



CITY OF BEVERLY HILLS STAFF REPORT

Meeting Date: April 5, 2011
To: Honorable Mayor & City Council
From: Cheryl Friedling, Deputy City Manager for Public Affairs
Subject: Participation By the City of Beverly Hills in 'The Real Housewives of Beverly Hills' Television Show
Attachments: 1. Location Agreement
2. Appearance Release Form

INTRODUCTION

At the City Council meeting of March 1, 2011, former Mayor Delshad presented a City proclamation to Ms. Lisa Vanderpump, the owner of the Beverly Hills restaurant Villa Blanca.

In addition to owning several restaurants, Ms. Vanderpump is a cast member of the Bravo television show *The Real Housewives of Beverly Hills*. The show premiered on October 14, 2010, and is part of a larger television franchise that showcases *Real Housewives* in Orange County, Miami, New Jersey and New York, among others.

A Bravo television crew filmed Ms. Vanderpump receiving the City Council's proclamation from former Mayor Delshad in the Council Chamber. The Bravo producers (Evolution Film & Tape, Inc.) seek approval regarding the required legal releases allowing film footage of the City Councilmembers and City shield to be aired on an upcoming segment of *The Real Housewives of Beverly Hills*.

DISCUSSION

The producers have requested that the City execute a Location Agreement granting approval to film and broadcast rights for video taken in the Council Chamber, as well as to broadcast the City's shield, which appears on Ms. Vanderpump's proclamation. The producers also require individual releases from any current or former Council member serving on the Council in March 1, 2011, and captured on the video during that Council meeting.

The City does not have any rights to review the video footage prior to airing. Furthermore, there is no guarantee that this footage will be used.

FISCAL IMPACT

A standard fee of \$1,500 would be charged to the producers for use of the City's shield in a televised format.

RECOMMENDATION

Unless there is an objection, the City Manager will execute the required legal release for video taken in the Council Chamber of Ms. Vanderpump receiving a City proclamation and related license agreement(s) regarding the use of the City shield and other City property.

Individual council members (and former Council members) will be presented with individual legal releases for approval so that their image may be aired by the Bravo producers in conjunction with this episode. Any Council member who prefers not to have their image portrayed can do so, and the show's producers will comply by editing around those shots or "blurring" the Council member's image.

Cheryl Friedling
Approved By



Attachment 1

EVOLUTION FILM & TAPE, INC.
3310 W. Vanowen Street
Burbank, California 91505-1239

LOCATION AGREEMENT #1

Dated: _____

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, _____ ("Owner") hereby grants to EVOLUTION FILM & TAPE, INC. ("Company"), and Company's subsidiaries, parents, affiliates, licensees, designees, and assigns and their respective employees, agents, independent producers, contractors and suppliers, (collectively "Released Parties"), permission to enter upon and use the property located at _____ ("Property") for the purpose of photographing, filming and recording (including, without limitation, sound recordings) certain scenes for a television program currently entitled "The Real Housewives of Beverly Hills" ("Program") commencing on or about _____ (subject to change on account of weather conditions or changes in production schedule), and continuing until completion of all scenes and work required.

Company may place all necessary facilities and equipment, including temporary sets on the Property, and agrees to remove the same after completion of work and leave the Property in as good condition as when it was received, reasonable wear and tear from uses permitted herein excepted. Signs on the Property may, but need not, be removed or changed, but, if removed or changed by Company, must be replaced. Owner represents and warrants that the Property is maintained in compliance with all federal, state and local laws, rules, regulations, codes and ordinances and is free of latent defects or illegal conditions of which Owner is or should be aware except those of which Owner has notified Company.

Company agrees to use reasonable care to prevent damage to the Property, and will indemnify Owner, and all other parties lawfully in possession, of the Property, and hold each of them harmless from any claims and demands of any person or persons arising out of or based upon personal injuries, death or property damage suffered by such person or persons resulting directly from any act of negligence on Company's part in connection with the work hereunder.

