



AGENDA REPORT

Meeting Date: September 20, 2016

Item Number: D-8

To: Honorable Mayor & City Council

From: Mark Cuneo, City Engineer
Tristan Malabanan, Civil Engineer

Subject: AN ENCROACHMENT AGREEMENT WITH 336 N. CAMDEN, LLC, OWNER OF THE PROPERTY LOCATED AT 336 N. CAMDEN DRIVE TO ENCROACH INTO THE PUBLIC RIGHT-OF-WAY ON CAMDEN DRIVE

Attachments:

1. Architectural Commission Approval Letter
2. Façade Renderings
3. Encroachment Agreement
4. Missoni Agreement

RECOMMENDATION

Staff recommends that the City Council move to approve an encroachment agreement with 336 N. Camden, LLC to allow for the encroachment into the public right-of-way.

INTRODUCTION

Christie's intends to open a west coast flagship retail store at 336 N. Camden Drive. On August 17, 2016, Christie's received Architectural Commission approval for a façade design reflective of its interest to establish this store as its flagship while promoting and maintaining its brand image. This approved façade would encroach into the public right-of-way on Camden Drive.

DISCUSSION

The encroachment agreement with Christie's will allow them to install a building façade that encroaches into the public right-of-way 0.73 feet as detailed in Exhibit "A." Encroachment agreements require the business or property owner to "Hold Harmless" the City should the private property located in the right-of-way be damaged. Also, an applicant is required to provide insurance to the City to protect the City from claims resulting from a private owner's encroachments placed within the right-of-way.

Staff has reviewed the proposed encroachment and finds that it would not adversely affect any persons or property, public health, welfare or safety.

FISCAL IMPACT

On August 10, 2016, the applicant paid the City of Beverly Hills a fee of \$7,502.00 for the processing of the permanent encroachment application. Staff negotiated a lease amount of \$3,000 associated with the encroachment agreement for the first year. Subsequent years will be adjusted by the estimated percentage increase as set forth by the Consumer Price Index (CPI) published by the Bureau of Labor Statistics of the United States Department of Labor.

The lease amount of \$3,000 was calculated based on the previous encroachment agreement with Rodeo-Santa Monica LLC for 469 North Rodeo Drive which was the Missoni flagship store. Based on Missoni's contract attached, the 2016 lease fee should be \$7,820.64 for approximately 96.25 square feet (SF) of encroachment. The resulting unit cost is \$81.25/SF. Applying this current price to Christie's 36.5 SF encroachment area, the lease fee should be approximately \$2,965.63. The applicant first proposed an annual lease fee of \$1,500. Staff recommended a lease fee of \$3,000 and the applicant accepted.



George Chavez

Approved By

Attachment 1



Community Development Department
Planning Division

Loren Shanks, Creative Space
530 Molino St. #107
Los Angeles, CA 90013

RE: Christie's – PL1613740
Façade remodel

August 18, 2016

Your project (Christie's / 332-336 N. Camden Drive / PL1613740) was **reviewed and approved** by the Architectural Commission at their meeting on August 17, 2016. Please see information below regarding the status of your project. The video recording of the meeting can be accessed [here](#).

Conditions of Approval / Approval Resolutions

Please note that we are waiting on the approval resolutions to be signed by the Chair of the Commission. Once those are ready, an email will be sent with the resolution attached for your records. In the meantime, if your project had project-specific conditions, please provide your project planner with architectural plans that have fully incorporated those conditions. **This must be done prior to submitting for plan check** to ensure our Development Services Program has the most up-to-date plans available for cross-referencing during the plan check process. The project-specific conditions of approval for your project are as follows:

1. The approval of project components that relate to the increase in building height shall be contingent upon the applicant securing a Development Plan Review Permit. Any architectural modifications required as a result of such approval may be subject to additional architectural review.
2. The applicant shall secure an encroachment agreement from City Council and the adjacent property owner to the south. Any architectural modifications required as a result of such agreements may be subject to additional architectural review.
3. Final architectural details for the storefront system and metal cladding to address the transition of such elements along the sloping finish grade at the public sidewalk shall be provided to the City's Urban Designer for final review and approval.
4. The applicant shall coordinate with the City's Urban Designer to develop a landscape plan for the edges of the surface parking area at the rear of the property.
5. A recessed soffit light shall be included on the underside of the rear staircase, subject to final review and approval by the City's Urban Designer.
6. The applicant may consider installing a security door at the rear staircase, subject to final review and approval by the City's Urban Designer.



Construction Permit Process

Your project is ready to begin the next step in the construction permit process, which requires development related plan review. Development plans can now be submitted to the Development Services Division for the necessary development and construction permits necessary to begin construction. **Note: If your project was approved with project-specific conditions, plans that have fully incorporated such conditions must be provided to your project planner prior to submitting for plan check.**

Please call 310.285.1141 during regular business hours or visit www.beverlyhills.org/buildingandsafety to make an appointment with a Plan Review Engineer (PRE) and Planner in the Development Services Division for questions. Please include a copy of the attached resolution in your plan set. If the attached conditions require you to submit revised plans prior to submitting for the plan review process, please contact your project planner.

Electronic Plan Review Services

The Development Services Division now offers paperless electronic plan review services for all construction related plan checks. For information on how to begin an electronic plan review submittal or additional information please visit www.beverlyhills.org/electronicreview.

Approved Plan Expirations

The Community Development Department will discard unclaimed plans after ninety (90) days following the appeal period, if you have not obtained your permit. After that time, you may need to provide duplicate plans subject to a reprocessing fee for conformity review. Any significant revisions to the previously approved plans may also require further Architectural Review and therefore be subject to separate additional fees.

Appeal Process

Decisions of the Architectural Commission may be appealed by any interested party to the City Council within fourteen (14) days of the date of the Commission's decision. Appeals must be filed in writing with the City Clerk at 455 North Rexford Drive, Beverly Hills, and must be accompanied by an appeal fee.

Sincerely,

CINDY GORDON, AICP

Associate Planner | City of Beverly Hills | 310.285.1191

CC: Stephen P. Webb, Evan Raabe, George Harb, Project File

Attachment 2



- (N) 6' PARAPET WALL. STEEL TOWELED STUCCO FINISH. COLOR TO MATCH METAL PANEL
- (N) INSET BACKLIT SIGNAGE; SEE A5.0
- (N) BLIND-FASTENED CUSTOM BREAK-FORMED PAINTED PEARLESCENT WHITE METAL PANEL
- (N) ORAMA MINIMAL FRAME TRIPLE TRACK SLIDING WINDOW SYSTEM
- (N) METAL PANEL TO MATCH
- (N) TEMPERED GLASS ENTRANCE DOOR

ARCHITECTURAL REVIEW PLANS

CREATIVE SPACE		120179513, 120179514, 120179515, 120179516, 120179517, 120179518, 120179519, 120179520, 120179521, 120179522, 120179523, 120179524, 120179525, 120179526, 120179527, 120179528, 120179529, 120179530, 120179531, 120179532, 120179533, 120179534, 120179535, 120179536, 120179537, 120179538, 120179539, 120179540, 120179541, 120179542, 120179543, 120179544, 120179545, 120179546, 120179547, 120179548, 120179549, 120179550, 120179551, 120179552, 120179553, 120179554, 120179555, 120179556, 120179557, 120179558, 120179559, 120179560, 120179561, 120179562, 120179563, 120179564, 120179565, 120179566, 120179567, 120179568, 120179569, 120179570, 120179571, 120179572, 120179573, 120179574, 120179575, 120179576, 120179577, 120179578, 120179579, 120179580, 120179581, 120179582, 120179583, 120179584, 120179585, 120179586, 120179587, 120179588, 120179589, 120179590, 120179591, 120179592, 120179593, 120179594, 120179595, 120179596, 120179597, 120179598, 120179599, 120179600, 120179601, 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Project Name	STREETSCAPE MONTAGES	Client	CHRISTIE'S INC
Site No.	08-01-10	Project No.	CHRISTIE'S RETAIL FLAGSHIP, BEVERLY HILLS
Scale	1/8" = 1'-0"	Address	330 N CAMDEN DR BEVERLY HILLS CA 90210

A11.2

Attachment 3



ENCROACHMENT AGREEMENT

1. Encroacher and Encroacher's Address for Notices: 336 N. CAMDEN, LLC, a limited liability company
534 Muirfield
Los Angeles, California 90020

2. Date of this Agreement: _____, 2016

3. Termination Date: The earlier of (i) the date upon which the façade improvements described on Exhibit "A" attached hereto (the "Façade") are removed; (ii) the date on which "Christie's" ceases to operate its business at 336 North Camden Drive, Beverly Hills, California; or (iii) the date on which this Encroachment Agreement terminates or is terminated in accordance with its terms.

