Tenant) shall comply with all generally applicable application requirements, procedures, Processing Fees, and criteria then applicable under the Zoning Ordinance and the Specific Plan; provided, however, that the normal operation of the Permitted Sign for the purposes contemplated herein shall not be deemed or construed as the operation of a “creative billboard sign” for purposes of the foregoing, nor shall the same require any additional permits or approvals beyond the Permitted Sign Approval and the Ministerial Permits.

3.3. Future Discretionary Permits. The Owner (or its authorized Tenant) may seek additional discretionary permits or amendments as allowed by the Specific Plan.

3.4. Reservations of Power.

3.4.1. Limitations, Reservations, and Exceptions. Notwithstanding any other provisions of this Agreement, the following subsequent land use regulations shall apply to the Permitted Sign:

- (a) Generally applicable Processing Fees imposed by the City to cover the costs to the City of processing applications for the Permitted Sign Approval and any subsequent approvals or permits for the Permitted Sign.
- (b) Procedural regulations applied on a City-wide, non-discriminatory basis relating to City entities required to review petitions or applications, forms of applications, notice requirements, information requested with petitions or applications, conduct of hearings, form of staff reports, nature and type of recommendations by City entities, appeal procedures, and any other similar matter of procedure.
- (c) Regulations governing building codes and similar construction standards and specifications including, but not limited to, the Uniform Building Codes, as they may be changed from time to time; provided that the foregoing shall not obligate Owner to modify or alter the Permitted Sign provided that it is constructed in accordance with the applicable building codes in effect at the date of issuance of a building permit for the construction of the Permitted Sign pursuant to West Hollywood Municipal Code

Title 13.

- (d) Regulations that are necessary to protect the public health and safety which: (a) are based on genuine health, safety, and general welfare concerns (other than general growth management issues); or (b) arise out of a documented emergency situation declared by the President of the United States, Governor of California, or the Mayor or City Council of the City of West Hollywood.
- (e) Regulations that are in conflict with the Permitted Sign Approval, provided Owner has given prior written consent to the application of such regulations to development of the Property (which consent may be withheld by Owner in its sole discretion).
- (f) Regulations applied on a City-wide, non-discriminatory basis that do not prevent or adversely affect construction and use of the Permitted Sign.

3.4.2. Modification or Suspension by State or Federal Law. In the event that state or federal laws or regulations, or those of any regional authority having jurisdiction over the Permitted Sign or Property, enacted after the Approval Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such state, federal, or regional authority laws or regulations. If such state or federal laws or regulations prevent or materially frustrate Owner's exercise of its rights under this Agreement to construct and operate the Permitted Sign, and if the applicable provisions of this Agreement cannot be modified in such a manner as to permit Owner to exercise its rights under this Agreement to construct and operate the Permitted Sign, then Owner shall have the right to terminate this Agreement by written notice to the City.

3.4.3. Police Powers. The parties acknowledge and agree that City is restricted in its authority to limit its police power by contract and that the foregoing limitation, reservations, and exceptions are intended to reserve to City all its police power which cannot be so limited. This Agreement shall be construed to reserve to City all such power and authority which cannot be restricted by contract.

3.4.4. Taxes, Assessments, and Fees. Anything herein to the contrary notwithstanding, City may impose on the Permitted Sign any new, generally applicable, non-discriminatory, City-wide taxes, assessments, and fees, including but not limited to business license taxes or franchise fees.

3.4.5. Obstruction. The parties acknowledge and agree that nothing in this

Agreement serves to impair, limit, or diminish the City's police power authority and discretion to consider and act upon applications for development projects in the vicinity of the Property, and that this Agreement does not confer upon the Owner a right to an unobstructed view of the Permitted Sign. The parties further acknowledge and agree that nothing in this Agreement, including this subsection, shall serve to impair, limit, or diminish Owner's right to comment upon, object to, or legally challenge a development project in the vicinity of the Property. Owner shall not remove or cut any tree located on a property adjacent to the Property to remove obstruction to the Approved Sign, provided Owner shall not be prohibited from removing or cutting, for any reason whatsoever, any tree located on any adjacent property that is owned by Owner. Each tree removed from City property at the request of the Owner to remove obstruction to the Approved Sign shall be replaced at the expense and effort of the Owner by four (4) new trees with at least a 48" box dimension within the City of West Hollywood. The City maintains the right to approve or deny any request to remove or relocate trees located on public property. In lieu of repeated trimming of any obstructing trees, Owner (or its authorized Tenant) may request to adjust the Approved Sign location and orientation as allowed by the Specific Plan Section 4.C.5.d. The City annually trims trees in the public right of way on Sunset Boulevard and as part of that existing effort, will consider the growth pattern of trees in relation to minimizing blockage of views to the Sign. The City shall not unreasonably deny Owner's (or any Tenant's) request for tree trimming if made prior to the City's annual tree trimming exercise.

- 3.5. Regulation by Other Public Agencies. It is acknowledged by the parties that other public agencies not within the control of the City may possess authority to regulate aspects of the Permitted Sign separately from or jointly with City, and this Agreement does not limit the authority of such other public agencies.
- 3.6. Relocation. If at any point after the date hereof and during the Term (whether before or after the Permitted Sign has been constructed), the Permitted Sign becomes nonconforming under applicable laws, the Permitted Sign may be relocated by mutual agreement between Owner and the City on whatever terms are agreeable to both parties under the authority of California Business and Professions Code section 5412. "Relocation" as used in this section, includes removal of an advertising structure and construction of a new advertising structure to substitute for the advertising structure removed. The purpose of this subsection is to allow the City to continue to develop in a planned manner without expenditure of public funds while allowing the continued maintenance of private investment and a medium of public communication established in outdoor advertising.

#### **4. PUBLIC BENEFITS**

##### **4.1. Public Benefit Payment**

- 4.1.1. Public Benefit Payment Date. Commencing on the Permitted Sign Payment Commencement Date and continuing on the anniversary of the Permitted Sign Payment Commencement Date for the remainder of the Term, Owner shall owe to the City the Public Benefit Payment (as set forth in Section 4.1.1.1 below, subject to the Annual Adjustment, and less any credits pursuant to Section 4.1.1.3). Twenty-five (25) percent of the Public Benefit Payment, less twenty-five percent (25) of any credit, shall be paid every 3 months in arrears to City on the fifteenth (15<sup>th</sup>) day of each January, April, July, and October during the Term of this Agreement (each period of four (4) successive quarters, a “Fiscal Year”). The Public Benefit Payment for any partial 3-month period shall be prorated based on the number of days within such time period.
- 4.1.2. Public Benefit Payment Amount. Beginning in the first year of the Term following the Permitted Sign Payment Commencement date, the Public Benefit Payment shall be equal to (i) \$925,000.00 with respect to the digital sign face of the Permitted Sign (“Digital Benefit Payment”), plus (ii) \$135,000 with respect to the static sign included in the Permitted Sign (“Static Benefit Payment”), for a total Public Benefit Payment of \$1,060,000.
- 4.1.3. Annual Adjustment. The Public Benefit Payment shall increase annually by 3% starting on the first anniversary of the Permitted Sign Payment Commencement Date, and continuing for the Term of the Agreement.
- 4.1.4. Extraordinary Public Benefit. In addition to the Public Benefit Payment, Owner shall also pay to the City an Extraordinary Public Benefit in the aggregate amount of \$330,000, to be used for planning and construction activities related to a commemorative walk or other public display or series of displays honoring the music legacy of the Sunset Strip, as directed by the City Council on December 7, 2020. The Extraordinary Public Benefit and process for implementation is further described in Exhibit C. The City Council directed City staff to work with a committee of business owners, property owners, and stakeholders from the Sunset Strip to formulate the logistics involved in creating a commemorative walk honoring the legendary rock and roll musicians of the Sunset Strip. The participants in this Agreement are some of those property owners. The payment of the Extraordinary Public Benefit shall be divided into three payments. The first payment of \$110,000 shall be due on the Commencement Date, the second payment of \$110,000 shall be due on the Permitted Sign Payment Commencement Date, and the third payment of \$110,000 shall be due on the first anniversary of the Permitted Sign Payment Commencement Date. Funds will be held by the City and be disbursed to the Legends of Sunset in accordance with the milestones outlined in Exhibit C. The first payment shall be directed to the Legends of Sunset Strip, LLC a non-profit that will hire a consultant to create a plan detailing the operational structure of an organization that