Company shall have the right to photograph, film, record and use in any manner whatsoever any name connected with the Property and any signs located thereon and any logos and verbiage contained on such signs (including, but not limited to, any tradenames, trademarks, copyrights, and logos) in connection with or as part of the Program or any other program and the right to refer to the Property by any real or fictitious name and the right to refer to any real or fictitious events as having occurred on the Property. Company shall have the right to reproduce, exhibit, advertise, and exploit and license others to reproduce, exhibit, advertise, and exploit all of the photographs, film and recordings made hereunder in connection with the Program or any other program in any and all media, whether now known or hereafter devised, throughout the universe in perpetuity, including, without limitation, the right to use or authorize the use of any portion(s) of the Program containing the photographs, film and recordings made hereunder in connection with any other program and/or in connection with the exploitation of any allied, ancillary or subsidiary rights with respect to the Program and/or any other program. Company shall be the sole owner of all right, title and interest in and to the Program and any photographs, film and recordings made hereunder, including, without limitation, the right to use and reuse all such photographs, film and recordings, and Owner shall not have any right of action or claim against Company or any other party arising out of any use of said photographs, film, recordings and/or sound recordings.

Owner's sole remedy for any breach or alleged breach by Company shall be an action at law to recover such money damages as may have been actually suffered by Owner (if any) as a result thereof and Owner will not have the right to terminate or rescind this Agreement or to seek or obtain any form of injunctive or other equitable relief. Company is not obligated to actually use the Property or produce the Program or include material shot hereunder in the Program. Company may at any time elect not to use the Property by giving Owner written notice of such election, in which case neither party shall have any obligation hereunder. If Company requires use of the Property for additional use in connection with the Program, Owner shall permit Company to re-enter upon and again utilize the Property for such purpose. The dates for such additional use shall be subject to Owner's approval, which approval Owner shall not unreasonably withhold.

Owner acknowledges and agrees that Owner will not be paid compensation for Company's use of the Property under this Agreement nor for Company's exercise of the rights granted by Owner under this Agreement. Owner further acknowledges and agrees that the consideration Owner will receive for Company's use of the Property and/or Company's exercise of its rights under this Agreement will be the opportunity for publicity that the Property and/or Owner will receive if Company decides to include photographs, film, or recordings made on the Property in any of its productions. Owner agrees not to make any commercial or any other use of the fact that the Property appeared or may appear in any of Company's productions.

Owner shall keep in strictest confidence and shall not disclose to any third party at any time (i.e., prior to, during, or after the taping or exhibition of the Program) any information or materials of any kind, including without limitation, any information or materials concerning or relating to Producer or one or more television networks or cable platforms of NBCUniversal Media, LLC ("Network"), the business of Producer or Network, any program produced by Producer or exhibited by Network, including, without limitation, any information concerning or relating to the Program, the Program participants, the events

contained in the Program or the outcome of any event in the Program, that Owner reads, hears or otherwise acquires or learns in connection with or as a result of Producer's use of the Property (collectively, the "Confidential Information"). Owner acknowledges and agrees that the Confidential Information is confidential and the exclusive property of Producer or Network. At no time will Owner ever, directly or indirectly, divulge in any manner, or use or permit others to use, any of the Confidential Information. Owner's obligations with respect to confidentiality as set forth in this paragraph shall continue in perpetuity unless and until such Confidential Information is publicly disclosed by Network.

If any controversy or claim arising out of or relating to this Agreement, or the breach of any term hereof, cannot be settled through direct discussions, the parties agree to endeavor to first settle the controversy or claim by mediation conducted in the County of Los Angeles and administered by JAMS under its applicable rules, before commencing any proceedings permitted under this paragraph. If a dispute is not otherwise resolved through direct discussions or mediation, the controversy or claim, including the scope or applicability of this agreement to arbitrate, shall be resolved by binding confidential arbitration conducted in the County of Los Angeles, and administered by JAMS in accordance with the Streamlined Arbitration Rules and Procedures of JAMS or subsequent versions thereof, including the optional appeal procedure (the "JAMS Rules", available at www.jamsadr.com, including, without limitation, the rule providing that each party shall pay *pro rata* its share of JAMS fees and expenses, and the rules providing for limited discovery and other exchange of information). The JAMS Rules for selection of an arbitrator shall be followed, except that the arbitrator shall be an arbitrator experienced in the entertainment industry and licensed to practice law in California. Notwithstanding the above requirements, if a party files suit in court or files an arbitration before first seeking to mediate, in direct violation of this paragraph, the other party does not have to request mediation to enforce the right to compel arbitration as required under this paragraph.