4. Encroachment: Commencing on the date on which the City of Beverly Hills ("City") issues the permits for the installment of the Façade (the "Permit Date"), the Façade may encroach into the area described on Exhibit "B" above the public sidewalk area adjacent to the street frontage of the structure located at 336 North Camden Drive, Beverly Hills, California (the "Premises").

5. Encroachment Payment: Commencing on the Permit Date, and thereafter on each anniversary of the Permit Date, Encroacher shall pay to the City at 455 North Rexford Drive, Third Floor, Beverly Hills, CA 90210, Attn: Director of Finance Administration, in advance (not in arrears), and without proration for any partial year at the end of the term of this Façade Agreement, the sum of \$3,000.00, increased on each anniversary of the Permit Date (each, an "Adjustment Date") by the estimated percentage increase in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor ("Bureau") for Urban Wage Earners and Clerical Workers for All Items (CPI W) U.S. City average or successor thereto ("CPI") during the year ending on the applicable Adjustment Date, as determined by City by dividing the CPI published 3 months prior to the applicable Adjustment Date by the CPI published 15 months prior to the applicable Adjustment Date. (If the CPI is converted to a different standard reference base or otherwise revised, the determination shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau, or if the Bureau should fail to publish the same, then with the use of such conversion factor, formula or table for converting the CPI as may be published by any nationally recognized publisher of similar statistical information. If the CPI ceases to be published and there is no successor thereto, then such other index selected by City in good faith shall be used.)

6. Additional Terms and Conditions:

Additional Terms and Conditions attached hereto as Exhibit "C" are incorporated herein by reference.

IN WITNESS WHEREOF, CITY and ENCROACHER have duly executed this Encroachment Agreement as of _____, 2016.

"City":

CITY OF BEVERLY HILLS,
a municipal corporation

Mayor

ATTEST:

Byron Pope,
City Clerk

APPROVED AS TO FORM:



LAURENCE S. WIENER
City Attorney

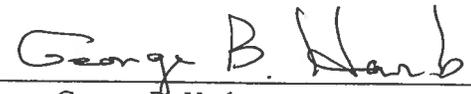
APPROVED AS TO CONTENT:

 MPR

Assistant City Manager / Director of Public Works

"Encroacher":

336 N. CAMDEN, LLC, a limited liability company
GEORGE B. HARB and CARYN TAMARA HARB
TRUSTEES OF THE HARB COMMUNITY
PROPERTY TRUST, Managing Member

By: 

Print Name: George B. Harb

Title: Trustee

EXHIBIT "A"

DESCRIPTION OF FAÇADE IMPROVEMENTS

EXHIBIT "A"

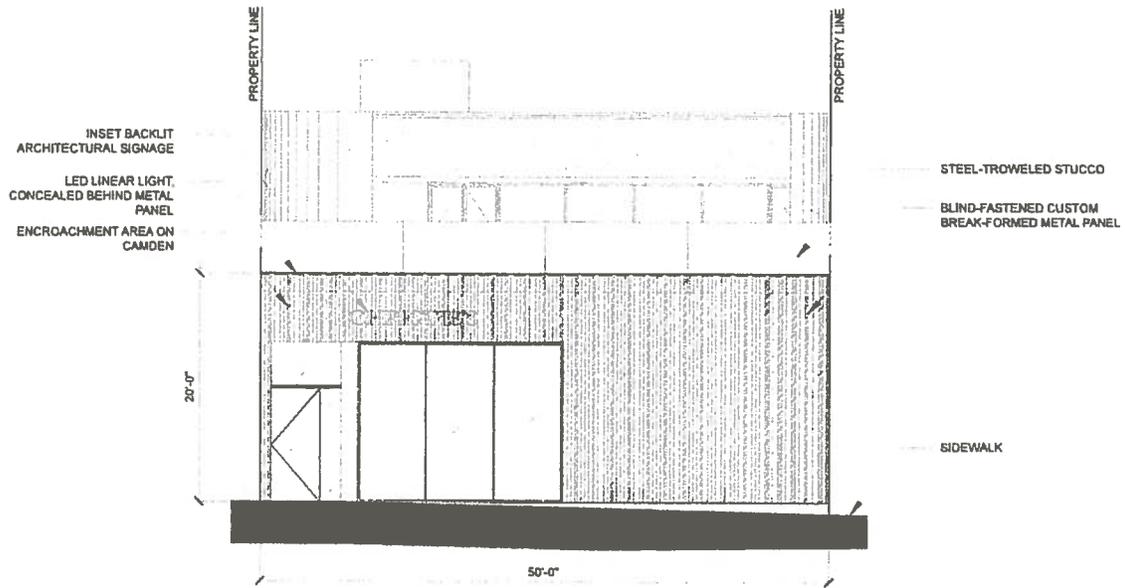
The building located at 332-336 N. Camden Dr. currently encroaches on the N. Camden Dr. sidewalk according to an ALTA survey conducted in April 2016. The current encroachment is a maximum of 0.73' deep and covers a total area of 9.1 Square Feet. The project proposed by Christie's removes the existing building skin that partially contributes to the encroachment, and replaces it with a new and more contemporary style of façade treatment that is in line with their brand image. In order to create a unified appearance across the façade, the encroachment depth will be limited to the existing 0.73' and increased to a total area of 36.5 Square Feet. This area is illustrated in the Encroachment Easement Exhibit provided by a licensed Land Surveyor (included in Exhibit "B").

The new façade system contributing to the encroachment is a series of 20' tall, undulating metal panels that are interlocked and attached to the building at hidden seams. The panels span the full length of the façade on N. Camden Drive, then turn to wrap the full length of the South façade and a part of the East façade (there is no North façade). The radius of the undulations will vary and will create an encroachment on the N. Camden Dr. sidewalk that is of varying depth, with a maximum of 0.73' as stated above. This maximum is inclusive of signage and lighting, which have been integrated into the design of the panels. At the entry door and glass storefront, the encroaching panels will be elevated approximately 14' off the sidewalk, which affect approximately a 5' tall strip of airspace. The square footage of this airspace has been included in the increase of total encroachment area as stated above as well.