would manage public-facing features commemorating the history of Rock and Roll on the Sunset Strip and possible self-sustaining business models for the Legends of Sunset, LLC to install commemorative elements on Sunset Boulevard. If the final structure, design, and operation of the commemorative features are not approved by the Director of Community Development by the five (5) year of the anniversary of the Permitted Sign Commencement Date, any remaining Extraordinary Public Benefit funds shall be used by the City for public pedestrian enhancements on the Sunset Strip.

4.1.5. Public Realm Improvements.

4.1.5.1. Owner shall make building and site improvements in substantial conformance with Exhibit D (the “Public Realm Improvements”).

4.1.5.2. If it is deemed necessary and appropriate by the City and the Owner, the City may issue multiple building permits and multiple certificates of occupancy for Site Improvements on portions of the property in the City. The City shall offer the Owner the option to pursue permitting and construction of the Permitted Sign structures separately from the Public Realm Enhancements that are non-signage. Should the Owner choose to permit the Permitted Sign structures separately, the Permitted Sign structures may begin to display off-site advertising prior to the completion of the non-signage Public Realm Enhancements, provided that the non-signage Public Realm Enhancements are completed within two (2) years of the Permitted Sign Payment Commencement Date. In the event Owner does not complete the non-signage Site Improvements within such time, Owner shall be prohibited from displaying off-site advertising until the Public Realm Improvements have been completed. In the event Owner is prohibited from displaying off-site advertising under this Section 4.1.1.3.1, all Public Benefit Payments and the term of the Agreement shall toll until off-site advertising begins to be displayed again.

4.1.6. Adjustments for Sign Area That Increase Size During Term of This Agreement. With the exception of the first such adjustment, if the Permitted Sign increases in size (beyond that approved pursuant to the Permitted Sign Approval and as set forth in Exhibit B) during the Term of this Agreement as may be permitted by the Specific Plan, the Digital Benefit Payment or Static Benefit Payment, as applicable, shall increase in equal proportion to the percentage increase in sign area. Notwithstanding the foregoing, this Section 4.1.2 shall not apply to changes in size of the Permitted Sign in connection with temporary creative billboard permits procured in accordance with the Specific Plan and the Code.

4.1.7. Historic Property Credit. Owner shall be granted an annual credit

against the Public Benefit Payment of \$150,000 for the first- five (5) years of this agreement. The Historic Property Credit shall be reduced to an annual credit of \$125,000 during the remaining term of this agreement.

- 4.2. Digital City Content Allocation. The “City Content Allocation” shall mean with respect to the digital face of the Permitted Sign, a maximum period of time equal to seventeen and one-half (17.5) percent of the total annual operating time for the digital face of the Permitted Sign for the display of art, civic announcements or other content as directed by the City.
  - 4.2.1. Arts Programming; Schedule. The precise schedule and content for the City Content Allocation will be developed by the City and approved by the West Hollywood Arts and Cultural Affairs Commission Art On The Outside (AOTO) Subcommittee. City shall make a good faith effort to provide a schedule to Owner one year in advance, and in any case shall provide such schedule to Owner as soon as reasonably possible in advance of the applicable time period for the City Content Allocation, but in no case shall this be less than one (1) month in advance.
  - 4.2.2. Emergency Programming. The digital face of the Permitted Sign will be made immediately available to the City for emergency announcements, instructions, and broadcasts in the event of an emergency, or disaster, or as otherwise reasonably deemed necessary by the City to protect public safety. Any such use of the Permitted Sign shall be counted towards the City Content Allocation.
  - 4.2.3. Other Use. Any of the City Content Allocation not used by the City may be sold back to Owner at a price agreed to by the parties or given back to Owner at no cost to Owner, at City’s sole discretion.
  - 4.2.4. City-wide Events. Nothing in this Agreement prevents the City from obtaining sponsorships for special events and displaying associated off-site advertising content during the City Content Allocation; provided, that such content shall only be used in connection with City-wide events that utilize all other digital signage on the Sunset Strip under the Sunset Arts & Advertising Program for the display of the same or similar content at the same time and such content is displayed on the Permitted Sign and shall only advertise the sponsors of such City-wide event.
  - 4.2.5. Flexible Use. With advance approval by the City, credit towards the City Content Allocation may be granted to Owner (or its authorized Tenant) for time dedicated on the Permitted Sign to other non-City art and civic programming.
- 4.3. Non-Digital City Content Allocation. The “City Content Allocation” shall mean a maximum period of time equal to ninety-six (96) hours of the total annual operating time for the Permitted Sign.

4.3.1. Arts Programming.

- 4.3.1.1. Schedule; Content. City shall make a good faith effort to provide a City Content Allocation schedule to Owner no less than one year in advance. The City shall provide all art content to be displayed on the Permitted Sign at least thirty (30) days in advance and all costs associated with the fabrication, installation and production of the art shall be borne by the City by way of set off against Public Benefit Payment payable to the City for the applicable Fiscal Year.
- 4.3.1.2. Other Use. Any of the City Content Allocation not used by the City may be sold back to Owner at a price agreed to by the parties or given back to Owner at no cost to Owner, at City's sole discretion.
- 4.3.1.3. Flexible Use. With advance approval by the City, credit towards the City Content Allocation may be granted to Owner (or its authorized Tenant) for time dedicated on the Permitted Sign to other non-City art and civic programming.

4.4. Light Monitoring Test. All digital billboard operators shall be required to allow the City's independent lighting consultant to prepare and conduct a light monitoring test for the purpose of preparing a Lighting Monitoring Report to be reviewed and approved by the Economic Development Director. This test must verify that the billboard meets the lighting standards of Sunset Boulevard Off-Site Advertising Policy and Guidelines ("Policy") and must be completed prior to the issuance of a certificate of occupancy for the digital billboard. The billboard operator must schedule the City's consultant to prepare and submit the Lighting Monitoring Report for approval prior to a request for a Certificate of Occupancy for the digital billboard. Thereafter, the operator must allow a light monitoring test at three-year intervals and at the City's request to confirm ongoing compliance with standards. The report, prepared by the City's lighting consultant, shall include: (i) Digital billboard luminance measured in nits (candelas per square meter). Measurements shall be conducted at the property line of the digital billboard site, or in the nearest adjacent public right of way, perpendicular to the digital billboard sign face. (ii) Digital billboard sign illuminance measured in foot candles. Measurements shall be conducted perpendicular to the digital billboard sign face, at the property line containing the digital billboard, and at adjoining residential use property or properties. The illuminance meter shall be aimed toward the sign face from the measurement location. All measurements shall include both luminance and illuminance for three conditions: (i) The sign off. (ii) The sign illuminated with an image. (iii) The sign illuminated using an all-white display.