Company may assign its rights hereunder in whole or in part to any person, firm or corporation and this Agreement may be assigned by any assignee thereof; provided, however, that Company shall remain secondarily liable hereunder unless such assignment is to any "major" or "mini-major" studio (as those terms are commonly understood in the entertainment industry) or to any other similar financially responsible party which assumes all of Company's obligations hereunder in writing, in which case, Company shall have no further liability hereunder. This Agreement and Owner's rights and obligations hereunder are not assignable by Owner and any purported assignment thereof will be null and void from the making thereof.

Owner hereby represents and warrants that Owner has the right and authority to make and enter into this Agreement and to grant Company the rights set forth herein, including, without limitation, the right to photograph, film and record, and to broadcast, exhibit and otherwise exploit the photographs, film and recordings of the Property and any and all furnishings, works of art and other objects located in or around the Property in any manner by any method and in any and all media, whether now known or discovered later, anywhere in the world at any time. If Owner does not own the Property but rather holds exclusive possession of the Property pursuant to a lease agreement, Owner represents and warrants that it has obtained all necessary permissions and consents from the lessor, and upon Company's request, shall cause such lessor to execute a Location Agreement in the form specified by Company. Owner hereby agrees to indemnify Company and Released Parties from and against any and all losses, liabilities, damages, expenses and claims (including reasonable attorney's fees) as a result of any breach or alleged breach of said representations and warranties or agreements made by Owner in this Agreement. This is the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all previous agreements and negotiations. This Agreement may not be modified or terminated without the express written consent of both parties. No other authorization is necessary to enable Company to use the Property for the purpose herein contemplated. Nothing in this Agreement shall limit or restrict any rights otherwise enjoyed by Company under law or contract.

AGREED TO AND ACCEPTED:

EVOLUTION FILM & TAPE, INC.
("Company")

("Owner")

By: _____

By: _____

Business Name: _____

Business Address: _____

Its: _____

Phone: _____

Email: _____

Attachment 2

Description:			
Hair Color:		Minor:	
Family They Know:			
Release Filled By:		Crew Letter:	
Scene Name:			

EVOLUTION FILM & TAPE, INC.
3310 West Vanowen Street
Burbank, California 91505-1239

APPEARANCE RELEASE FORM AND ARBITRATION PROVISION

THIS IS A LEGAL DOCUMENT AFFECTING YOUR RIGHTS AND RESPONSIBILITIES
PLEASE READ IT CAREFULLY BEFORE SIGNING

1. I hereby grant to Evolution Film & Tape, Inc. ("Producer") the right to take motion and still pictures of me and record my voice and any sounds made by me, and to obtain other information about me, including but not limited to my name, likeness, photograph, voice, dialogue, sounds, biographical information, personal characteristics and other personal identification (collectively, the "Footage and Materials"), and to use the Footage and Materials in and in connection with the development, production, distribution and exploitation of the television program currently entitled "The Real Housewives of Beverly Hills" (the "Program"), and any other production, and in the advertisements, merchandising, publicity and promotions for the Program, and any other production and for any entity that may sponsor, advertise in or exhibit in any manner the Footage and Materials, the Program or any other production (the "Advertisements"), and in the exploitation of all allied, ancillary and subsidiary rights (including, without limitation, remake, sequel, theatrical, television, digital, radio, publishing, merchandising, soundtrack album and other similar rights). The Footage and Materials, the Program, and the Advertisements may be exploited throughout the universe at any time, in perpetuity, in any and all media now known and hereafter devised, without any compensation to me whatsoever. The rights granted herein shall also include the right to edit, delete, dub and fictionalize the Footage and Materials, the Program, and the Advertisements as Producer sees fit in Producer's sole discretion.