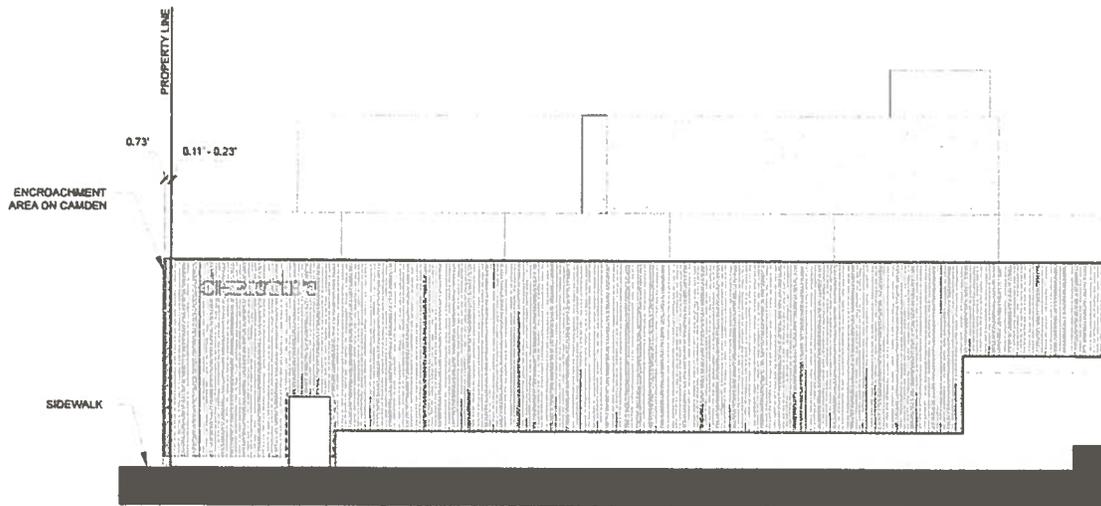


West-Facing Rendering

(continued on next page)



West-Facing Elevation



South-Facing Elevation

(end of Exhibit "A")

EXHIBIT "B"

DESCRIPTION OF ENCROACHMENT AREA

EXHIBIT "B"

EXHIBIT 'A'
ENCROACHMENT EASEMENT LEGAL

BEING THE LANDS LYING WITHIN THE RIGHT OF WAY OF CAMDEN DRIVE, SAID LANDS LYING DIRECTLY ADJACENT TO LOT 7 IN BLOCK 8 OF BEVERLY, IN THE CITY OF BEVERLY HILLS, COUNTY OF LOS ANGELES, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 11, PAGE 94, OF MAPS IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT BEING THE MOST WESTERLY CORNER OF SAID LOT 7 AND LYING ON THE NORTHEASTERLY RIGHT OF WAY LINE OF SAID CAMDEN DRIVE AS SHOWN ON SAID MAP; THENCE LEAVING SAID RIGHT OF WAY LINE AND ALONG THE SOUTHWESTERLY PROJECTION OF THE NORTHERLY LINE OF SAID LOT 7 S50°28'30"W A DISTANCE OF 0.73 FEET; THENCE PARALLEL WITH SAID RIGHT OF WAY LINE, S39°31'30"E A DISTANCE OF 50.00 FEET TO THE SOUTHWESTERLY PROJECTION OF THE SOUTHERLY LINE OF SAID LOT 7; THENCE ALONG SAID PROJECTION LINE N50°28'30"E A DISTANCE OF 0.73 FEET TO THE SOUTHWEST CORNER OF SAID LOT 7 AND AFOREMENTIONED NORTHEASTERLY RIGHT OF WAY LINE OF CAMDEN DRIVE ; THENCE ALONG SAID RIGHT OF WAY LINE N39°31'30"W A DISTANCE OF 50.00 FEET TO THE POINT OF BEGINNING.

THIS DOCUMENT WAS PREPARED BY ME OR
UNDER MY DIRECTION ON: 08/23/2016



W. WAYNE WHATLEY, LS 8645
EXPIRES: 12/31/2017



(continued on next page)

EXHIBIT 'B'

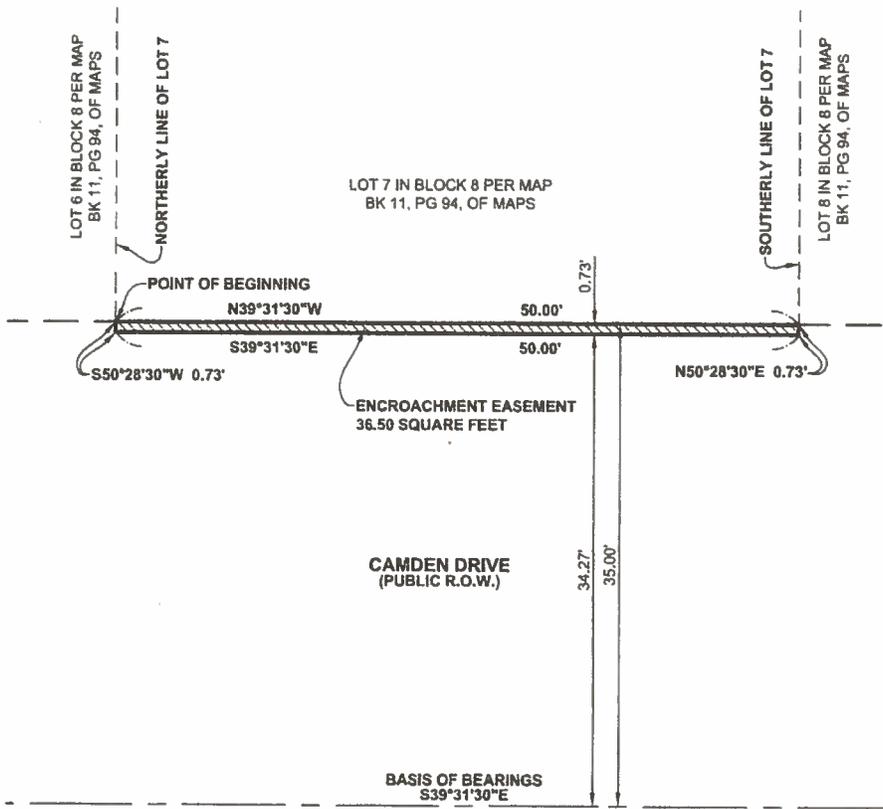
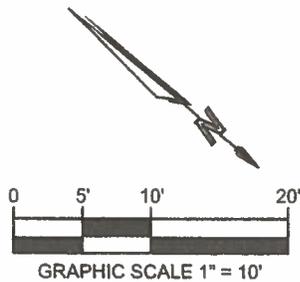
ENCROACHMENT EASEMENT EXHIBIT

BASIS OF BEARING

BEING THE CENTERLINE OF CAMDEN DRIVE PER TRACT MAP BOOK 11, PG 94, COUNTY OF LOS ANGELES, A BEARING OF S39°31'30"E

LEGEND

- PROPOSED LOT LINE
- - - EXIST. LOT LINE
- - - CENTERLINE
- - - RIGHT OF WAY LINE



(end of Exhibit "B")

EXHIBIT "C"

ADDITIONAL TERMS AND CONDITIONS

RECITALS

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the laws of the State of California and the Beverly Hills Municipal Code.

B. City and Encroacher desire to enter into this Encroachment Agreement for a storefront façade on the real property located in the City, which is herein described, upon the terms and conditions set forth herein. To the extent the Façade encroaches on City sidewalks, it meets all the following criteria:

- (1) the encroachment use is consistent with the General Plan;
- (2) the encroachment use promotes the harmonious development of the area;
- (3) the encroachment use does not adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property;
- (4) the encroachment use does not create any significant traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards;
- (5) the encroachment use does not impede the safe and orderly flow of pedestrians along the public right-of-way;
- (6) the encroachment use does not adversely impact parking in the vicinity as a result of employee or patron parking demands;
- (7) the encroachment use does not create a substantial adverse impact on persons or property; and
- (8) the encroachment use does not adversely affect the public health, welfare and safety.

7. GENERAL.

These Standard Terms and Conditions, and its attachments, shall be deemed fully incorporated in the Encroachment Agreement to which this Exhibit is attached, and these Standard Terms and Conditions and the Encroachment Agreement and its other Exhibits shall hereinafter be collectively referred to as the "Agreement." All terms shall, unless expressly provided to the contrary herein, have the same respective meaning as set forth in the Encroachment Agreement. The Section numbers of this Exhibit are a continuation of the Section numbers of the Encroachment Agreement.