4.5. Coordination Technology. Owner shall, or shall cause its authorized Tenant to, coordinate with the City to permit the City's art content to be displayed and



operated by the City on the digital face of the Permitted Sign during the City Content Allocation. The City shall provide proposed content no later than five (5) business days prior to the date the proposed art content is to be displayed on the Permitted Sign. All such art content must meet the specific screen specifications of the Permitted Sign, and the City shall notify Owner and/or the Tenant of the proposed start and end dates for such displays. The City, Owner, and/or Tenant shall cooperate in good faith to identify and incorporate software solutions that allow for the seamless display of City Content on the Permitted Sign and all other digital billboards within the Sunset Arts & Advertising Program.

- 4.6. Periodic Video Technology Upgrades. Every 8 years from the Approval Date, the Owner shall update or replace (or cause to be updated or replaced), as the case may be, the digital signage technology of the Permitted Sign; provided that, notwithstanding the foregoing, if at the time an update or replacement of the digital signage technology would otherwise be required pursuant to this Section 4.4, the existing digital signage technology is compliant with the City's then-applicable Digital Advertising Technology Standards (as set forth in the most recent Digital Advertising Technology Standards Report issued by the City), then no update and/or replacement shall be required until such time, if any, as the digital signage technology of the Permitted Sign fails to be in compliance with the City's Digital Advertising Technology Standards. The City will create a Digital Advertising Technology Standards Report every 5 years. The report will be posted by City and may be found by Owner on the City's website. Upgrades must be made in compliance with the standards set forth in the then-applicable Digital Advertising Technology Standards Report and will not necessarily in all instances require total replacement of the LED display on the Permitted Sign. Notwithstanding the foregoing, in no event shall Owner be required in any rolling eight (8) year period to spend an aggregate amount in excess of ten percent (10%) of the average gross annual advertising revenue received by the Owner or Tenant calculated over the same eight (8) year period on such upgrade(s) or replacement(s).
- 4.7. Maintenance. Owner shall repair, maintain, and replace the Permitted Sign so as to keep the premises in a good condition and repair and the Permitted Sign in good working order, subject to reasonable wear and tear and damage caused by casualty.
- 4.8. Building Occupancy. Notwithstanding any terms to the contrary herein, if the premise is not available and open for customers ("Occupancy Threshold") for more than six (6) consecutive months during the Term, then for the period commencing on the first (1st) day following such six (6) month period and ending on the first (1st) day thereafter that the occupancy level of the Building exceeds the Occupancy Threshold, as the City's sole and exclusive remedy for the failure of the occupancy level of the Building to exceed the Occupancy Threshold, the Public Benefit Payment shall be increased by twenty-five percent (25%). During any period that any major repair, remodeling or reconstruction is being undertaken with respect to the Building, the occupancy level of the Building shall be deemed to be above the Occupancy Threshold,

regardless of the actual occupancy level of the Building during such period, provided that the repair, remodeling or reconstruction is proceeding with due diligence and in no event for longer than a period of eighteen (18) months (which time can be extended by the City Manager, or designee, based on substantial evidence that the failure to achieve the Occupancy Threshold is based on a natural disaster, earthquake, force majeure event or other event outside the Owner's control). The eighteen (18) month period shall begin to run from the date that the Owner obtains active and valid permits that have been issued by the City for the Building to undergo the applicable repair, remodeling or reconstruction. The occupancy level of the Building shall also be deemed to be above the Occupancy Threshold, regardless of the actual occupancy level of the Building during such period that Owner has active and valid permits that have been issued by the City for the Building to undergo mandatory seismic strengthening required under WHMC Title 13, provided that the work is being diligently pursued, as determined by the City Manager or designee. Notwithstanding the foregoing or anything to the contrary contained herein and recognizing that this is a small building where occupancy rates can be low with the loss of one tenant, in the event that the occupancy level of the Building is beneath the Occupancy Threshold and the Owner is using commercially reasonable efforts to cause the occupancy level of the Building to exceed the Occupancy Threshold (and has provided City with reasonable supporting documentation of such commercially reasonable efforts), then the City Manager, or designee, shall provide one six-month extension before the Public Benefit Payment is increased.

- 4.9. Building Use. For the life of the Agreement, the Building use shall contain a bar, restaurant, or hospitality use unless mutually agreed upon by both parties.
- 4.10. Green Energy. Upon City's request from time to time, the Owner shall provide City with reasonable evidence that all energy consumed by the Permitted Sign meets the City's applicable renewable energy and neutral carbon fuel requirements as set out in the Specific Plan. Compliance may be met through use of on-site renewable energy resources, purchase of renewable energy certificates, and/or purchase of other clean, renewable energy resources to the reasonable satisfaction of the Director of Economic Development, or City Manager designee.
- 4.11. Cultural Resource. Owner shall cause the Building to be maintained in good condition and shall maintain and repair the Building in a manner consistent with the maintenance standards observed by comparable landlord of cultural resource properties comparable to the Building in the City. The Owner shall submit a Rehabilitation & Maintenance Plan or a Mills Act Contract application prior to the issuance of a certificate of occupancy for the permitted sign, prepared by a certified preservation consultant which proposes how the building will be preserved over the life of the development agreement. This is a comprehensive plan which includes, at a minimum, the following: documentation of work completed to date; existing conditions of all architectural elements, roof, exterior materials, windows, structural,

mechanical, electrical, and plumbing; termite inspection; inspections by qualified preservation engineers to determine existing conditions and future required improvements; existing photographic inventory; any required rehabilitation work; specific years for maintenance and rehabilitation items, and any other items deemed necessary by the City. This Plan will be reviewed by the City's preservation consultant and by the Historic Preservation Commission prior to finalizing. The owner shall prepare an annual status report, due on the same day that the Plan was due, and present for review to the Director of Community Development. This report will show progress made from the previous year and the anticipated work for the upcoming year. If the Owner obtains and implements a Mills Act Contract for the Property, the Mills Act Contract obligations would supersede this Section 4.9 for the term of the Mills Act Contract. The Mills Act Contract term is ten (10) years, with the City and Owner having the option to extend the agreement upon mutual agreement to do so; if the Mills Act Contract is terminated, expired or no longer valid, the Owner shall submit a Rehabilitation and Maintenance plan for City approval within 6 months of the expiration date.

- 4.12. Redevelopment. During any period that any major repair, remodeling or reconstruction is being undertaken with respect to the Building ("Redevelopment"), if such Redevelopment requires removal of the Permitted Sign, the Term of this agreement shall toll during the period the Permitted Sign is removed and shall resume on the date of issuance of a certificate of occupancy for the reconstructed Permitted Sign structure by the applicable City building authorities (the "Redevelopment Period"). The parties acknowledge that the Public Benefit Payment shall abate on a day for day basis during any Redevelopment Period, and the Annual Adjustment shall toll during the Redevelopment Period. Notwithstanding anything to the foregoing to the contrary, in the event the Redevelopment Period exceeds five (5) years, then the City may terminate this Agreement unless Owner agrees to resume paying the Public Benefit Payment in accordance with the terms of this Agreement.

## **5. PROCESSING FEES**

- 5.1. Owner shall pay to City all generally applicable Processing Fees regularly charged by the City which are applicable to the subject matter of this Agreement; the amount of such Processing Fees may be increased from time to time on a non-discriminatory City-wide basis.
- 5.2. Owner shall reimburse the City for costs reasonably incurred by the City in connection with preparing, reviewing and processing this Agreement. Such reimbursement shall include staff time and materials charges in excess of those included within the usual Processing Fees, including consultants and reasonable City Attorney fees. The costs shall be deducted from the Development Agreement deposit submitted to the City for the project. Unused funds shall be returned to Owner, with a reasonably detailed accounting of the reimbursement amounts applied against such deposit, within three (3) months of the Council

approval of this Development Agreement.