2. The Footage and Materials shall also include any and all material that I may create, write, provide or contribute to in connection with the Program at any time, including, without limitation, personal journals, photographs, webisodes, vlogs, blogs, video diaries, e-mails and text/picture messages. Producer shall be the sole and exclusive owner of all rights (including, without limitation, copyrights) in and to the Footage and Materials. Any and all such Footage and Materials shall be deemed "works made for hire" specially ordered as part of a motion picture or other audio-visual work, and I waive the exercise of any "moral rights," "droit moral," and any analogous rights which I have. To the extent I retain any interest in the Footage and Materials, I hereby grant and assign to Producer all rights of any nature in and to all such Footage and Materials.

3. Producer has no obligation to me whatsoever. Without in any way limiting the foregoing, I acknowledge and agree that Producer is under no obligation to use the Footage and Materials.

4. I represent and warrant the following: (a) I am not currently, and during one (1) year from today do not intend to be, a candidate for any public office; and (b) my appearance in the Program is not a performance and is not employment and is not subject to any union or guild collective bargaining agreement, and does not entitle me to wages, salary, corporate benefits, unemployment or workers' compensation benefits, or other compensation under any such collective bargaining agreement or otherwise.

5. I understand that it may be a federal offense, unless disclosed to Producer prior to exhibition, if any, to do any of the following: (a) give or agree to give any member of the production staff and anyone associated in any manner with the Program or any representative of Producer any portion of my compensation or anything else of value to arrange my appearance in the Program or the Advertisements, or (b) accept or agree to accept anything of value to promote any product, service or venture on the air or to use any prepared material containing such a promotion. I represent and warrant that I gave nothing of value nor did I agree to give anything of value to anyone so I could be in the Program or the Advertisements. I know that Producer does not permit it and that it may be a federal offense not to tell Producer if I had. I shall notify Producer and the network on which

the Program will air immediately if any person attempts or has attempted to induce me to do anything in violation of the foregoing or which is in any way dishonest.

6. I understand I will not be paid any compensation for giving Producer the rights listed in this Agreement, or for Producer's exercise of any and all of the rights listed in this Agreement. I hereby waive any and all rights I may have to any such compensation. I acknowledge and agree that a significant element of the consideration I am receiving under this Agreement is the opportunity for publicity that I will receive if Producer includes me or the Footage and Materials, in the Program or in the Advertisements. I know Producer will incur significant costs and expenses in reliance upon this Agreement, so I will not attempt to cancel it or to revoke any of the rights granted to Producer herein. I acknowledge that I am a volunteer and that I shall not be deemed to be an employee of Producer, nor shall I be entitled to the benefits provided by Producer to its employees. I agree not to make any commercial or any other use of the fact that I appeared in the Program or that Producer used the Footage and Materials in the Program.

7. (a) I shall keep in strictest confidence and shall not disclose to any other participant or other third party at any time (i.e., prior to, during, or after the taping or exhibition of the Program) any information or materials of any kind, including without limitation, any information or materials concerning or relating to Producer or one or more television networks or cable platforms of NBCUniversal Media, LLC ("Network"), the business of Producer or Network, any program produced by Producer or exhibited by Network, including, without limitation, any information concerning or relating to the Program, the Program participants, the location(s) of the Program, the events contained in the Program or the outcome of any event in the Program, that I read, hear or otherwise acquire or learn in connection with or as a result of my participation on the Program (collectively, the "Confidential Information"). I acknowledge and agree that the Confidential Information is confidential and the exclusive property of Producer or Network. At no time will I ever, directly or indirectly, divulge in any manner, or use or permit others to use, any of the Confidential Information. My obligations with respect to confidentiality as set forth in this paragraph shall continue in perpetuity or until terminated by Network in writing. In no event shall I have the right to terminate my confidentiality obligations under this Agreement.