8. CITY RIGHT TO TERMINATE.

Notwithstanding the Recitals above, in the event City hereafter determines that the Façade or the encroachment poses a threat to the health or safety of passersby or the community and Encroacher fails to commence to cure the threat within ten (10) days after written notice from City or fails to cure the matters giving rise to the threat within thirty (30) days after City's written notice, then City may terminate this

Agreement by further written notice to Encroacher. In the event of any such termination, Encroacher shall remove the Façade at its sole cost and expense (and in compliance with the other applicable terms of this Agreement).

9. ADDITIONAL CONDITIONS.

City may impose such additional conditions on the Façade and Premises as deemed necessary by City to protect City, persons, property, or the public health, welfare, and safety.

10. ADDITIONAL FEES.

Encroacher shall pay as additional fees, all taxes and assessments of any nature whatsoever levied upon the Premises, insurance premiums for all insurance required under this Agreement, and all fees and expenses relating to the use of the Premises, including, but not limited to, costs of permit fees.

11. MAINTENANCE.

Encroacher at its own expense shall keep the Premises in a clean and sanitary condition. If Encroacher does not keep the Façade clean, and fails to correct any unclean or unsanitary condition within 48 hours after being notified in writing to do so by City, City may enter the Premises and remedy the condition, or conditions, and charge the cost to Encroacher.

12. ALTERATIONS AND REPAIRS; REMOVAL OF FAÇADE.

Encroacher accepts the Premises in the condition they now are (without a representation or warranty, express or implied), and City shall not be required to make any alterations, improvements or repairs therein or thereon. Encroacher hereby waives any and all rights it may have to any expressed or implied warranties concerning the condition of Premises. Encroacher shall not make any changes to the Façade without first securing the prior consent of City in writing. All such approved changes or removals shall be at the sole expense of Encroacher. Encroacher may remove the Façade upon at least 30 days' prior written notice to City, subject to Encroacher's compliance with the other terms of this Agreement.

13. SIGNS AND ADVERTISEMENTS.

No signs or advertising matter of any kind shall be permitted unless and until approved in writing by City. Notwithstanding the foregoing, Encroacher is encouraged to install Holiday Decorations in appropriate areas within Encroacher's business establishment in accordance with *Business Owner's Guide to Installing Holiday Decorations* or other rules as the City may establish from time to time.

14. CONDUCT OF BUSINESS.

Encroacher shall at all times conduct and operate its business in a quiet and orderly manner to the satisfaction of City so that same shall not become or constitute a nuisance either public or private.

15. EMPLOYEES AND MECHANICS' LIEN.

Encroacher shall keep said Premises and every estate, right, title and interest therein, or in or to any part thereof, at all times during the term of this Agreement, free and clear of any mechanics' liens and other liens, including, but not limited to, liens for labor, services, supplies, equipment, or material. Encroacher will at all times fully pay and discharge and wholly protect, defend, indemnify and hold harmless City with respect to such liens, and any claims, assertions or filing thereof.

16. TAXES.

Encroacher shall exonerate, indemnify and hold harmless City from and against, shall defend City from and against, and shall assume full responsibility for, payment of all wages or salaries and all federal, State, County and City taxes or contributions imposed or required under the Unemployment Insurance, Social Security, Income Tax laws, Worker's Compensation laws, or other laws with respect to Encroacher's employees engaged in the performance of Encroacher's obligations and operations hereunder.

This Agreement may create a possessory interest in public property which is subject to taxation. In the event such interest is created, Encroacher shall pay any and all taxes levied on such interest.

Encroacher shall pay any and all taxes upon personal property and improvements belonging to said Encroacher and upon its possessory interests, if any, and Encroacher shall pay all sales and other taxes levied against the operation of said business.

17. INSURANCE.

Encroacher shall procure and maintain at Encroacher's own cost and expense for the duration of this Agreement, the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the condition of the Premises or the possession, occupancy, operation and use of the Premises by Encroacher, Encroacher's agents, representatives, employees, or subcontractors.

A. Extent of Coverage.

Encroacher shall procure limits of insurance coverage in the following minimum amounts:

1. Comprehensive General Liability: Two Million Dollars (\$2,000,000), combined single limit per occurrence for bodily injury and property damage. Such comprehensive liability policy shall expressly include coverage for fire-legal liability.

2. Worker's Compensation and Employer's Liability: Worker's Compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of One Million Dollars, (\$1,000,000) per accident.

3. Builder's Risk or Tenant Improvements Insurance: At City's discretion, either (1) a tenant improvements or betterments insurance or (2) an "all risks" builder's risk insurance. Such insurance shall apply to Façade improvements in place and all material and equipment at the job site furnished under contract. Such insurance shall cover all risks, including but not limited to vandalism and malicious mischief, and shall further cover any damages arising as a result of construction of any improvements, changes or alterations to the Premises, including but not limited to, hook-ups to utilities or upgrading of any utilities; but excluding contractors', subcontractors' and construction managers' tools and equipment and property owned by contractors' or subcontractors' employees, with limits in accordance with project value.

4. Property Insurance: Property insurance shall be provided for the Façade. Encroacher shall obtain and keep in force during the term of this Agreement a policy or policies of insurance covering loss or damage to the Façade, in the amount of at least one hundred percent (100%) of the full replacement value thereof, as the same may exist from time to time, against all perils included

within the classification of fire, extended coverage, vandalism, malicious mischief, and special extended perils. City shall bear no responsibility for any loss, damage or destruction of the Façade even if Encroacher fails to procure and maintain the insurance required hereunder.

B. Duration of Coverage. Encroacher shall procure and maintain the insurance coverage described in subsections A(1), (2) and (4) of this Section prior to commencing occupancy of the Premises and for the entire term of such occupancy. Encroacher shall procure and maintain the insurance coverage described in subsection A(3) of this Section 17, prior to commencing any construction or demolition on the Premises and until completion and acceptance of such work.

C. Deductibles and Self-Insured Retention. Such insurance policies shall have no deductibles or self-insured retentions unless approved in advance by City in writing. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects City, its officials, and employees; or Encroacher shall procure a bond guaranteeing payment of losses, related investigation, claims administration and defense expenses.

D. Other Insurance Provisions.

1. General Liability:

(i) City, members of its City Council, boards and commissions, officers, agents and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Encroacher; products and completed operations of Encroacher; premises owned, leased or used by Encroacher, or arising from or in any manner connected to Encroacher's business, activities, operations, services or work conducted in or about the Premises. The coverage shall contain no special limitations on the scope of protection afforded to City, members of City Council, boards and commissions, officers, agents, and employees.

(ii) Encroacher's insurance coverage shall be primary insurance as respects City, members of its City Council, boards and commissions, officers, agents, and employees. Any insurance or self-insurance maintained by City, its officials, and employees shall be in excess of Encroacher's insurance and shall not contribute to it.

(iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, members of its City Council, boards and commissions, officers, agents, and employees.

(iv) Coverage shall state that Encroacher's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Worker's Compensation, Employer's Liability and Property Coverages: The insurer shall agree to waive all rights of subrogation against City, members of its City Council, boards and commissions, officers, agents, and employees for losses arising from the condition, occupancy, possession of the Premises or any activities or operations of Encroacher herein.

3. All Coverages.

(i) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to City as set forth in Section 25 of this Agreement.

(ii) If Encroacher, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may obtain (but has no obligation to do so) such insurance in Encroacher's name or as agent of Encroacher and shall be compensated by Encroacher for the costs of the insurance premiums or may deduct such costs from the security deposit required hereunder. Encroacher shall pay City interest on paid insurance premiums at the maximum rate permitted by law computed from the day written notice is received that the premiums have been paid.

E. Acceptability of Insurance. All insurance policies are to be placed with insurers holding a "General Policy Holders' Rating" of B+VII or better as set forth in the most current issue of "Best's Insurance Guide" and shall be authorized to do business in California.