## 6. ASSIGNMENT, AMENDMENT, AND REVIEW

### 6.1. Assignment

6.1.1. Right to Assign. Owner shall have the right to sell, transfer, convey, mortgage, encumber or assign the Property in whole or in part to any person, partnership, joint venture, firm, trust corporation or other entity at any time during the Term in Owner's sole and absolute discretion and without consent of the City; provided, however, that any such sale, transfer, or assignment shall include a written assignment and assumption of the right, duties, and obligations of "Owner" arising under or from this Agreement with respect to the property transferred and provided that:

- (a) Concurrently with the closing of such sale, transfer, conveyance or assignment, Owner shall provide the City with an executed agreement by the purchaser, transferee, or assignee providing therein that the purchaser, transferee, or assignee expressly and unconditionally assume the duties and obligations of Owner under this Agreement arising from and after the date of such sale, transfer, conveyance or assignment; and
- (b) Prior to the assignment of Owner's rights and obligations under this Agreement, Owner shall, and shall cause the prospective purchaser, transferee or assignee to, meet with the appropriate City officials to review with the prospective purchaser, transferee or assignee the obligations of "Owner" under this Agreement, it being understood that it is of great importance to the City that any successors to Owner's interest in this Agreement be informed of and understand their obligations hereunder.

Any sale, transfer or assignment of this Agreement not made in strict compliance with the foregoing conditions shall constitute a material default by Owner under this Agreement. Notwithstanding the failure of any purchaser, transferee, or assignee to execute the agreement required by paragraph (a) of this Subsection 6.1.1, the benefits and burdens of this Agreement shall benefit and be binding upon such purchaser, transferee, or assignee from and after the date of such party's acquisition of the Property. Owner shall provide the City such information as the City may reasonably request in order for the City to determine Owner's compliance with the provisions of this Section 6.1.1. Following any sale, transfer or assignment in accordance with this Section 6.1.1, the seller or transferor shall be relieved of any further liability or obligation under this Agreement, except for any obligations which accrued prior to the date of such sale, transfer or assignment (i.e., the assigning Owner shall remain

liable to the City hereunder for any failure to perform any obligations accruing prior to the date of such sale, transfer for assignment). For the avoidance of doubt, nothing contained in this Agreement shall require Owner to obtain City's consent prior to conveying title to the Property to another person or entity (but any assignment of this Agreement which is not in accordance with the terms of this Section 6.1.1 shall constitute a material default of Owner under this Agreement).

6.1.2. Applicability. The provisions of Section 6.1.1 shall not be applicable to (i) a transfer or assignment pursuant to a mortgage or deed of trust or (ii) a transfer made in connection with the enforcement of the security interest of a mortgage or deed of trust or by deed in lieu thereof or (iii) a transfer as a result of which Owner retains effective management control of the Property and Permitted Sign or (iv) a lease of the Property or Permitted Sign or (v) any change in control of the Owner entity. The provisions of Section 6.1.1 hereof shall be applicable to any subsequent transfer by a mortgagee after it has successfully enforced its security interest or otherwise acquired title to the Property.

## 6.2. Changes and Amendments

6.2.1. Minor Changes. If Owner (or its authorized Tenant) reasonably finds that a change or amendment in the Permitted Sign Approval is reasonably necessary, desirable or appropriate, Owner (or its authorized Tenant) shall have the right to apply for any required changes to the Permitted Sign Approval. The parties acknowledge that refinements and modifications which constitute a "minor" change in the Permitted Sign or Permitted Sign Approval shall not require an amendment to this Agreement or public notice or hearing. The City Manager, in consultation with the City Attorney and Director of Planning and Development Services, shall be authorized to reasonably make the determination on behalf of the City whether a requested refinement or modification may be effectuated pursuant to this Section 6.2.1 or whether the requested refinement or modification is of such a character to require an amendment hereof pursuant to Section 6.2.2. The City Manager shall be authorized to approve any minor changes hereunder on behalf of the City.

6.2.2. The City Manager shall not unreasonably withhold or delay its determination that a requested refinement or modification constitutes a "minor" change as the term is used herein.

A change is considered minor if processed as part of an Administrative Permit, including:

(a) Relocation or Reorientation as allowed per Section 4.C.5.d of the Sunset Specific Plan

(b) A height adjustment as allowed by the terms of the Sunset Specific Plan in Section 4.C.5.b

(c) A square footage adjustment of up to 33 percent (which increase shall not be subject to Section 4.1.2 of this Agreement.)

A change to the Permitted Sign Approval shall not be deemed “minor” if such change:

- (a) Requires subsequent or supplemental review under CEQA; or
- (b) Creates a situation adverse to public health or safety.

6.2.3. Other Changes. Any change in the Permitted Sign which is not a “minor change” as defined herein shall require approval in accordance with the Applicable Rules, as applicable.

### 6.3. Annual/Special Review

6.3.1. Annual Review. The City may, at least every twelve (12) months during the term of this Agreement, review the extent of good faith and substantial compliance by Owner with the terms of this Agreement. Provided a default has been established by such review under the terms of this Agreement and such default is not thereafter cured within any applicable notice and cure period set forth in Section 7.1.3, such a periodic review may result in suspension or termination of this Agreement in accordance with Chapter

19.66 of the Code. Pursuant to Government Code Section 65865.1, as amended, if requested by the City, Owner shall have the duty to file an annual review request with the City, pay any applicable Processing Fees for such annual review and reasonably demonstrate its good faith compliance with the terms of this Agreement at such periodic review.

6.3.2. Special Review. The City Council may order a special review of compliance with this Agreement at any time. The Director of Planning and Development Services or the City Council, as determined from time to time by the City Council, shall conduct such special reviews. Any special review shall comply with the procedural provisions of an annual review as provided by Section 6.3.1.

6.3.3. Opportunity to be Heard. Upon written request to the City by Owner, Owner shall be permitted an opportunity to be heard orally and/or in writing at a hearing before the City Council regarding performance under this Agreement. Owner shall also be heard before the City Council on any required public hearing concerning a review of action on the Agreement.

6.3.4. Information to be Provided to Owner. The City shall provide a copy of staff reports and related exhibits concerning contract performance as soon as reasonably possible in advance of any such review or action upon this Agreement by the Planning Commission or the City Council.

## **7. DEFAULT, REMEDIES, AND TERMINATION**

### **7.1. Enforceability.**

7.1.1. Default. Subject to Section 7.1.3, failure by any party to perform any material term or provision of this Agreement required to be performed by such party shall constitute an event of default (“Event of Default”). For purposes of this Agreement, a party claiming another party is in default shall be referred to as the “Complaining Party”, and the party alleged to be in default shall be referred to as the “Party in Default”.

7.1.2. Additional Event of Default. Owner shall also be deemed to be in default under this Agreement if Owner files for reorganization or other relief under any Federal or state bankruptcy or insolvency law, whether voluntarily or by an involuntary bankruptcy or insolvency action, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of Owner, or shall suffer an attachment or levy of execution to be made against the Property unless, within sixty (60) days thereafter, (i) in any of such cases, such circumstances shall have been terminated or released, or otherwise secured in the case of an attachment or levy of execution, or (ii) in the case of a bankruptcy or insolvency proceeding, Owner can provide the City with reasonable assurances that it will have the capacity and ability to pay the Public Benefit Payment. As used herein, "reasonable assurances" may include the preparation and submission of a plan of reorganization, provided that such plan shall have been submitted to the appropriate bankruptcy court within one hundred and twenty (120) days after the initial filing and which is approved within sixty (60) days after submission. Should either of such time periods pass without the requisite action having been taken then the preparation and/or filing of a proposed plan, as the case may be, shall not be deemed a reasonable assurance. The acceptability of any other form of reasonable assurance shall be in the reasonable and good faith business judgment of the City.