(b) I acknowledge that any breach by me of any of the confidentiality provisions of this Agreement would cause Producer and Network irreparable injury and damage that cannot be reasonably or adequately compensated by damages in an action at law, and, therefore, I hereby expressly agree that Producer and Network shall be entitled to injunctive and other equitable relief (without posting any bond) to prevent or cure any breach or threatened breach of the confidentiality provisions of this Agreement by me. Furthermore, I will defend, indemnify and hold harmless Producer, Network, their parent, subsidiary and affiliated companies, and each of their respective officers, directors, agents, representatives and employees, from and against any and all claims, actions, damages, liabilities, losses, costs and expenses (including, without limitation, attorneys' fees) that in any way arise out of or result from my breach of any of the confidentiality provisions of this Agreement.

(c) Without in any way limiting the foregoing, I further agree that without the prior approval of Network in each instance, I shall not discuss the Program or my participation in the Program with any third party, except that I may make incidental, non-derogatory mention that I participated in the Program (i.e., "I participated in the Program 'The Real Housewives of Beverly Hills.'") only after the earlier of the exhibition of the episode(s) in which I appear or the public announcement by Network of my participation in the Program.

8. RELEASE, AGREEMENT NOT TO SUE AND INDEMNITY. To the maximum extent permitted by law, I agree that I will never sue Producer, NBCUniversal Media, LLC, Network or anyone because I do not like the manner in which Producer took or used the Footage and Materials or for any cause of action based on any of the Released Claims (as defined below). To the maximum extent permitted by law, I, for myself and on behalf of my heirs, executors, agents, successors or assigns, hereby release, hold harmless, and forever discharge Producer, NBCUniversal Media, LLC, Network, and any station or network that exhibits the Program, and each of their respective parent, subsidiary and affiliated companies, and each of their respective officers, directors, agents, representatives and employees (the "Released Parties"), from any and all claims, actions, damages, losses, liabilities, costs, expenses, injuries or causes of action whatsoever that in any way are caused by, arise out of or result from this Agreement, my appearance in the Footage and Materials, the Program, or in the Advertisements, the creation of the Footage and Materials, or the broadcast or other exhibition of the Program, the Footage and Materials, or the Advertisements, on any legal theory whatsoever (including, but not limited to, personal injury, rights of privacy and publicity, defamation, or false light), regardless of whether caused by the negligence or willful misconduct of the Released Parties (collectively, the "Released Claims"). I will defend, indemnify and hold the Released Parties harmless from any and all such claims, actions, damages, losses, liabilities, costs, expenses, injuries or causes of action, as well as all those that in any way are caused by, arise out of or result from any breach or alleged breach by me of any of the representations or warranties made by me

in this Agreement.

9. TO THE MAXIMUM EXTENT PERMITTED BY LAW, I WAIVE ANY AND ALL RIGHTS I MAY HAVE UNDER SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND EVERY LIKE PROVISION IN ANY FOREIGN JURISDICTION. SECTION 1542 PROVIDES AS FOLLOWS:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