F. Verification of Coverage. Prior to exercising any right granted under this Agreement, Encroacher shall furnish City with a certificate or certificates of insurance verifying all insurance coverage required by this Section. Said certificates shall be signed by a person authorized by that insurer to bind coverage on its behalf. Current copies of said certificates shall be maintained on file with the City Clerk at all times during the term of this Agreement.

G. Increase in Required Insurance Coverages. City may increase the dollar amount of coverage required under any of the policies described above, upon prior written notice to Encroacher.

18. COMPLIANCE WITH LAWS AND ORDINANCES.

Encroacher shall use the Premises and conduct and maintain the Façade in accordance with all federal, State, County and City laws, ordinances, rules and regulations as may from time to time be applicable.

19. PERMITS AND LICENSES.

Encroacher shall be required to obtain any and all permits and licenses as may from time to time be required in connection with the services to be performed under this Agreement and the installation, maintenance or repair of the Façade.

20. WAIVERS.

A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

21. HOLDOVER.

Any holding over by Encroacher after the expiration or any termination of this Agreement or of any extension or renewal thereof shall not constitute a renewal or extension of the term hereof.

22. HOLD HARMLESS.

Encroacher agrees to defend, indemnify and hold harmless City and members of its City Council, boards and commissions, officers, agents, and employees (hereinafter, collectively "City parties") from and against all loss, damage, cost, expense, liability, claims, demands, suits, attorneys' fees and judgments arising from or in any manner connected to Encroacher's possession, occupancy, use,

construction or demolition of the Façade or Premises or arising from or in any manner connected to the condition of the Premises or Façade and Encroacher's business, activities, operations, services or work conducted in, on or about the Premises.

Encroacher further agrees to indemnify, defend and hold harmless all City parties, from and against all loss, damage, costs, expense, liability, claims, demands, suits, attorneys' fees and judgments arising from or in any manner connected to the furnishing or supplying of any work, services, materials, equipment or supplies by any persons, firms, corporations or other entities in connection with this Agreement or Encroacher's operations.

Without limiting the generality of the foregoing, Encroacher agrees that no City party shall be liable for any injury to Encroacher's business or any loss of income therefrom, or for damage to the goods, wares, merchandise, improvements or other property of Encroacher, Encroacher's officers, agents, employees, contractors, invitees, or customers, or any other person in, on or about the Premises, or personal injury or death of Encroacher, its officers, agents, employees, contractors, invitees, and customers.

Encroacher shall further indemnify and hold harmless City from and against any and all claims arising (i) from any breach or default in the performance of any obligations on the part of Encroacher to be performed under the terms of this Agreement and the encroachment permit issued pursuant hereto, or (ii) from any negligence or other wrongful conduct of Encroacher. In the event any action or proceeding is brought against City by reason of such claim, Encroacher, upon notice from City, shall defend such action or proceeding at Encroacher's expense, by legal counsel satisfactory to City.

23. INDEPENDENT CONTRACTOR.

It is understood and agreed that Encroacher, in the performance of this Agreement, will be acting in a wholly independent capacity and not as the agent, employee, partner, or joint venturer of City. This Agreement does not create a tenancy of any nature whatsoever between City and Encroacher.

24. DEFAULT; TERMINATION; REMOVAL OF FAÇADE.

In the event Encroacher fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Encroacher shall be deemed in default in the performance of its obligations under this Agreement. If such default is a monetary default which is not cured within a period of three (3) days after delivery of written notice of default from City to Encroacher, specifying the nature of such default and the steps necessary to cure such default, City may terminate this Agreement forthwith by giving written notice thereof to Encroacher. If such default is a non-monetary default which is not cured within ten (10) days after written notice of default from City to Encroacher, specifying the nature of such default and the steps necessary to cure such default, City may terminate this Agreement forthwith by giving written notice thereof to Encroacher. Upon termination of this Agreement by City due to a default by Encroacher or other termination or expiration of this Agreement, Encroacher shall, at its sole cost and expense, remove the Façade and restore the storefront to its condition prior to the construction and installation of the Façade.

25. NOTICES.

All notices, demands, requests and approvals to be given under this Agreement shall be given in writing and shall be deemed served when delivered personally, or seventy-two (72) hours after the deposit thereof in the United States mail, postage prepaid and addressed as hereinafter provided. All notices, requests and approvals from Encroacher to City shall be addressed to: Office of the City Manager, 455

North Rexford Drive, Fourth Floor, Beverly Hills, California 90210. All notices, demands, requests and approvals from City to Encroacher shall be addressed to the Encroacher at the address set forth in Section 1 of this Agreement. Either party hereto may, from time to time by notice in writing served upon the other party as aforesaid, designate a different mailing address or a different person to whom all such notices or demands are thereafter to be addressed.

26. COSTS OF LITIGATION.

If either party hereto institutes any action or proceeding in court to enforce any provision hereof or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing party shall be entitled to receive from the losing party all costs and expenses and such amount as the court may adjudge to be reasonable attorneys' fees for the costs incurred by the prevailing party in such action or proceeding.

27. CAPTIONS FOR CONVENIENCE.

The captions herein are for convenience only, are not a part of this Agreement and do not in any way limit, define or amplify the terms and provisions hereof.

28. COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which is an original, and all of which together constitute but one and the same document.

29. MERGER OF NEGOTIATIONS.

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto with respect to the subject matter hereof and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any amendment to this Agreement shall only be valid if in writing and signed by both parties.

30. GOVERNING LAW.

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties, shall be interpreted and construed pursuant to the law of the State of California.

Certificate of Insurance (Con't)

OTHER Coverage

SLD9.15.16

INSR LTR	TYPE OF INSURANCE	ADDL INSR	WVD SUBR	POLICY NUMBER	EFFECTIVE DATE (MM/DD/YY)	EXPIRATION DATE (MM/DD/YY)	LIMIT
C	COURSE OF CONSTRUCTION			CLP3016938	7/1/2016	7/1/2017	\$16,100,000

Attachment 4



ENCROACHMENT AGREEMENT

1. **Encroacher:** Rodeo-Santa Monica LLC
 Address for Notices:
 9629 Brighton Way
 Beverly Hills, CA 90210

2. **Date of this Agreement:** September 15, 2009

3. **Termination Date:** The earlier of (i) the date upon which the façade improvements described on Exhibit "A" attached hereto (the "Façade") are removed; (ii) the date on which "Missoni" ceases to operate its business at 469 North Rodeo Drive in Beverly Hills, California; or (iii) the date on which this Encroachment Agreement terminates or is terminated in accordance with its terms.

4. **Encroachment:** Commencing on the date on which the City of Beverly Hills ("City") issues the permits for the installment of the Façade (the "Permit Date"), the Façade may encroach into the area described on Exhibit "B" above the public sidewalk area adjacent to the street frontage of the structure located at 469 North Rodeo Drive, Beverly Hills, California (the "Premises").

5. **Encroachment Payment:** Commencing on the Permit Date, and thereafter on each anniversary of the Permit Date, Encroacher shall pay to the City at 455 North Rexford Drive, Third Floor, Beverly Hills, CA 90210, Attn: Director of Finance Administration, in advance (not in arrears), and without proration for any partial year at the end of the term of this Façade Agreement, the sum of \$7,000.00, increased on each anniversary of the Permit Date (each, an "Adjustment Date") by the estimated percentage increase in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor ("Bureau") for Urban Wage Earners and Clerical Workers for All Items (CPI W) U.S. City average or successor thereto ("CPI") during the year ending on the applicable Adjustment Date, as determined by City by dividing the CPI published 3 months prior to the applicable Adjustment Date by the CPI published 15 months prior to the applicable Adjustment Date. (If the CPI is converted to a different standard reference base or otherwise revised, the determination shall be made with the use of such conversion factor, formula or table for converting the CPI as may be published by the Bureau, or if the Bureau should fail to publish the same, then with the use of such conversion factor, formula or table for converting the CPI as may be published by any nationally recognized publisher of similar statistical information. If the CPI ceases to be published and there is no successor thereto, then such other index selected by City in good faith shall be used.