### **7.1.3. Procedure Regarding Defaults.**

7.1.3.1. Notice of Default. In the event that a Complaining Party desires to assert that an Event of Default has occurred hereunder, the Complaining Party shall give written notice of default to the Party in Default, specifying in reasonable detail

the default complained of by the Complaining Party. Delay in giving such notice shall not constitute a waiver of any default. In the event of any Event of Default (whether or not material), the Party in Default shall use reasonable efforts to cure, correct or remedy the Event of Default claimed. Any failures or delays by a Complaining Party in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by a Complaining Party in asserting any of its rights and remedies shall not deprive the Complaining Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies. If an Event of Default occurs, prior to the Complaining Party exercising any remedies pursuant to the further provisions of this Section 7.1, the Complaining Party shall give the Party in Default written notice of such default and an opportunity to cure the default within the applicable time period set forth herein. Without limitation, evidence of an Event of Default on the part of Owner may arise in the course of the regularly scheduled annual review or a special review described in Section 6.3.

7.1.3.2. Cure Periods. If the default is reasonably capable of being cured within thirty (30) days, the Party in Default shall have such period to effect a cure prior to exercise of remedies by the Complaining Party. If the nature of the alleged default is such that it cannot practicably be cured within such thirty (30) day period, the Party in Default shall have such additional time as is reasonably necessary to cure such Event of Default, provided that (i) the cure is commenced within such thirty (30) day period; (ii) the cure is diligently prosecuted to completion at all times thereafter; and (iii) at the earliest reasonably practicable date (in no event later than thirty (30) days after the Party in Default's receipt of the notice of default), the Party in Default provides written notice to the Complaining Party that the cure cannot practicably be completed within such thirty (30) day period. Subject to the foregoing, if the Party in Default fails to cure a material Event of Default in accordance with the foregoing, the Complaining Party, at its option, may terminate this Agreement pursuant to California Government Code Section 65868, and/or institute legal proceedings pursuant to this Agreement. In the event that the Party in Default fails to cure a non-material Event of Default within the applicable cure period, the Complaining Party shall have all of its rights and remedies with respect thereto as may be available at law or in equity, subject to the



express limitations on remedies set forth in this Agreement; provided that this Agreement shall not be terminated in respect to a non-material Event of Default.

7.1.3.3. Procedures Regarding City Termination. Notice of intent to terminate following a material Event of Default by Owner which remains uncured following the running of the applicable notice and cure period shall be by certified mail, return receipt requested. Upon delivery by the City of notice of intent to terminate, the matter shall be scheduled for consideration and review by the City Council within thirty (30) days in accordance with Government Code Sections 65867 and 65868. Upon consideration of the evidence presented in said review and a determination by the City Council of a material Event of Default based thereon, the City may give written notice of termination of this Agreement to Owner. Any determination of default (or any determination of failure to demonstrate good faith compliance as a part of annual review) made by the City against Owner, or any person who succeeds to Owner with respect to any portion of the Property, shall be based upon written findings supported by substantial evidence in the record. Any purported termination of this Agreement for alleged default shall be subject to review in the Superior Court of the County of Los Angeles pursuant to Code of Civil Procedure § 1094.5(c).

7.1.4. Institution of Legal Action. Subject to notice of default and opportunity to cure under Section 7.1.3, and subject further to the limitation on remedies set forth in Section 7.1.5, in addition to any other rights or remedies, any party to this Agreement may institute legal action to cure, correct or remedy any default of the other party, to enforce any covenants or agreements herein to be performed by the other party, to enjoin any threatened or attempted violation hereof, or to obtain any other remedies consistent with this Agreement. If a legal action or proceeding is brought by any party to this Agreement because of an Event of Default under this Agreement, or to enforce a provision hereto, the prevailing party shall be entitled to reimbursement of all costs and expenses, including all court costs, consultant's fees, expert witness fees, expenses of preparing exhibits, and reasonable attorneys' fees ("Litigation Expenses") incurred in prosecuting such legal action or proceeding. This provision is separate and several and shall survive the merger of this Agreement into any judgment on this Agreement.

7.1.5. Remedies

7.1.5.1. Owner's Remedies. In the event that the City is found liable for wrongfully interfering with Owner's rights under

this Agreement to construct or operate the Permitted Sign or otherwise breaches this Agreement and such interference or breach results in Owner's loss of revenue from the Permitted Sign, then the Term as set forth in Section 2.6 shall be extended for the duration of the wrongful interference or breach. It is acknowledged by the parties that the City would not have entered into this Agreement if it were liable in damages under or with respect to this Agreement or the application thereof. Accordingly, Owner covenants not to sue for or obtain any monetary damages for a breach by the City of any provision of this Agreement. Notwithstanding any terms to the contrary herein, Owner shall have the right to sue for specific performance of the City's obligations under this Agreement, it being acknowledged and agreed by the parties that the absolute bar to the Owner's right to sue the City for damages leaves no other adequate remedy for Owner if the City should be determined to be in default under this Agreement. Except as expressly limited herein, Owner shall have all other remedies that may be available to Owner at law or in equity.

7.1.5.2. City's Remedies. The parties agree that the City shall have limited remedies for monetary damages and specific performance as specifically provided for in this Section 7.1.5.2. The City shall not have any right to compel specific performance with respect to the construction, operation or leasing of the Permitted Sign, or any obligation herein to do so. Further, the City shall have no right to monetary damages as a result of Owner's failure to construct, operate, lease, or derive revenue from the Permitted Sign. The City shall have the right to sue for monetary damages only with respect to any failure by the Owner to pay (i) any Processing Fees, (ii) any amounts owing pursuant to Section 4.1, or (iii) any amounts owing by Owner to the City pursuant to the further provisions of this Section 7.1.5.2. In no event shall the City be entitled to consequential damages or punitive damages for any breach of this Agreement. In the event (i) Owner is required to remove the Permitted Sign pursuant to the terms of Section 8.1.2 and fails to do so on or before the Sign Removal Deadline (as defined in Section 8.1.2), and (ii) such failure continues for thirty (30) days after the City delivers written notice of such failure to Owner (such 30th day being referred to herein as the "30-Day Removal Deadline"), then the City shall have the right to enforce such removal by way of an action for specific performance, and, if successful, Owner shall (i) be liable for all reasonable Litigation Expenses incurred by the City in pursuing such remedy, and (ii) pay to the City the Public Benefit

Payment which would have been payable hereunder for the period after the 30-Day Removal Deadline, as if such period had fallen within the Term. Furthermore, in the event (i) Owner makes any material modification to the Permitted Sign and fails to obtain from the City any permits or approvals which, pursuant to the Applicable Rules or the Permitted Sign Approval, are required for such modification, and (ii) such failure continues for thirty (30) days after the City delivers written notice of such failure to Owner (such 30th day being referred to herein as the "30-Day Modification Deadline"), then the City shall have the right to enforce compliance with such Applicable Rules or Permitted Sign Approval by way of an action for specific performance, and, if successful, Owner shall be liable for all reasonable Litigation Expenses in pursuing such remedy. Notwithstanding the foregoing, in the event that the required permits and approvals for such modification cannot reasonably be obtained within thirty (30) days after Owner's receipt of the City's notice, then the 30-Day Modification Deadline shall be extended for such reasonable period of time as may be necessary for Owner to obtain such permits and approvals, provided that Owner applies for the required permits and approvals within the initial 30-day period and thereafter diligently pursues to completion the steps necessary to obtain such permits and approvals. The provisions of this section shall survive expiration or termination of this Agreement.