10. **MEDIATION & ARBITRATION.** The parties agree that if any controversy or claim arising out of or relating to this Agreement cannot be settled through direct discussions, they shall endeavor first to settle the controversy or claim by a mediation administered by JAMS under its applicable rules. IF THE DISPUTE IS NOT OTHERWISE RESOLVED THROUGH DIRECT DISCUSSIONS OR MEDIATION, THE PARTIES AGREE THAT THE CONTROVERSY OR CLAIM, INCLUDING THE SCOPE OR APPLICABILITY OF THIS AGREEMENT TO ARBITRATE, SHALL THEN BE RESOLVED BY FINAL AND BINDING CONFIDENTIAL ARBITRATION ADMINISTERED BY JAMS IN ACCORDANCE WITH ITS STREAMLINED ARBITRATION RULES AND PROCEDURES OR SUBSEQUENT VERSIONS THEREOF, INCLUDING THE OPTIONAL APPEAL PROCEDURE (THE "JAMS RULES", AVAILABLE AT WWW.JAMSADR.COM, INCLUDING, WITHOUT LIMITATION, THE RULE PROVIDING THAT EACH PARTY SHALL PAY *PRO RATA* ITS SHARE OF JAMS FEES AND EXPENSES, AND THE RULES PROVIDING FOR LIMITED DISCOVERY AND OTHER EXCHANGE OF INFORMATION). THE JAMS RULES FOR SELECTION OF AN ARBITRATOR SHALL BE FOLLOWED, EXCEPT THAT THE ARBITRATOR SHALL BE AN ARBITRATOR EXPERIENCED IN THE ENTERTAINMENT INDUSTRY AND LICENSED TO PRACTICE LAW IN CALIFORNIA OR A RETIRED JUDGE. ALL PROCEEDINGS BROUGHT PURSUANT TO THIS PARAGRAPH WILL BE CONDUCTED IN THE COUNTY OF LOS ANGELES. THE PARTIES AGREE THAT THE REMEDY FOR ANY CLAIM BROUGHT PURSUANT TO THIS AGREEMENT SHALL BE LIMITED TO ACTUAL DAMAGES, AND IN NO EVENT SHALL ANY PARTY BE ENTITLED TO RECOVER PUNITIVE OR EXEMPLARY DAMAGES OR TO RESCIND THIS AGREEMENT OR SEEK INJUNCTIVE OR ANY OTHER EQUITABLE RELIEF.

11. This Agreement shall be interpreted under the internal, substantive laws of the State of California without regard to the conflicts of law provisions thereof. To the extent that the arbitration provisions of this Agreement are not enforced or court proceedings are otherwise required, commenced or maintained, the parties submit to the *in personam* jurisdiction of the Los Angeles County Superior Courts and the United States District Court for the Central District of California, and waive any objections that they may have as to jurisdiction or venue in any such courts.

12. As used herein, "Producer" shall include Producer, its licensees, successors and assigns, and each of their respective parents, subsidiaries, and affiliates, and each of their respective officers, directors, shareholders, employees, agents, representatives, successors, licensees and assigns. I agree that Producer may license, assign, and otherwise transfer this Agreement and all rights granted by me to Producer under this Agreement to any person or entity.

13. This is the complete and binding agreement between Producer and me, and it supersedes all prior understandings and communications, both oral and written, with respect to its subject matter. The illegality, invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any of the remainder of this Agreement, which shall be enforced to the maximum extent permitted by law. This Agreement cannot be terminated, rescinded or amended, except by a written agreement signed by both Producer and me.

I UNDERSTAND THAT I AM GIVING UP CERTAIN LEGAL RIGHTS UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, MY RIGHT TO FILE A LAWSUIT IN COURT WITH RESPECT TO ANY CLAIM ARISING IN CONNECTION WITH THIS AGREEMENT.

Signature: _____ Date: _____ Phone: _____

Print Name: _____ Date of Birth: _____

E-Mail: _____

Address: _____

If participant is under eighteen years of age: I represent and warrant that I am the parent or legal guardian of the minor whose name appears above. I represent and warrant that (together with the undersigned person below, if any) I have legal custody, sole care and control of the minor and have the complete and unconditional right to enter into this Agreement on behalf of the minor. I acknowledge that I have read the foregoing Agreement and am familiar with each and all of the terms contained therein, I am satisfied that the Agreement is fair and equitable, and I hereby give my express consent to its execution by my child/ward and will not revoke my consent at any time. I hereby release the Released Parties as defined in Paragraph 8 above from any claims and causes of action I may have against them of any nature whatsoever. I hereby fully and unconditionally guarantee the performance of my child's/ward's obligations and the grant of rights in and to the results and proceeds of my child's/ward's activities as set forth above.

Signature of Parent or Guardian: _____ Date: _____

Print Name: _____ Phone: _____

Signature of Parent or Guardian: _____ Date: _____

Print Name: _____ Phone: _____

For verification purposes only pursuant to 18 U.S.C. §§ 2256 et seq.