6A. Additional Terms and Conditions:

The Additional Terms and Conditions attached hereto as Exhibit "C" are incorporated herein by reference.

6B. Termination of Prior Encroachment Agreement

The Encroachment Agreement dated April 30, 2009, between the City and Encroacher, also known as City Agreement No. 167-09, shall be terminated upon the date that this Agreement is executed.

IN WITNESS WHEREOF, CITY and ENCROACHER have duly executed this Encroachment Agreement as of September 15, 2009.

"City":

"Encroacher":

CITY OF BEVERLY HILLS,
a municipal corporation

RODEO-SANTA MONICA, LLC,
a Delaware limited liability company



RODERICK J. WOOD, ICMA-CM
City Manager

By: Fashion World-Santa,
a California limited partnership,
its sole managing member

By: Santa Properties,
a California limited partnership,
its sole general partner

APPROVED AS TO FORM:



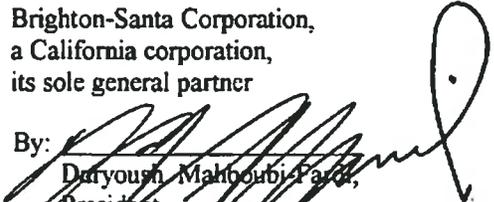
LAURENCE S. WIENER
City Attorney

By: Brighton-Santa Corporation,
a California corporation,
its sole general partner

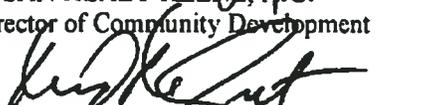
APPROVED AS TO CONTENT:



SUSAN HEALY KEENE, AICP
Director of Community Development

By: 

Daryoush Mahboubi-Fardi,
President

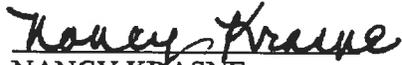


DAVID D. GUSTAVSON
Director of Public Works and
Transportation

By: 

Behrouz Mahboubi-Fardi,
Vice President

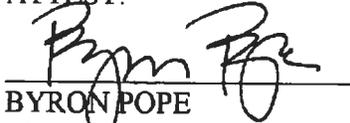
CITY OF BEVERLY HILLS,
a municipal corporation



NANCY KRASNE

Mayor of the City of Beverly Hills, California

ATTEST:



BYRON POPE

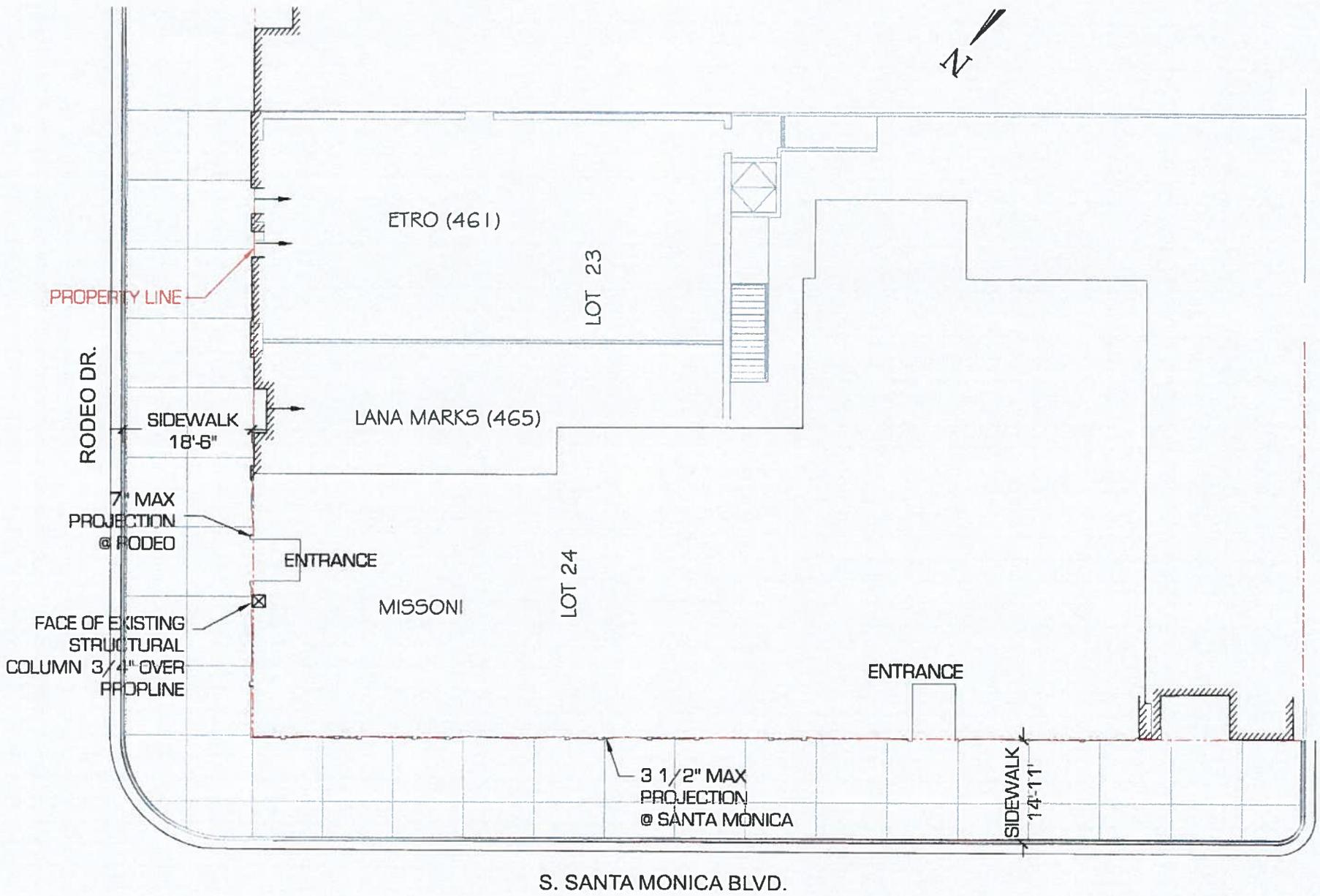
City Clerk

EXHIBIT "A"

DESCRIPTION OF PREMISES
(i.e., the encroachment area)

(Attached.)

EXHIBIT A



MISSONI
 469 N. RODEO DR
 BEVERLY HILLS,
 CA 90210

space CA
 architecture • planning • interiors

8607 Venice Boulevard
 Los Angeles, CA 90034
 T. 310 202 0406
 F. 310 202 0320

RODEO DR.

7" MAX
PROJECTION
@ RODEO

FACE OF EXISTING
STRUCTURAL
COLUMN 3/4" OVER
PROPLINE

SIDEWALK
18'-6"

SIDEWALK
14'-11"

3 1/2" MAX
PROJECTION
@ SANTA MONICA

15x11/817 A

MISSONI

469 N. RODEO DR
BEVERLY HILLS,
CA 90210

SPaCe CA
architecture • planning • interiors

8607 Venice Boulevard
Los Angeles, CA 90034

T. 310 202 0406
F. 310 202 0320

5

EXHIBIT "B"

DESCRIPTION OF FAÇADE

The façade treatment consists of rows of aluminum "ribbons," each of which is approximately 4 inches in height and painted white. Each ribbon is wavy in texture and creates a three dimensional pattern along the walls that give the building a very distinct feel, almost like a woven pattern. Display windows are scattered along the Santa Monica and Rodeo faces and are framed by 8-inch wide white aluminum bands. The entries along these two sides are recessed and also framed by white aluminum bands.

EXHIBIT "C"

ADDITIONAL TERMS AND CONDITIONS

RECITALS

A. City is a municipal corporation duly organized and validly existing under the laws of the State of California with the power to carry on its business as it is now being conducted under the laws of the State of California and the Beverly Hills Municipal Code.