7.1.5.3. Voter Actions. The parties understand that the Development Agreement Act authorizes this Development Agreement to bind the City even as to actions taken by voters of the City. If a court of competent jurisdiction enters a final non-appealable order to the contrary and the City fails or refuses to perform its obligations under this Agreement solely to comply with a measure adopted by initiative after entry of such a final, non-appealable order subjecting this Agreement to the effects of legislation adopted by initiative after the Approval Date, this Agreement shall be modified or suspended to the extent required by Government Code Section 65869.5 and Owner's remedies by reason thereof shall be limited to reformation or rescission of this Agreement, and the City shall not be in default hereunder. City hereby agrees that, in the event that any action or proceeding challenging the enforceability of this Agreement is initiated as a result of such measure adopted by initiative, City shall defend in good faith the enforceability of this Agreement and the rights of the City and Owner hereunder, subject to the terms of Section 8.5.1 below.

7.2. Termination of Agreement. As to the Property and all of the rights of Owner

hereunder, and except as otherwise provided in this Agreement, this Agreement shall be deemed terminated and of no further effect upon the expiration of the Term of this Agreement. Subject to the notice and cure provisions set forth in Section 7.1.3, the City shall have the right to terminate this Agreement as to the Property and the rights of Owner hereunder, in the event the Owner materially defaults and fails to cure such Event of Default within the applicable cure period. Notwithstanding any other provisions of this Agreement to the contrary, the Owner retains the right to terminate this Agreement upon thirty (30) days written notice to the City in the event the Owner reasonably determines that the continued operation of the Permitted Sign has become economically infeasible due to changes in market conditions, increased costs, or burdens imposed, consistent with this Agreement, by the City or other governmental entity as conditions to subsequent to the Permitted Sign Approval or pursuant to this Agreement. Upon the termination of this Agreement, neither party shall have any further right or obligation with respect to the Permitted Sign hereunder except with respect to any obligation to have been performed prior to such termination or with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth herein as surviving this Agreement.

## **8. GENERAL PROVISIONS**

- 8.1. Removal of Permitted Sign. The Permitted Sign and all associated structures shall be removed at the end of the Term; provided, however, that the Permitted Sign and associated structures shall not be required to be removed to the extent that Owner and City have entered into an extension of this Agreement or a new agreement regarding the continued operation of the Permitted Sign on the Property. Upon (i) removal of the Permitted Sign pursuant to the immediately preceding sentence, (ii) removal of the Permitted Sign at Owner's sole discretion three (3) years after the Commencement Date, or (iii) removal of the Permitted Sign following termination of this Agreement, Owner, shall be entitled to construct on the Property a static advertising sign generally consistent with the static advertising sign previously approved by the City, as set forth in Exhibit C. For the avoidance of doubt, Owner shall not be required to pay the Public Benefit Payment to the City in connection with the construction with such static advertising sign.
- 8.2. Update to the City's Billboard Inventory. Upon the effective date of this Agreement, the Permitted Sign will be included in the City's Billboard Inventory.
- 8.3. Approval Procedure: Recordation. The following procedure shall govern approval of this Agreement (which shall precede the execution hereof by the City):
  - 8.3.1. Prior to City Council approval of this Agreement, Owner shall execute this Agreement.

8.3.2. City Council shall undertake all necessary proceedings to consider this Agreement in accordance with the procedures established by the Development Agreement Ordinance, WHMC Chapter 19.66. Approval by the City shall be by adoption of the Approval Ordinance.

8.3.3. As provided in Section 65868.5 of the Development Agreement Act, the City shall cause a copy of this Agreement to be recorded with the County Recorder within ten (10) days following the adoption of the Approval Ordinance. Any recording costs shall be paid by Owner.

8.4. Cooperation and Implementation. City represents that it will cooperate in good faith with Owner to the fullest extent reasonable and feasible to implement this Agreement. Upon satisfactory completion by Owner of all of preliminary actions to be initially taken by Owner and payment of all applicable fees to be initially paid by Owner, in both cases pursuant to this Agreement, City shall promptly commence and diligently proceed to complete all steps necessary for the implementation of this Agreement and the development of the Permitted Sign in accordance with the terms of this Agreement, including, but not limited to, the processing and checking of any and all of the following which may be filed or submitted by or on behalf of Owner: (i) Permitted Sign Approval, agreements, covenants and related matters to the extent required under the terms of this Agreement, (ii) plans, specifications and other documents necessary for the erection or modification of the Permitted Sign, and (iii) requests for inspections. Owner shall, in a timely manner, provide City with all documents, plans and other information reasonably necessary for the City to carry out its obligations hereunder.

8.5. Legal Challenges.

8.5.1. Owner Defense. If any legal action or other proceeding is instituted by a third party or parties, other governmental entity or official challenging the validity of any provision of the Permitted Sign Approval or of this Development Agreement (including, without limitation, any action or proceeding which challenges the enforceability of this Agreement and is initiated as a result of a measure adopted by initiative, as described in Section

7.1.5.3 above), Owner and the City shall cooperate in defending any such action. The City shall notify Owner of any such legal action against City within ten (10) days after the City receives service of process, except for any petition for immediate injunctive relief, in which case the City shall notify Owner immediately upon receipt of notice thereof. Owner shall indemnify, hold harmless and defend (with counsel reasonably acceptable to City) the City, and any of its officers, employees or agents for any claim or lawsuit brought to challenge the validity or enforcement of the Permitted Sign Approval or this Agreement, arising out of any negligence or willful

misconduct of Owner or any of its officers, agents, servants, lessees, employees, contractors, subcontractors, materialmen, suppliers or their officers, agents, servants, lessees, or employees (collectively, "Owner Agents"), instituted by a third party or another governmental entity or official. In connection with such a proceeding, City may, at its option, elect to have counsel of its choice, rather than counsel selected by Owner, defend the City in any such claim or lawsuit, in which case Owner shall pay the reasonable fees and costs charged by such counsel in carrying out such defense of the City, and the City shall cause its counsel to cooperate with Owner's counsel in the defense of such claim or lawsuit. Notwithstanding the foregoing, if the City fails promptly to notify Owner of any legal action against the City, or if the City or City's counsel fails to cooperate in the defense, Owner shall not thereafter be responsible for the City's defense or any fees or costs or Litigation Expenses incurred by City's counsel in connection therewith. Owner shall promptly pay all monetary awards, judgments, verdicts, court costs and attorneys' fees that may be awarded in such action, unless Owner is relieved of its obligation to defend the City pursuant to the terms of the immediately preceding sentence.

8.5.2. Continued Processing. The filing of any lawsuit(s) by a third party (not a party to this Agreement) after the Approval Date against the City and/or Owner relating to this Agreement or to other development issues affected the Permitted Sign shall not delay or stop the processing or issuance of any permit or authorization necessary for development or use of Permitted Sign, unless the City reasonably and in good faith determines that such delay is legally required.

## 8.6. Indemnity

8.6.1. Owner Indemnity. To the fullest extent permitted by law, Owner hereby agrees, at its sole cost and expense, to defend, protect, indemnify, and hold harmless the City and its elected officials, officers, attorneys, agents, employees, volunteers, successors, and assigns (collectively "Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including reasonable fees of accountants, attorneys, engineers, consultants or other professionals and all costs associated therewith (collectively, "Claims"), (i) arising or claimed to arise, directly or indirectly, out of or in connection with, resulting from, or related to any negligence or willful misconduct of Owner or any Owner Agent in connection with the implementation of this Agreement or the Permitted Sign Approval, or (ii) arising or claimed to arise, directly or indirectly, out of, in connection with,

resulting from, or related to this Agreement or the Permitted Sign Approval arising from any negligence or willful misconduct of Owner or any Owner Agent, any construction permitted pursuant to this Agreement or the Permitted Sign Approval, or any subsequent use of the Permitted Sign, or any portion thereof, permitted by this Agreement or the Permitted Sign Approval, except for any Claims resulting from the negligence, willful misconduct or breach of this Agreement by an Indemnitees; provided that the foregoing shall not be deemed to make Owner liable for consequential or punitive damages. Notwithstanding the foregoing, Owner shall have no obligation to indemnify the City pursuant to this Section 8.6.1 to the extent that it is ultimately determined that a Claim for which the City has sought indemnification pursuant to this Section 8.6.1 did not in fact arise (as opposed to being claimed to have arisen from) the matters described in the foregoing clause (i) or (ii).

8.6.2. Survival of Indemnity. The indemnity provisions contained in Sections 8.5 and 8.6 shall survive the termination of the Agreement with respect to any Claims accruing prior to the termination of this Agreement and are in addition to any other rights or remedies which Indemnitees may have under the law.

8.7. Notices. All notices or other communications required hereunder shall be in writing and shall be personally delivered (including by means of professional messenger service), or sent by registered or certified mail, postage prepaid, return receipt required, or by electronic PDF transmission followed by delivery of a “hard” copy, and shall be deemed received on the date of receipt personally, by registered or certified mail or by email.

Unless otherwise indicated in writing, such notice shall be sent addressed as follows:

If to the City:

City Clerk  
City of West Hollywood  
8300 Santa Monica Boulevard West  
Hollywood, CA 90069  
Email: [Citymanager@weho.org](mailto:Citymanager@weho.org)  
Email: [bleague@weho.org](mailto:bleague@weho.org)

With a copy to:

Lauren Langer – Best Best & Krieger  
300 S. Grand Avenue, 25<sup>th</sup> Floor  
Los Angeles, CA 90071  
Telephone: (310) 220-2176  
Email: [lauren.langer@bbklaw.com](mailto:lauren.langer@bbklaw.com)

If to Owner:

Mikeal A. Maglieri  
9015 W. Sunset Blvd.  
West Hollywood, CA. 90069  
93100 278-4232  
nancy@rainbowbarandgrill.com

With a copy to:

Gary S. Wishik, APLC  
9440 Santa Monica Blvd., S.301  
Beverly Hills, CA 90210  
Phone: 310-278-3092  
[gswlaw@gmail.com](mailto:gswlaw@gmail.com)

- 8.8. No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the parties to this Agreement and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement. Notwithstanding the foregoing, it is contemplated that the Permitted Sign will be leased to a Tenant from time to time, and the City acknowledges and agrees that the Permitted Sign may be constructed and/or operated by a Tenant rather than by Owner; provided, however, that Owner shall be liable for any default under this Agreement caused by the acts or omissions of a Tenant and shall be liable for all payments due under this Agreement, and the City shall have the right to look to Owner (rather than such Tenant) in enforcing this Agreement with respect to any such default. In the event there is a conflict between the Owner's lease with a Tenant and this Agreement, as between Owner and the City, the terms of this Agreement shall control.
- 8.9. Time of Essence. Time is of the essence for each provision of this Agreement of which time is an element.
- 8.10. Modification, Amendment, or Extension. Subject to any notice and hearing requirements imposed by law, this Agreement may be modified, amended and/or extended from time to time by mutual written consent of the City and Owner in the same manner as its adoption by ordinance as set forth in Government Code Sections 65867, 65867.5 and 65868 and Chapter 19.66 of the Municipal Code.
- 8.11. Conflicts of Law. In the event that state, regional or federal laws or regulations enacted after the Approval Date or the action or inaction of any other governmental jurisdiction in which the Property is located prevent or preclude compliance with one or more provisions of this



Agreement or require changes in plans, maps or permits approved by the City, the parties shall (a) provide the other party with written notice of such state, regional or federal restriction, a copy of such regulation or policy and a statement of conflict with the provisions of this Agreement, and (b) Owner and the City staff shall, within thirty (30) days, meet and confer in good faith in a reasonable attempt to modify this Agreement, but only to the minimum extent necessary to comply with such federal, regional or state law or regulation. The City shall cooperate with Owner in the securing of any permits which may be required as a result of such modifications. Owner may, at its option, upon notification by the City of any such required modification, elect to terminate this Agreement if the required modification is not acceptable to Owner in its sole and absolute discretion.

- 8.12. 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 referring expressly to this Section. No waiver of any right or remedy in respect of any occurrence or event shall be deemed a waiver of any right or remedy in respect of any other occurrence or event.
- 8.13. Successors and Assigns. Except as expressly provided to the contrary in this Agreement, the burdens and obligations of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement and all successors in interest to the Property or any portion thereof or any interest therein, and shall be covenants running with the land.
- 8.14. Governing State Law. This Agreement shall be construed in accordance with the laws of the State of California.
- 8.15. Constructive Notice and Acceptance. Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property 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 Property.
- 8.16. Statement of Compliance. Within thirty (30) days following any written request, in accordance with the notice provisions of this Agreement, which either party may make from time to time, the other party shall execute and deliver to the requesting party a statement certifying that: (a) this Agreement is unmodified and in full force and effect or, in effect, as modified, and stating the date and nature of such modifications; (b) that there are no current uncured defaults under this Agreement or specifying the dates and nature of any such uncured defaults; and (c) any other information relating to this Agreement or the performance thereof reasonably requested by the requesting party. The

failure to deliver such statement within such time shall be conclusive upon the party which fails to deliver such statement that this Agreement is in full force and effect without modification except as may be represented by the requesting party and that there are no uncured defaults in the performance of the requesting party. Said statement(s) shall be in a form reasonably satisfactory to the City, Owner and to any purchaser, lender, title company, governmental agency, or other person reasonably requesting such statement(s) in connection with the sale, use, development, construction, financing or marketing of the Property. The City and Owner, for their own respective uses, shall also be entitled to obtain a statement of compliance at any reasonable time.

- 8.17. Mortgagee Protections. The parties hereto agree that this Agreement shall not prevent or limit the right of Owner at its sole discretion, to encumber the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device (collectively "Mortgage") securing, among other things, financing of the purchase, development, redevelopment or operation of the Property or any portion thereof (including, without limitation, any combination of purchase financing, construction financing, bridge loans, take-out and permanent financing); provided, however, that the lien of any such Mortgage recorded after the date of this Agreement shall be subordinate to this Agreement.

The City acknowledges that prospective lenders providing such financing may request certain interpretations and modifications of this Agreement, and agrees upon request, from time to time, to meet with Owner and representatives of such lenders to discuss in good faith any such request for interpretation or modification. The City shall not unreasonably withhold its consent to any such requested interpretation or modification that the City, acting reasonably and in good faith, determines is consistent with the intent and purposes of this Agreement and protects the interests of the City under this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any Mortgage.

If the City timely receives a request from a Mortgagee requesting a copy of any notice of default given to Owner under the terms of this Agreement, the City shall provide a copy of that notice to the Mortgagee within three (3) days of sending the notice of default to Owner and concurrently notify Owner that such notice to the Mortgagee has been requested by and provided to the Mortgagee. The Mortgagee shall have the right, but not the obligation, to cure the default within a period of time equal to the cure period provided to the

Owner under this Agreement, plus an additional thirty (30) days, and City shall not exercise any of its remedies with respect to such default until the Mortgagee's cure period has expired.

Any Mortgagee who obtains title to the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. Upon obtaining title to the Property, such Mortgagee shall be entitled to all of the rights, privileges and benefits of Owner under this Agreement and shall be bound by and obligated to perform all of the obligations imposed upon Owner under this Agreement; provided, however, that such Mortgagee shall not be liable for any prior act or omission of Owner or obligated to cure any default by Owner under this Agreement.