B. City and Encroacher desire to enter into this Encroachment Agreement for a storefront façade on the real property located in the City, which is herein described, upon the terms and conditions set forth herein. To the extent the Façade encroaches on City sidewalks, it meets all the following criteria:

- (1) the encroachment use is consistent with the General Plan;
- (2) the encroachment use promotes the harmonious development of the area;
- (3) the encroachment use does not adversely interfere with the use and enjoyment of residential properties in the vicinity of the subject property;
- (4) the encroachment use does not create any significant traffic impacts, traffic safety hazards, pedestrian-vehicle conflicts, or pedestrian safety hazards;
- (5) the encroachment use does not impede the safe and orderly flow of pedestrians along the public right-of-way;
- (6) the encroachment use does not adversely impact parking in the vicinity as a result of employee or patron parking demands;
- (7) the encroachment use does not create a substantial adverse impact on persons or property; and
- (8) the encroachment use does not adversely affect the public health, welfare and safety.

7. GENERAL.

These Standard Terms and Conditions, and its attachments, shall be deemed fully incorporated in the Encroachment Agreement to which this Exhibit is attached, and these Standard Terms and Conditions and the Encroachment Agreement and its other Exhibits shall hereinafter be collectively referred to as the "Agreement." All terms shall, unless expressly provided to the contrary herein, have the same respective meaning as set forth in the Encroachment Agreement. The Section numbers of this Exhibit are a continuation of the Section numbers of the Encroachment Agreement.

8. CITY RIGHT TO TERMINATE.

Notwithstanding the Recitals above, in the event City hereafter determines that the Façade or the encroachment poses a threat to the health or safety of passersby or the community and Encroacher fails to commence to cure the threat within ten (10) days after written notice from City or fails to cure the matters giving rise to the threat within thirty (30) days after City's written notice, then City may terminate this

Agreement by further written notice to Encroacher. In the event of any such termination, Encroacher shall remove the Façade at its sole cost and expense (and in compliance with the other applicable terms of this Agreement).

9. ADDITIONAL CONDITIONS.

City may impose such conditions on the Façade and Premises as deemed necessary by City to protect City, persons, property, or the public health, welfare, and safety.

10. ADDITIONAL FEES.

Encroacher shall pay as additional fees, all taxes and assessments of any nature whatsoever levied upon the Premises, insurance premiums for all insurance required under this Agreement, and all fees and expenses relating to the use of the Premises, including, but not limited to, costs of permit fees.

11. MAINTENANCE.

Encroacher at its own expense shall keep the Premises in a clean and sanitary condition. If Encroacher does not keep the Façade clean, and fails to correct any unclean or unsanitary condition within 48 hours after being notified in writing to do so by City, City may enter the Premises and remedy the condition, or conditions, and charge the cost to Encroacher.

12. ALTERATIONS AND REPAIRS; REMOVAL OF FAÇADE.

Encroacher accepts the Premises in the condition they now are (without a representation or warranty, express or implied), and City shall not be required to make any alterations, improvements or repairs therein or thereon. Encroacher hereby waives any and all rights it may have to any expressed or implied warranties concerning the condition of Premises. Encroacher shall not make any changes to the Façade without first securing the prior consent of City in writing. All such approved changes or removals shall be at the sole expense of Encroacher. Encroacher may remove the Façade (upon at least 30 days' prior written notice to City), subject to Encroacher's compliance with the other terms of this Agreement.

13. SIGNS AND ADVERTISEMENTS.

No signs or advertising matter of any kind shall be permitted unless and until approved in writing by City. Notwithstanding the foregoing, Encroacher is encouraged to install Holiday Decorations in appropriate areas within Encroacher's business establishment in accordance with *Business Owner's Guide to Installing Holiday Decorations* or other rules as the City may establish from time to time.

14. CONDUCT OF BUSINESS.

Encroacher shall at all times conduct and operate its business in a quiet and orderly manner to the satisfaction of City so that same shall not become or constitute a nuisance either public or private.

15. EMPLOYEES AND MECHANICS' LIEN.

Encroacher shall keep said Premises and every estate, right, title and interest therein, or in or to any part thereof, at all times during the term of this Agreement, free and clear of any mechanics' liens and other liens, including, but not limited to, liens for labor, services, supplies, equipment, or material. Encroacher will at all times fully pay and discharge and wholly protect, defend, indemnify and hold harmless City with respect to such liens, and any claims, assertions or filing thereof.

16. TAXES.

Encroacher shall exonerate, indemnify and hold harmless City from and against, shall defend City from and against, and shall assume full responsibility for, payment of all wages or salaries and all federal, State, County and City taxes or contributions imposed or required under the Unemployment Insurance, Social Security, Income Tax laws, Worker's Compensation laws, or other laws with respect to Encroacher's employees engaged in the performance of Encroacher's obligations and operations hereunder.

This Agreement may create a possessory interest in public property which is subject to taxation. In the event such interest is created, Encroacher shall pay any and all taxes levied on such interest.

Encroacher shall pay any and all taxes upon personal property and improvements belonging to said Encroacher and upon its possessory interests, if any, and Encroacher shall pay all sales and other taxes levied against the operation of said business.

17. INSURANCE.

Encroacher shall procure and maintain at Encroacher's own cost and expense for the duration of this Agreement, the following insurance against claims for injuries to persons or damages to property which may arise from or in connection with the condition of the Premises or the possession, occupancy, operation and use of the Premises by Encroacher, Encroacher's agents, representatives, employees, or subcontractors.

A. Extent of Coverage.

Encroacher shall procure limits of insurance coverage in the following minimum amounts:

1. Comprehensive General Liability: Two Million Dollars (\$2,000,000), combined single limit per occurrence for bodily injury and property damage. Such comprehensive liability policy shall expressly include coverage for fire-legal liability.

2. Worker's Compensation and Employer's Liability: Worker's Compensation limits as required by the Labor Code of the State of California and Employer's Liability limits of One Million Dollars, (\$1,000,000) per accident.

3. Builder's Risk or Tenant Improvements Insurance: At City's discretion, either (1) a tenant improvements or betterments insurance or (2) an "all risks" builder's risk insurance. Such insurance shall apply to Façade improvements in place and all material and equipment at the job site furnished under contract. Such insurance shall cover all risks, including but not limited to vandalism and malicious mischief, and shall further cover any damages arising as a result of construction of any improvements, changes or alterations to the Premises, including but not limited to, hook-ups to utilities or upgrading of any utilities; but excluding contractors', subcontractors' and construction managers' tools and equipment and property owned by contractors' or subcontractors' employees, with limits in accordance with project value.

4. Property Insurance: Property insurance shall be provided for the Façade. Encroacher shall obtain and keep in force during the term of this Agreement a policy or policies of insurance covering loss or damage to the Façade, in the amount of at least one hundred percent (100%) of the full replacement value thereof, as the same may exist from time to time, against all perils included

within the classification of fire, extended coverage, vandalism, malicious mischief, and special extended perils. City shall bear no responsibility for any loss, damage or destruction of the Façade even if Encroacher fails to procure and maintain the insurance required hereunder.

B. Duration of Coverage. Encroacher shall procure and maintain the insurance coverage described in subsections A(1), (2) and (4) of this Section prior to commencing occupancy of the Premises and for the entire term of such occupancy. Encroacher shall procure and maintain the insurance coverage described in subsection A(3) of this Section 17, prior to commencing any construction or demolition on the Premises and until completion and acceptance of such work.

C. Deductibles and Self-Insured Retention. Such insurance policies shall have no deductibles or self-insured retentions unless approved in advance by City in writing. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects City, its officials, and employees; or Encroacher shall procure a bond guaranteeing payment of losses, related investigation, claims administration and defense expenses.