- 8.18. Covenant of Good Faith and Fair Dealing. No party shall knowingly or intentionally do anything which shall have the effect of harming or injuring the right of the other party to receive the benefits of this Agreement.
- 8.19. Covenant of Cooperation. Owner and the City shall reasonably cooperate with and assist each other in the performance of the provisions of this Agreement, including assistance in obtaining permits for the development of the Permitted Sign which may be required from public agencies other than the City. Owner reserves the right to challenge any ordinance, measure, moratorium or other limitation in a court of law if it becomes necessary to protect the development rights vested in the Property pursuant to this Agreement.
- 8.20. Justifiable Reliance. The City acknowledges that, in investing money and planning effort in and to the Permitted Sign and all public improvements and dedication offers required hereunder, if any, and in undertaking commencement of design and construction of the Permitted Sign, Owner will be doing so in reliance upon the City's covenants contained in this Agreement and upon the enforceability of this Agreement, and the City agrees that it will be reasonable and justifiable for Owner to so rely.
- 8.21. Permitted Sign is A Private Undertaking. It is specifically understood and agreed to by and between the parties hereto that: (1) the subject property is a private property; (2) Owner shall have full power over and exclusive control of the real property herein described subject only to the limitations and obligations of Owner under this Agreement and the Permitted Sign Approval; and (3) the contractual relationship between the City and Owner is such that Owner is not an agent or partner of the City nor is City an agent or partner of Owner.

Notwithstanding the foregoing, nothing contained in this Agreement shall be deemed to waive or modify any otherwise applicable obligations the City, acting in its governmental capacity and not as a party to this Agreement, may have to Owner or any other party, under and in accordance with all applicable laws.

8.22. Further Actions and Instruments. The parties to this Agreement shall cooperate with and provide reasonable assistance to the other parties to the extent contemplated in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of any party, the other parties shall promptly execute, with acknowledgment or affidavit if reasonably required, and file or record such required instruments and writings in commercially reasonable form and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

8.23. Section Headings. All Article and Section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

8.24. Emergency Circumstances.

8.24.1. If, as the result of specific facts, events or circumstances, the City reasonably believes that a severe and immediate emergency threat to the health or safety of the City or its residents, meeting the requirements of subparagraph 8.24.2, below, requires the modification or suspension of this Agreement, the City will, after reasonable notice to Owner (in light of all the circumstances), hold a hearing on such facts, events or circumstances, at which Owner shall have the right to address the City Council. The City shall have the right to suspend this Agreement, in whole or in part, if, following such hearing, the City Council reasonably and in good faith determines that such suspension is required in order to protect the health and safety of the City and its residents.

8.24.2. For purposes of this Section 8.24, in order to permit the City to suspend this Agreement as set forth in Section 8.24.1 above, an emergency must meet each of the following criteria: (i) it must be based on severe, immediate and genuine health, safety and general welfare concerns (other than general growth management issues); (ii) it must arise out of a documented emergency situation, as declared by the President of the United States, Governor of California, or the Mayor, City Council or City Manager of the City of West Hollywood; and (iii) based upon its terms or its effect as applied, it does not apply exclusively or primarily to the Property or the Permitted Sign.

- 8.25. Severability. Invalidation of any of the provisions contained in this Agreement, or of the application thereof to any person, by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other person or circumstance, and the same shall remain in full force and effect, unless enforcement of this Agreement, as so invalidated, would be unreasonable or inequitable under all the circumstances or would frustrate the purposes of this Agreement and/or the rights and obligations of the parties hereto.
- 8.26. Interpretation. The language in all parts of this Agreement shall in all cases be construed simply, as a whole and in accordance with its fair meaning and not strictly for or against any party. The parties hereto acknowledge and agree that this Agreement has been prepared jointly by the parties and has been the subject of arm's length and careful negotiation over a considerable period of time, that each party has independently reviewed this Agreement with legal counsel, and that each party has the requisite experience and sophistication to understand, interpret and agree to the particular language of the provisions hereof. Accordingly, in the event of an ambiguity in or dispute regarding the interpretation of this Agreement, this Agreement shall not be interpreted or construed against the party preparing it, and instead other rules of interpretation and construction shall be utilized.
- 8.27. Counterparts. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original and all of which when taken together shall constitute one and the same instrument.
- 8.28. Existing Agreement. This Agreement supersedes the existing Development Agreement for the property at 9015 Sunset, which is in no further force or effect upon the Commencement Date of this Agreement.
- 8.29. Entire Agreement. This Agreement consists of \_\_\_\_\_ pages and \_\_\_\_\_ exhibits, which constitute the entire understanding and agreement of the parties.

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IN WITNESS WHEREOF, the parties have each executed this Agreement  
on the date first written above.

**CITY OF WEST HOLLYWOOD**

\_\_\_\_\_

**BAM SUNSET, LLC**

By: \_

Name: Andrew Bilanzich

Title: Managing Partner

By: \_

Name: Lou Adler

Title: Managing Partner

By: \_

Name: Mikeal A. Maglieri

Title: Managing Partner

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## EXHIBIT A

### Legal Description of Property

Certain real property located in the City of West Hollywood, County of Los Angeles, State of California, described as follows:

## EXHIBIT B

### Description of Permitted Sign

The Permitted Sign at 9015 Sunset Boulevard would replace the existing two-sided 14 feet by 48 feet static billboard with a two-sided digital and internally lit static billboard, with each sign face measuring 20 feet by 50 feet. The pole will be painted black and the base of the structure will be backlit.



**EXHIBIT C**  
**Extraordinary Public Benefit (Legends of Sunset)**

<b>OBM Proposal</b>			
<b>Milestone</b>	<b>Amount to be Released from City to Legends of Sunset</b>	<b>Use of Funds</b>	<b>Estimated Date</b>
<b>January 2024 - Rainbow/Roxy Commencement Date - \$160,000 Deposit</b>			
1. 9009/9015 Project Approval	\$ 100,000	Legends of Sunset Management and Professional Arts Consultant Fees	Jan-24
2. Professional Arts Consultant contracted and Urban Art Subcommittee wACAC approval	\$ 60,000	Design Competition Finalists Payment	Mar-24
<b>July 2024 - Whisky Permitted Sign Payment Commencement - \$110,000 Deposit</b>			
3. Second Meeting w Urban Art, Design Vision Winner Selected or project terminated	\$ 100,000	Legends of Sunset Management and Competition Winner Design Advancement	Jul-24
<b>January 2025 - Rainbow/Roxy Permitted Sign Payment Commencement - \$160,000 Deposit</b>			
4. Urban Art Subcommittee ACAC final Approval	\$ 100,000	Construction Documentation of Approved Project	Jan-25
<b>July 2025 - Whisky 1st Anniversary - \$110,000 Deposit</b>			
5. Permits to build submitted	\$ 50,000	Permit Fees	Jul-25
<b>January 2026 - Rainbow/Roxy 1st Anniversary - \$160,000 Deposit</b>			
<b>July 2026 - Whisky 2nd Anniversary - \$110,000 Deposit</b>			
6. Approved Permits and Final Rainbow/Roxy/Whisky payments (later of)	\$ 400,000	Construction Costs	Jan-26
	<b>\$ 810,000</b>		

## EXHIBIT D

### Public Realm Improvements

The Public Realm Improvements at 9015 Sunset Boulevard are pedestrian enhancements in the courtyard of the building which include native landscaping, permeable pavers, and a removed curb cut on Sunset Blvd. Physical improvements also include a curved wall that will display artwork celebrating the music history of the Sunset Strip.

9015 Sunset Boulevard has been voluntarily designated as a West Hollywood Cultural Resource in connection with this agreement.