D. Other Insurance Provisions.

1. General Liability:

(i) City, members of its City Council, boards and commissions, officers, agents and employees are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of Encroacher; products and completed operations of Encroacher; premises owned, leased or used by Encroacher, or arising from or in any manner connected to Encroacher's business, activities, operations, services or work conducted in or about the Premises. The coverage shall contain no special limitations on the scope of protection afforded to City, members of City Council, boards and commissions, officers, agents, and employees.

(ii) Encroacher's insurance coverage shall be primary insurance as respects City, members of its City Council, boards and commissions, officers, agents, and employees. Any insurance or self-insurance maintained by City, its officials, and employees shall be in excess of Encroacher's insurance and shall not contribute to it.

(iii) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, members of its City Council, boards and commissions, officers, agents, and employees.

(iv) Coverage shall state that Encroacher's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

2. Worker's Compensation, Employer's Liability and Property Coverages: The insurer shall agree to waive all rights of subrogation against City, members of its City Council, boards and commissions, officers, agents, and employees for losses arising from the condition, occupancy, possession of the Premises or any activities or operations of Encroacher herein.

3. All Coverages.

(i) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to City as set forth in Section 25 of this Agreement.

(ii) If Encroacher, for any reason, fails to maintain insurance coverage which is required pursuant to this Agreement, the same shall be deemed a material breach of contract. City, at its sole option, may obtain (but has no obligation to do so) such insurance in Encroacher's name or as agent of Encroacher and shall be compensated by Encroacher for the costs of the insurance premiums or may deduct such costs from the security deposit required hereunder. Encroacher shall pay City interest on paid insurance premiums at the maximum rate permitted by law computed from the day written notice is received that the premiums have been paid.

E. Acceptability of Insurance. All insurance policies are to be placed with insurers holding a "General Policy Holders' Rating" of B+VII or better as set forth in the most current issue of "Best's Insurance Guide" and shall be authorized to do business in California.

F. Verification of Coverage. Prior to exercising any right granted under this Agreement, Encroacher shall furnish City with a certificate or certificates of insurance verifying all insurance coverage required by this Section 17. Said certificates shall be signed by a person authorized by that insurer to bind coverage on its behalf. Current copies of said certificates shall be maintain on file with the City Clerk at all times during the term of this Agreement.

G. Increase in Required Insurance Coverages. City may increase the dollar amount of coverage required under any of the policies described above, upon prior written notice to Encroacher.

18. COMPLIANCE WITH LAWS AND ORDINANCES.

Encroacher shall use the Premises and conduct and maintain the Façade in accordance with all federal, State, County and City laws, ordinances, rules and regulations as may from time to time be applicable.

19. PERMITS AND LICENSES.

Encroacher shall be required to obtain any and all permits and licenses as may from time to time be required in connection with the services to be performed under this Agreement and the installation, maintenance or repair of the Façade.

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A waiver by City of any breach of any term, covenant, or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition contained herein, whether of the same or a different character.

21. HOLDOVER.

Any holding over by Encroacher after the expiration or any termination of this Agreement or of any extension or renewal thereof shall not constitute a renewal or extension of the term hereof.

22. HOLD HARMLESS.

Encroacher agrees to defend, indemnify and hold harmless City and members of its City Council, boards and commissions, officers, agents, and employees (hereinafter, collectively "City parties") from and against all loss, damage, cost, expense, liability, claims, demands, suits, attorneys' fees and judgments arising from or in any manner connected to Encroacher's possession, occupancy, use,

construction or demolition of the Façade or Premises or arising from or in any manner connected to the condition of the Premises or Façade and Encroacher's business, activities, operations, services or work conducted in, on or about the Premises.

Encroacher further agrees to indemnify, defend and hold harmless all City parties, from and against all loss, damage, costs, expense, liability, claims, demands, suits, attorneys' fees and judgments arising from or in any manner connected to the furnishing or supplying of any work, services, materials, equipment or supplies by any persons, firms, corporations or other entities in connection with this Agreement or Encroacher's operations.

Without limiting the generality of the foregoing, Encroacher agrees that no City party shall be liable for any injury to Encroacher's business or any loss of income therefrom, or for damage to the goods, wares, merchandise, improvements or other property of Encroacher, Encroacher's officers, agents, employees, contractors, invitees, or customers, or any other person in, on or about the Premises, or personal injury or death of Encroacher, its officers, agents, employees, contractors, invitees, and customers.

Encroacher shall further indemnify and hold harmless City from and against any and all claims arising (i) from any breach or default in the performance of any obligations on the part of Encroacher to be performed under the terms of this Agreement and the encroachment permit issued pursuant hereto, or (ii) from any negligence or other wrongful conduct of Encroacher. In the event any action or proceeding is brought against City by reason of such claim, Encroacher, upon notice from City, shall defend such action or proceeding at Encroacher's expense, by legal counsel satisfactory to City.

23. INDEPENDENT CONTRACTOR.

It is understood and agreed that Encroacher, in the performance of this Agreement, will be acting in a wholly independent capacity and not as the agent, employee, partner, or joint venturer of City. This Agreement does not create a tenancy of any nature whatsoever between City and Encroacher.

24. DEFAULT; TERMINATION; REMOVAL OF FAÇADE.

In the event Encroacher fails or refuses to perform any of the provisions hereof at the time and in the manner required hereunder, Encroacher shall be deemed in default in the performance of its obligations under this Agreement. If such default is a monetary default which is not cured within a period of three (3) days after receipt of written notice of default from City to Encroacher, specifying the nature of such default and the steps necessary to cure such default, City may terminate this Agreement forthwith by giving written notice thereof to Encroacher. If such default is a non-monetary default which is not cured within ten (10) days after written notice of default from City to Encroacher, specifying the nature of such default and the steps necessary to cure such default, City may terminate this Agreement forthwith by giving written notice thereof to Encroacher. Upon termination of this Agreement by City due to a default by Encroacher or other termination or expiration of this Agreement, Encroacher shall, at its sole cost and expense, remove the Façade and restore the storefront to its condition prior to the construction and installation of the Façade.

25. NOTICES.

All notices, demands, requests and approvals to be given under this Agreement shall be given in writing and shall be deemed served when delivered personally, or seventy-two (72) hours after the deposit thereof in the United States mail, postage prepaid and addressed as hereinafter provided. All notices, requests and approvals from Encroacher to City shall be addressed to: Office of the City Manager, 455

North Rexford Drive, Fourth Floor, Beverly Hills, California 90210. All notices, demands, requests and approvals from City to Encroacher shall be addressed to the Encroacher at the address set forth in Section 1 of this Agreement. Either party hereto may, from time to time by notice in writing served upon the other party as aforesaid, designate a different mailing address or a different person to whom all such notices or demands are thereafter to be addressed.

26. COSTS OF LITIGATION.

If either party hereto institutes any action or proceeding in court to enforce any provision hereof or for damages by reason of an alleged breach of any provisions of this Agreement, the prevailing party shall be entitled to receive from the losing party all costs and expenses and such amount as the court may adjudge to be reasonable attorneys' fees for the costs incurred by the prevailing party in such action or proceeding.

27. CAPTIONS FOR CONVENIENCE.

The captions herein are for convenience only, are not a part of this Agreement and do not in any way limit, define or amplify the terms and provisions hereof.

28. COUNTERPARTS.

This Agreement may be executed in several counterparts, each of which is an original, and all of which together constitute but one and the same document.

29. MERGER OF NEGOTIATIONS.

This Agreement represents the full and complete understanding of every kind or nature whatsoever between the parties hereto with respect to the subject matter hereof and all preliminary negotiations and agreements of whatsoever kind or nature are merged herein. No verbal agreement or implied covenant shall be held to vary the provisions hereof. Any amendment to this Agreement shall only be valid if in writing and signed by both parties.

30. GOVERNING LAW.

The validity of this Agreement and any of its terms or provisions, as well as the rights and duties, shall be interpreted and construed pursuant to the law of the State of California.